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# A Different Kind of Symmetry

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# A DIFFERENT KIND OF SYMMETRY

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In 1959, the Supreme Court decided *Williams v. Lee*[1] and announced a federal common law rule designed to protect tribal self-governance. *Williams v. Lee* sent a powerful message about the continuing legitimacy of tribal sovereignty and tribal governing institutions, but it is, in the first instance, a case about tribal courts. The rule in *Williams v. Lee* prohibited state courts from adjudicating reservation-based disputes when doing so would undermine the authority of tribal courts over reservation affairs. It thus recognized the primacy of tribal courts on Indian reservations.[2] *Williams v. Lee* did not, of course, invent tribal courts,[3] but it made the American legal community much more conscious of their existence and established their place in American jurisprudence.

Nearly a half-century later, tribal courts are well rooted on Indian reservations across the country and in the American legal landscape. In light of the increasing number—and stature—of tribal courts since the decision in *Williams v. Lee* and other decisions[4] and the increasing variety of disputes in tribal courts as many tribes enjoy greater economic development on their lands,[5] tribal courts are seeing ever more civil litigation and issuing more and more judgments. By 1992, according to one estimate, there were 170 tribal courts exercising jurisdiction over approximately one million Americans.[6] And for the past thirty years or so, litigants and academics have given more and more attention to the interesting issues that arise because of the existence of vibrant judicial systems within the courts of the Third Sovereign.[7]

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1. 358 U.S. 217 (1959).

2. Because of the newfound enlightenment toward tribal governments that the Supreme Court exhibited in the case, Professor Charles Wilkinson cites *Williams v. Lee* as the case that began the "modern era" in federal Indian law. *See* CHARLES F. WILKINSON, AMERICAN INDIANS, TIME, AND THE LAW: NATIVE SOCIETIES IN A MODERN CONSTITUTIONAL DEMOCRACY 1–31 (1987). Alas, the modern era has ended. *See* David H. Getches, *Beyond Indian Law: The Rehnquist Court's Pursuit of States' Rights, Color-Blind Justice, and Mainstream Values*, 86 MINN. L. REV. 267 (2001).

3. Tribal courts existed at least a century earlier in substantially similar form to American courts. *See, e.g.*, JOHN HOWARD PAYNE, INDIAN JUSTICE: A CHEROKEE MURDER TRIAL IN TAHLEQUAH IN 1840 (Grant Foreman ed., 2002) (1934). Before adopting American-style courts, tribes had many other formal ways of addressing criminal conduct and activities. *See generally* SIDNEY L. HARRING, CROW DOG'S CASE: AMERICAN INDIAN SOVEREIGNTY, TRIBAL LAW, AND UNITED STATES LAW IN THE NINETEENTH CENTURY (1994); RENNARD STRICKLAND, FIRE AND THE SPIRITS: CHEROKEE LAW FROM CLAN TO COURT (1975); WILLIAM THOMAS HAGAN, INDIAN POLICE AND JUDGES: EXPERIMENTS IN ACCULTURATION AND CONTROL (1966).

4. *See, e.g.*, Nat'l Farmers Union Ins. Co. v. Crow Tribe, 471 U.S. 845 (1985) (requiring civil litigants to exhaust tribal court processes before challenging tribal jurisdiction in federal court); Iowa Mut. Ins. Co. v. LaPlante, 480 U.S. 9 (1987) (applying the same exhaustion rule to cases arising under diversity jurisdiction).

5. *See generally* Nell J. Newton, *A Tribal Court Praxis: A Year in the Life of Twenty Tribal Courts*, 22 AM. IND. L. REV. 285 (1998) (surveying approximately eighty-five reported cases from tribal courts).

6. *See* Sandra Day O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 TULSA L.J. 1 (1997).

7. *Id.* The term is borrowed from Justice O'Connor. *See also* Gloria Valencia-Weber, *Tribal Courts, Custom and Innovative Law*, 24 N.M. L. REV. 225, 227 (1994) ("Law and jurisprudence in the U.S. have always included a third sovereign, the American Indian tribes."). The author uses the term advisedly; a more appropriate term might be "the First Sovereign."

