

# THE GOONZETTE

*Digital Culture • Commentary • Analysis*

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# Federal Courts Finally Catch Up: Why Recent Tribal Law Victories Matter Beyond the Headlines

The past year has delivered a series of legal victories for Indian Country that should have every tribal leader, practitioner, and community member paying attention. But before we celebrate too loudly, let's examine what these wins actually mean – and more importantly, what they don't mean – for the future of tribal sovereignty.

## ## The Good News First

\*Haaland v. Brackeen\* finally put to rest decades of constitutional challenges to the Indian Child Welfare Act. The Supreme Court's decision wasn't just a victory for ICWA – it was a reaffirmation that Congress has broad authority to legislate regarding Indian affairs, and that tribal political status isn't some historical accident but a fundamental aspect of federal law. When Justice Barrett wrote that ICWA's preferences are based on tribal membership, not race, she articulated something we've been saying for generations: we are nations, not ethnicities.

The \*Oklahoma v. Castro-Huerta\* aftermath has been equally instructive. While that 2022 decision temporarily muddied jurisdictional waters, tribal nations across Indian Country responded with what I call "sovereignty in action." They didn't just file briefs – they negotiated compacts, strengthened their own court systems, and demonstrated that the best response to federal uncertainty is tribal capability.

In my own backyard, Ho-Chunk Nation's recent gaming compact renegotiation with Wisconsin exemplifies this principle. Rather than accepting whatever scraps the state offered, tribal negotiators leveraged their strong economic position and legal standing to secure terms that reflect genuine government-to-government relationships.

## ## The Patterns Worth Watching

**W**hat connects these victories isn't luck – it's strategy. Successful tribal advocacy today requires understanding that federal courts, however sympathetic, will never be the ultimate guardians of tribal sovereignty. That responsibility belongs to us.

**T**he most effective approaches I'm seeing combine three elements: legal excellence, economic strength, and political sophistication. Tribes that prevail in federal court do so because they've built comprehensive cases that don't just cite *\*Worcester v. Georgia\** but demonstrate contemporary governmental capacity. They show up with detailed jurisdictional analyses, robust enforcement mechanisms, and evidence of effective governance.

**T**his matters because federal judges – even well-intentioned ones – often suffer from what I call "sovereign imagination deficit." They understand state sovereignty because they live in it. They grasp federal authority because they exercise it. But tribal sovereignty requires them to envision something outside their daily experience: nations that aren't states, governments that aren't counties, legal systems that predate the Constitution.

## ## The Strategic Imperative

**S**mart tribal advocates know that winning in court is only half the battle. The other half is building the governmental infrastructure to make those victories meaningful.

**T**ake jurisdiction, always our most contentious issue. Recent decisions have generally favored tribal authority, but only when tribes demonstrate they can exercise that authority effectively. Federal courts won't expand tribal jurisdiction for tribes that lack functioning court systems, adequate law enforcement, or clear legal codes.

**T**his creates what I call the "sovereignty spiral" – either upward or downward. Strong governance enables legal victories, which create space for stronger governance, which enables bigger legal victories. But the reverse is equally true: weak institutions invite legal challenges, which constrain governmental capacity, which invites more challenges.

## ## The Road Ahead

The current Supreme Court, for all its flaws, has shown more respect for tribal sovereignty than many predicted. But that respect is conditional on tribes demonstrating the governmental sophistication that justifies it. This isn't assimilation – it's translation. We're explaining our inherent sovereignty in terms federal institutions can understand and respect.

The next phase of tribal law development will likely focus on three areas: environmental regulation, digital governance, and inter-tribal cooperation. Climate change doesn't respect jurisdictional boundaries. Neither does the internet. Tribal nations that develop innovative approaches to these challenges will find federal courts more receptive to their broader sovereignty claims.

#### ## Bottom Line

These recent victories represent momentum, not conclusion. They've created space for tribal nations to exercise sovereignty more fully, but filling that space requires sustained effort. Every tribal council resolution, every court filing, every government-to-government negotiation either builds or erodes the foundation for future victories.