One question that arises more and more because of the growth of tribal courts involves the cross-border enforcement of tribal civil judgments and orders. Between states, the rule for cross-boundary enforcement of judgments is relatively straightforward. Under the U.S. Constitution, each state is required to grant "Full Faith and Credit" to "judicial Proceedings" of other states under rules prescribed by Congress.[8] Congress enacted such rules in a statute called the Full Faith and Credit Act.[9] Pursuant to this scheme, a civil judgment obtained in one state is routinely enforced in another state.[10] The issue of cross-border enforcement of state court judgments in tribal courts and of tribal court judgments in state courts, however, is not so straightforward.

State and tribal courts and legislative bodies face numerous practical issues related to enforcement of judgments from other jurisdictions. The key policy issues can be boiled down to one fundamental question: how much respect should a court in one jurisdiction accord a court of another jurisdiction? In most cases, answering this question will guide the development of an analytical framework that courts will use in deciding whether to recognize a specific judgment.[11]

Not surprisingly, legal scholars disagree as to how this fundamental question should be answered. One major controversy centers on whether identical recognition rules should apply to state, federal, and tribal courts or, alternatively, whether each jurisdiction should make its own rules as to whether and how to recognize rulings from other jurisdictions.[12] This debate, for reasons that will be explained in greater detail below,[13] has been described as one of symmetry versus asymmetry between jurisdictions.

This fundamental question for cross-border enforcement of civil judgments between jurisdictions is compelling and even interesting. Scholars have carefully and repeatedly addressed it.[14] However, because academic commentary on tribal court recognition, or full faith and credit, generally relates to orders and judgments

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8. U.S. CONST art. IV, § 1. "Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effects thereof." *Id.*

9. 28 U.S.C. § 1738 (2000).

> Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

*Id.* The Act thus omits any mention of Indian tribes.

10. *See, e.g.*, 16B AM. JUR. 2D *Constitutional Law* § 975 (2003).

11. Other important questions abound, such as whether it should matter if the other jurisdiction reciprocates.

12. *See infra* notes 18–20 and accompanying text.

13. *See infra* Part I.

14. *See infra* notes 19, 22 (listing the works of Robert Laurence on the topic); *see also* Stacy L. Leeds, *Cross-Jurisdictional Recognition and Enforcement of Judgments: A Tribal Court Perspective*, 76 N.D. L. REV. 313, 331–46 (2000); Karla Engle, Red Fox v. Hettich*: Does South Dakota's Comity Statute Foster Unwarranted State Court Intrusion into Tribal Jurisdictional Authority over Civil Disputes?*, 38 S.D. L. REV. 706 (1993); Daina B. Garonzik, *Full Reciprocity for Tribal Courts from a Federal Courts Perspective: A Proposed Amendment to the Full Faith and Credit Act*, 45 EMORY L.J. 723 (1996); Panel, *Recognizing and Enforcing State and Tribal Judgments: A Roundtable Discussion of Law, Policy, and Practice*, 18 AM. INDIAN L. REV. 239, 239–83 (1993); William V. Vetter, *Of Tribal Courts and "Territories": Is Full Faith and Credit Required?*, 23 CAL. W. L. REV. 219 (1987).

in the civil, not criminal, arena,[15] scholars have not considered the level of respect states and their courts accord to tribal judgments in the parallel universe of criminal law.

In a little-noticed development that seems to be on the verge of becoming a groundswell, state courts and legislatures have begun to accord respect, in a variety of circumstances, to tribal judgments in criminal cases, also known as "judgments of conviction" or, more informally, "convictions." This short article seeks to survey how states have begun to use tribal criminal convictions, to relate these developments to the ongoing issue of recognition of civil judgments, and to search for insights that this comparison might offer.

Part I first summarizes the ongoing academic debate between arguments for symmetry versus asymmetry in recognition of tribal civil judgments. It then provides a summary description of the range of approaches states have taken toward recognition of tribal civil judgments and arranges these approaches along a hypothetical spectrum from highly respectful to disrespectful.

Part II summarizes some of the ways state courts formally recognize tribal criminal convictions in subsequent state civil and criminal proceedings.[16] Because of the idiosyncratic approaches that states have used toward the recognition of tribal criminal judgments, it is difficult to draw a spectrum like the one hypothesized in part I, but this article seeks to provide the reader a relatively clear picture of the state of the current law.

Part III compares and contrasts the different approaches to recognition of tribal civil judgments and criminal convictions, even sometimes within the same state, and briefly explains some of the ramifications of respecting tribal criminal convictions while denying respect for tribal civil judgments. Ultimately, part III makes a normative argument that state courts ought to respect tribal civil judgments at least as much as they respect tribal criminal convictions and argues further that states already giving great respect to tribal criminal convictions ought, in turn, give similar respect to tribal civil judgments. In summary, this article will urge a different kind of symmetry: symmetry *within* each state jurisdiction in its approach toward tribal criminal convictions and tribal civil judgments.

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15. Some scholars have recognized that such questions occasionally arise in the criminal context. *See, e.g.*, Melissa L. Tatum, *A Jurisdictional Quandary: Challenges Facing Tribal Governments in Implementing the Full Faith and Credit Provisions of the Violence Against Women Acts*, 90 KY. L.J. 123, 138–39, 183–84 (2002) (noting disagreement about how to treat domestic violence protection orders that are contained in conditions of pretrial release, probation, or parole in a criminal case, particularly in light of the fact that violation of such order may give rise to a criminal, rather than civil, proceeding); *see also Negotiating*, *infra* note 22, at 439 (noting that there are a variety of circumstances, including in the criminal context, in which one jurisdiction must make a decision whether to respect another jurisdiction's proceedings, such as deciding whether to issue an order compelling a witness to appear in another jurisdiction).

16. At the end of this work is an appendix that collects and displays the data surveyed in parts I and II; it identifies each state and presents, side-by-side, the state's provisions as to recognition of criminal judgments and its provisions for recognition of civil judgments.

## I. SYMMETRY, ASYMMETRY, AND RECOGNITION OF TRIBAL CIVIL JUDGMENTS

One major controversy among academics regarding recognition of judgments from other jurisdictions centers on whether identical recognition rules should apply to state, federal, and tribal courts or, alternatively, whether each jurisdiction should make its own rules as to whether and how to recognize the other jurisdiction's rulings. Some scholars and a few courts have theorized that the Constitution's Full Faith and Credit Clause and the federal Full Faith and Credit Act together create a broad federal mandate of respect for tribal court judgments in state and federal courts, and vice versa.[17] These scholars argue that principles of full faith and credit require each jurisdiction in the United States to take the same respectful approach to judgments from other American jurisdictions.[18]

On the other side of this debate are those who argue that this interpretation of the Full Faith and Credit Act is incorrect and ill conceived. Because different jurisdictions have different needs and concerns, these scholars argue that each of the state and tribal governments should design its own rules as to whether and how much respect to grant another jurisdiction's judicial rulings.[19] These scholars, in general, argue that comity, of some sort, is the appropriate approach.[20]

Professor Robert Laurence frames this argument in terms of symmetry and asymmetry.[21] Laurence would describe those scholars and courts who would find a federal mandate of full faith and credit for all courts within the territorial boundaries of the United States to be adhering to a notion of "symmetry" between courts.[22] He