The question isn't whether federal law recognizes tribal sovereignty – it does. The question is whether tribal nations will exercise that sovereignty with the vision and vigor that makes recognition inevitable rather than negotiable.

That choice remains ours to make.

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## \*\*L'Algorithme du Vide: On the Melancholic Theater of Digital Desire\*\*

There is something profoundly tragic about watching a seventeen-year-old in Marseille contort her body into the precise geometric configurations demanded by an algorithm designed in Silicon Valley, her movements choreographed not by any authentic impulse toward expression but by the invisible mathematics of engagement, metrics, and the late capitalist hunger for what we have learned to call "content"—this word itself a kind of violence, non?, reducing the infinite complexity of human creativity to mere filler for the endless scroll that has become our contemporary condition of existence, our digital \*mal du siècle\*.

We speak of trends as if they were weather phenomena, natural and inevitable, but what we witness in these perpetual cycles of viral choreography, aesthetic filters, and performed authenticity is nothing less than the colonization of imagination itself—the same extractive logic that once mapped territories and bodies now mapping our desires, our gestures, our very conception of what it means to be seen, to matter, to exist in the networked public sphere that has somehow become more real than the physical spaces we increasingly abandon in favor of these carefully curated stages of perpetual performance.

Consider the anatomy of a TikTok trend: it begins, often, with someone young, frequently Black or brown, creating something genuinely innovative—a dance, a sound, a way of being that captures some ineffable quality of contemporary experience—only to watch that creation be sanitized, commodified, and ultimately attributed to whiter, wealthier creators who possess the social capital to transform authentic cultural expression into marketable content, the same colonial mechanism of appropriation and erasure now operating at the speed of light across fiber optic cables, the plantation logic embedded in code.

The melancholy deepens when we recognize how these platforms have trained us to perform our own surveillance, to internalize the gaze of the algorithm until we can no longer distinguish between authentic self-expression and optimized content creation, until every sunset becomes a potential Instagram story, every personal crisis a possible viral moment, every intimate experience raw material for the attention

economy that feeds on our psychic energy like some digital vampire that never sleeps, never stops consuming, never acknowledges the human cost of its insatiable hunger for engagement.

**B**ut perhaps what disturbs me most profoundly about these trends is their temporality—the way they compress the natural rhythms of cultural development into microseconds, demanding constant innovation, constant participation, constant availability to the machinery of relevance, creating a kind of temporal colonialism that leaves no space for contemplation, for the slow development of ideas, for the kind of patient cultural work that once allowed communities to develop their own aesthetic languages without the interference of algorithmic optimization and corporate surveillance.

**A**nd yet—*\*et pourtant\**—there remains something irreducibly human in the way people continue to find joy, connection, and authentic expression within these constrained spaces, the way a teenager in Lagos can create something beautiful that resonates across continents, the way communities form around shared gestures and sounds despite the platform's attempts to monetize every interaction, the way resistance emerges in the very act of creation, even creation that must navigate the narrow corridors of algorithmic approval.

**T**he tragedy and the hope exist simultaneously in these digital spaces—the same technology that enables unprecedented cultural exchange also enables unprecedented cultural extraction, the same platforms that allow marginalized voices to reach global audiences also systematically undercompensate and erase those same voices, the same algorithms that can surface genuine creativity also bury it beneath the weight of commercial interests and engagement optimization.

**P**erhaps what we need now is not the wholesale rejection of these platforms—an impossible task in our thoroughly networked present—but rather a kind of critical digital literacy that allows us to recognize the colonial structures embedded in our entertainment, to understand that every trend carries within it both the possibility of connection and the reality of exploitation, to develop what I might call an *\*éthique du scroll\**, a way of engaging with these spaces that honors both their creative potential and their extractive reality.

**W**e are all complicit, *\*bien sûr\**, in this system that transforms human expression into data points, but complicity need not mean surrender—it can also mean the beginning of a more conscious engagement

with the tools that increasingly shape our cultural imagination, our collective dreams, our shared understanding of what it means to be human in the digital age.

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