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17. In the Full Faith and Credit Act, Congress used different language than the founders used in the constitutional clause, broadening the language in at least one portion of the statute to include courts "within the United States and its Territories and Possessions." 28 U.S.C. § 1738 (2000). At least two states and one Indian tribe have concluded from this statutory language that the Full Faith and Credit Act extends to Indian tribes. *See, e.g.*, Sheppard v. Sheppard, 655 P.2d 895, 902 (Idaho 1982) (determining that the phrase "Territories and Possessions" includes Indian tribes); Jim v. CIT Fin. Servs. Corp., 87 N.M. 362, 533 P.2d 751 (1975) (classifying the Navajo Nation as a "Territory"). In similar fashion, the Cheyenne River Sioux Court of Appeals has determined that the Act requires it to recognize state judgments. *See* Robert Laurence, *Full Faith and Credit in Tribal Courts: An Essay on Tribal Sovereignty, Cross-Boundary Reciprocity and the Unlikely Case of* Eberhard v. Eberhard, 28 N.M. L. REV. 19 (1998) [hereinafter *Unlikely Case*]. *But see, e.g.*, Brown v. Babbitt Ford, 571 P.2d 689 (Ariz. Ct. App. 1977) (determining that "Territory" does not apply to Indian reservations). The primary rationale for not applying the Act to tribes is that, when Congress has intended to mandate state recognition of tribal court actions, it has been more explicit.

18. Robert N. Clinton et al., *Dispute Resolution in Indian Country: Does Abstention Make the Heart Grow Fonder?*, 71 N.D. L. REV. 541, 554 (1995) ("I submit, and always have maintained, that tribal judgments are judgments of the territories within the meaning of the Full Faith and Credit Act, thereby indicating that they are entitled to the same full faith and credit as state judgments."); Robert N. Clinton, *Redressing the Legacy of Conquest: A Vision Quest for a Decolonized Federal Indian Law*, 46 ARK. L. REV. 77 (1993); Robert Clinton, *Tribal Courts and the Federal Union*, 26 WILLAMETTE L. REV. 841 (1990); Fred L. Ragsdale, Jr., *Problems in the Application of Full Faith and Credit for Indian Tribes*, 7 N.M. L. REV. 133 (1977).

19. Robert Laurence, *Symmetry and Asymmetry in Federal Indian Law*, 42 ARIZ. L. REV. 861 (2000) [hereinafter *Symmetry and Asymmetry*]; *see also* Leeds, *supra* note 14 (noting her agreement with Laurence).

20. An early commentator once also suggested that there might be a third approach, querying, "should state courts simply ignore tribal decisions?" *See* Gordon K. Wright, *Recognition of Tribal Decisions in State Courts*, 37 STAN. L. REV. 1397 (1985). To be fair, the author of that piece argued against such an approach.

21. *See supra* note 19.

22. *Id.* Professor Laurence has enlightened us more on these issues than any other scholar. *See* Robert Laurence, *The Role, If Any, for the Federal Courts in the Cross-Boundary Enforcement of Federal, State and Tribal Money Judgments*, 35 TULSA L.J. 1 (1999); Robert Laurence, *The Off-Reservation Garnishment of On-Reservation Debt and Related Issues in the Cross-Boundary Enforcement of Money Judgments*, 22 AM. INDIAN L. REV. 355

calls it symmetry because each jurisdiction must treat every other jurisdiction's judgments exactly the same and indeed much as it treats its own, and those other jurisdictions must do likewise.[23] Professor Laurence rejects the interpretation of the Full Faith and Credit Act as a federal mandate addressing tribal courts.[24] He argues that "full faith and credit" does not apply because neither the Constitution nor the applicable federal statute envisions tribal courts being part of the full faith and credit scheme.[25]

Setting aside the legal question as to the congressional intent of the Full Faith and Credit Act, Laurence rejects, as a normative manner, the policy implications of the federal mandate interpretation.[26] He argues that the mandatory symmetry that comes with full faith and credit is undesirable as a policy matter.[27]

Laurence argues that the better approach is more flexible and that each jurisdiction should adopt recognition rules appropriate to its own needs.[28] In arguing that rules for recognition of judgments ought to differ according to each jurisdiction's needs, he thus prefers the more flexible notion that jurisdictions should adopt a broader principle of comity rather than the restrictive mandate of full faith and credit.[29] Because his view recognizes and even encourages each jurisdiction to adopt a different approach toward judgments from other jurisdictions, Professor Laurence characterizes his approach as one favoring "asymmetry."[30]

As the academic debate has raged, tribal judges in many states seem to have anticipated that states would reject the enforced symmetry of "full faith and credit" but have nevertheless sought state statutes or judicial rules that would implement respect for tribal judgments in state courts in keeping with the general theory of full faith and credit, if not in accordance with any federal mandate to do so.[31] Though

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(1998); Robert Laurence, *The Convergence of Cross-Boundary Enforcement Theories in American Indian Law: An Attempt to Reconcile Full Faith and Credit, Comity and Asymmetry*, 18 QUINNIPIAC L. REV. 115 (1998); Robert Laurence, *The Bothersome Need for Asymmetry in Any Federally Dictated Rule of Recognition for the Enforcement of Money Judgments Across Indian Reservation Boundaries*, 27 CONN. L. REV. 979 (1995); Robert Laurence, *Dominant-Society Law and Tribal Court Adjudication*, 25 N.M. L. REV. 1 (1995); P.S. Deloria & Robert Laurence, *Negotiating Tribal-State Full Faith and Credit Agreements: The Topology of the Negotiation and the Merits of the Question*, 28 GA. L. REV. 381 (1994) [hereinafter *Negotiating*]; Robert Laurence, *The Enforcement of Judgments Across Indian Reservation Boundaries: Full Faith and Credit, Comity, and the Indian Civil Rights Act*, 69 OR. L. REV. 589 (1990).

23. *See generally Symmetry and Asymmetry*, *supra* note 19.

24. *See supra* note 19.

25. *Id.*

26. *Id.*

27. *Id.*

28. Symmetry manifests itself even in the less rigid context of comity with the question of whether the state's recognition rule will require reciprocity as a condition of enforcement. *See, e.g.*, WIS. STAT. § 806.245 (2003) (requiring tribal recognition of state courts as a condition for state recognition of tribal courts). The more fundamental question faced by states, of course, is not whether to require reciprocity, but how much respect to accord tribal court judgments in the first instance.

29. *See Symmetry and Asymmetry*, *supra* note 19.

30. *See supra* notes 19, 22.

31. Several states have recently formalized rules to grant recognition to tribal judgments and orders, at least in certain circumstances or for certain purposes. The author testified before the Supreme Court of Minnesota on behalf of one such initiative that culminated in a new, formal rule for the recognition of tribal court orders and judgments. *See* MINN. R. GEN. PRAC. 10 (adopted Dec. 12, 2003) (effective Jan. 1, 2004). Other states have recently adopted similar measures. *See* Arizona Rules of Procedure for the Recognition of Tribal Court Civil Judgments, 17B ARIZ. REV. STAT. ANN. (2002); *see also* Michael F. Cavanaugh, *Michigan's Story: State and Tribal Court Try*

tribal judges may wish for state court rules more in keeping with full faith and credit, they have tended to settle for rules that are more flexible and thus arguably more oriented toward comity.[32]

States have adopted tremendously diverse approaches to recognition of general civil judgments and orders from tribal courts.[33] Some states are highly respectful of tribal court civil judgments.[34] Courts in Idaho,[35] New Mexico,[36] and Oklahoma,[37] for example, accord tribal judgments full faith and credit, giving tribal court judgments the same status accorded judgments from sister states. New Mexico and Idaho took such action in court decisions. Oklahoma accorded full faith and credit through legislative authorization and judicial rule.

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*to Do the Right Thing*, 76 U. DET. MERCY L. REV. 709 (1999) (discussing Michigan's adoption of rule on recognition of tribal court judgments).

32. In Minnesota, for example, the state supreme court rejected a proposed rule that would mandate recognition of most tribal court judgments and that was, thus, consistent with the principles of full faith and credit. Mark Cohen, *Minnesota Supreme Court Rejects Enforcement Proposal for Tribal Courts*, MINN. LAW., Mar. 10, 2003, *available at* http://www.minnlawyer.com/SearchResult.cfm. The Minnesota Supreme Court ultimately adopted a rule that guides judicial discretion toward several factors but does not mandate any particular result. Thus, the final rule allows and perhaps encourages comity but leaves the decision within the discretion of state trial judges. *See* MINN. R. GEN. PRAC. 10 (entitled "Tribal Court Orders and Judgments").

33. States are required by federal law to recognize the orders of tribal courts in a few narrow instances. This work intends to focus on circumstances in which a state has a choice as to recognition of a tribal court criminal conviction or civil judgment because it intends to comment on how states make those choices when the decision is voluntary. Thus, the federal mandates are not particularly helpful to this discussion. Of these federal mandates, perhaps the most well-known statute requiring the recognition of tribal court orders is the Violence Against Women Act (VAWA), 18 U.S.C. § 2265(a) (2000), which requires state courts to grant full faith and credit for tribal court orders for protection. Several federal statutes dealing with children either expressly or implicitly require state recognition of tribal court orders or judgments. These include the following: Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901, 1911(d) (2000), which states:

> The United States, every State, every territory or possession of the United States, and every Indian tribe shall give full faith and credit to the public acts, records, and judicial proceedings of any Indian tribe applicable to Indian child custody proceedings to the same extent that such entities give full faith and credit to the public acts, records, and judicial proceedings of any other entity.

*Id.*; Child Support Orders Act, 28 U.S.C. § 1738B (2000) (including "Indian Country" in the definition of "State" and providing that each state "shall enforce according to its terms a child support order made consistently with this section by a court of another State"); Parental Kidnapping Prevention Act, 28 U.S.C. § 1738A (2000) (requiring states to enforce custody and visitation determinations of other states). Although the definition of "State" provided in the Parental Kidnapping Prevention Act does not specifically include tribes, it has been held to require full faith and credit for tribal court orders. *See* Leeds, *supra* note 14, at 333. Another federal statute mandates full faith and credit between Maine and two Indian tribes. Maine Indian Claims Settlement Act, 25 U.S.C. § 1725(g) (2000) (stating that "[t]he Passamaquoddy Tribe, the Penobscot Nation, and the State of Maine shall give full faith and credit to the judicial proceedings of each other").

34. For a thorough survey of how state courts have addressed these questions, see Leeds, *supra* note 14, at 331–46. This is a rapidly developing area. Since Professor Leeds' article was published, at least two states, Minnesota and Arizona, have enacted new rules on recognition of tribal court judgments. *See supra* note 31.

35. *See* Leeds, *supra* note 14, at 332 (stating that Idaho and New Mexico are the only states to include tribes in their definition of territory, thus giving full faith and credit recognition to tribal courts, just as they would to other states' courts); *see also* Sheppard v. Sheppard, 655 P.2d 895, 902 (Idaho 1982); Jim v. CIT Fin. Servs. Corp., 87 N.M. 362, 533 P.2d 751 (1975).

36. *See supra* note 36.

37. OKLA. STAT. tit. 12, § 728 (2003); OKLA. DIST. CT. R. 30(b) (2003); *see* Dennis W. Arrow, *Oklahoma's Tribal Courts: A Prologue, the First Fifteen Years of the Modern Era, and a Glimpse of the Road Ahead*, 19 OKLA. CITY U. L. REV. 7, 63–70 (1994) (describing the process through which Oklahoma's tribal recognition rule developed); Shelly Grunsted, *Full Faith and Credit: Are Oklahoma's Tribal Courts Finally Getting the Respect They Deserve?*, 36 TULSA L.J. 381 (2000).

At the other end of the spectrum is South Dakota. The South Dakota statute on recognition of tribal court judgments creates a strong presumption against recognition.[38] A party seeking recognition of a tribal judgment must prove *by clear and convincing evidence* numerous facts related to the legitimacy of the tribal judgment.[39] If these facts are proven, then the judge *may* recognize the tribal judgment, but only in a narrow range of circumstances.[40]

One can imagine a hypothetical spectrum representing at one end those jurisdictions that are highly respectful toward tribal courts, such as Idaho, New Mexico, and Oklahoma, and at the other end South Dakota, which is highly disrespectful. Because many states have no reported court decisions, judicial rules, or legislative determinations on recognition of tribal court judgments, their respective positions on the spectrum cannot yet be plotted.

Some states are seemingly neutral or indifferent toward tribes. Minnesota's rule on recognition of tribal judgments neither mandates nor prohibits recognition of tribal judgments, nor does it set burdens of proofs or presumptions, but simply leaves trial judges broad discretion as to whether to recognize any given judgment and offers guidance as to appropriate factors to consider in exercising that discretion.[41] Montana apparently treats tribal court judgments as if they were foreign judgments,[42] though it is not entirely clear what this means in practice[43] because the state legislature has not addressed tribal courts specifically and the state courts have repeatedly avoided the issue.[44] Because of their apparent neutrality on the question, Minnesota and Montana would likely occupy the midpoint of the spectrum until further developments occur in those states.

Several states would lie between the midpoint of the spectrum and the Idaho-New Mexico-Oklahoma end. Michigan, for example, presumes full faith and credit but allows an objector to overcome that presumption.[45] Arizona, in similar fashion, is generally respectful but stops just short of full faith and credit; it allows the person against whom enforcement is sought to object and forbids recognition if the objector

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38. S.D. CODIFIED LAWS § 1-1-25 (Michie 2003); *see also* Red Fox v. Hettich, 494 N.W.2d 638, 647 (S.D. 1993) (holding that tribal member did not satisfy burden of proof necessary to show that tribal court had jurisdiction so that its judgment should be recognized under principle of comity).

39. S.D. CODIFIED LAWS § 1-1-25(1)(a)–(e) (Michie 2003).

40. *Id.* § 1-1-25(2)(a)–(d).

41. MINN. R. GEN. PRAC. 10 (entitled "Tribal Court Orders and Judgments").

42. *See* Wippert v. Blackfeet Tribe of Indians, 654 P.2d 512, 515 (Mont. 1982).

43. *See* Leeds, *supra* note 14, at 339–40.

44. *See* MONT. CODE ANN. § 25-9-503 (2003). Section 25-9-503 states:

> A copy of any foreign judgment authenticated *in accordance with an act of congress or the statutes of this state* may be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, and proceedings for reopening, vacating, or staying as a judgment of a district court of this state and may be enforced or satisfied in like manner.

*Id.* (emphasis added). Thus, Montana would recognize tribal child support orders because required by federal statute but not tribal monetary judgments. *See* Anderson v. Engelke, 954 P.2d 1106, 1110 (Mont. 1998) (declining to enforce tribal monetary judgment). *But see* Day v. State Dep't of Soc. & Rehab. Servs., 900 P.2d 296 (Mont. 1995) (recognizing tribal child support order).

45. MICH. CT. R. 2.615 (2003); *see also* Cavanaugh, *supra* note 31, at 712–16 (detailing the development of the Michigan rule on recognition of tribal court judgments).

demonstrates that the tribal court lacked jurisdiction or failed to afford due process.[46] Arizona also allows its state courts to consider several other factors in exercising discretion as to whether to recognize the judgment over an objection.[47] Some states allow objectors to block recognition under certain circumstances, but treatment varies as to whether the proponent of recognition or the objector carries the burden of proof on such issues.[48]

Some states grant respect to civil judgments from tribal courts but limit that respect to particular tribal courts or to tribal courts that lie within the state. North Carolina,[49] North Dakota,[50] Wisconsin,[51] and Wyoming[52] fit within this category. Some of these state statutes are not clear as to how state courts should treat rulings from tribal courts outside the state. Thus, it is difficult to plot with certainty where these states should fit on the spectrum.

In summary, many states have considered recognition of tribal civil judgments and have reached thoughtful approaches that correspond to full faith and credit or at least some form of comity toward tribal courts. With the exception of South Dakota, which occupies a lonely, extreme position of disrespect for tribal courts, most jurisdictions that have considered tribal civil judgments have decided to accord respect and recognition in most circumstances. Some states addressed recognition through court decisions, some through rules promulgated by courts, and some through legislative enactment. Though the processes for reaching these rules have differed by state, most of the rules were adopted after processes involving considerable deliberation.

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46. Arizona Rules for the Recognition of Tribal Court Civil Judgments, 17B ARIZ. REV. STAT. ANN., R. 1–6 (2002). Arizona also has a statute requiring recognition of involuntary commitment orders issued by tribal courts. ARIZ. REV. STAT. § 12-136 (2003) (providing that "an involuntary commitment order of an Arizona tribal court filed with the clerk of the superior court shall be recognized and is enforceable by any court of record in this state").

47. 17B ARIZ. REV. STAT. ANN. R. 5(d), 529.

48. *See, e.g.*, MICH. CT. R. 2.615 (2003) (recognizing tribal court orders, etc. unless the objecting party demonstrates one of an enumerated list of factors); N.D. R. CT. 7.2 (2003) (similarly recognizing tribal court orders unless the objecting party can demonstrate the existence of enumerated conditions). *But see, e.g.*, S.D. CODIFIED LAWS § 1-1-25 (Michie 2003) (requiring the party seeking recognition to establish an enumerated list of factors).

49. North Carolina extends full faith and credit, but only to the Cherokee Tribal Court, provided the tribe reciprocates. N.C. GEN. STAT. § 1E-1 (2003).

50. N.D. R. CT. 7.2 (2003); *see* Ralph J. Erickstad & James Ganje, *Tribal and State Courts—A New Beginning*, 71 N.D. L. REV. 569, 579–80 (1995) (describing the adoption of North Dakota rule for recognition of tribal judgments); *see also* Fredericks v. Eide-Kirschmann Ford, 462 N.W.2d 164 (N.D. 1990) (holding that tribal court judgments are enforceable in state court as a matter of comity).

51. WIS. STAT. § 806.245(6) (2003) (providing that "[a] foreign protection order...issued by an Indian tribal court in this state shall be accorded full faith and credit"); *see also* Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 665 N.W.2d 899, 902 (Wis. 2003) (holding that "circuit court was required by [statute] to give full faith and credit to the tribal court judgment").

52. WYO. STAT. ANN. § 5-1-111 (2002) (granting full faith and credit to courts of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation as long as certain conditions are met).

## II. RECOGNITION OF TRIBAL CRIMINAL CONVICTIONS

Numerous tribal courts across the United States exercise some form of criminal jurisdiction.[53] Tribal criminal jurisdiction is limited to misdemeanors[54] committed by Indians.[55] Thus, it is a little more circumscribed than tribal civil jurisdiction.[56]

In contrast to rules for recognition of civil judgments, neither any of the states nor the federal government has taken a comprehensive, systematic, or uniform approach toward recognition of tribal criminal convictions in subsequent state proceedings. In contrast to the broad general rules developed carefully and deliberatively in the civil context, state and federal courts and other decision makers that have recognized tribal criminal convictions have done so in an ad hoc manner, recognizing them in a variety of different contexts but not in the same general uniform terms as tribal civil judgments.

State and federal courts use tribal convictions in one or more of the following ways: (1) as relevant criminal history for sentencing purposes in subsequent state criminal proceedings,[57] (2) as triggers for sex offender registration requirements or involuntary commitment of sex offenders in state civil proceedings,[58] (3) as predicates and or prior offenses for purposes of aggravated offenses or enhanced charges in state criminal proceedings or administrative penalties in state civil proceedings,[59] and (4) as a relevant component of a juvenile's criminal record for prosecution of the juvenile as an adult.[60]

In some jurisdictions, these decisions have been made in the legislative arena.[61] In others, courts have made these decisions in interpreting statutes that are not

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53. To provide but one example, the courts of the Navajo Nation heard 27,602 criminal cases during Navajo Nation fiscal year 1998, which runs the same as the federal fiscal year, October 1 through September 30. *See* Russell Means v. Dist. Court–Chinle Judicial Dist., 26 INDIAN L. RPTR. 6083 (Navajo 1999). Driving while intoxicated and crimes against persons (such as assault and battery) together constituted over 12,000 cases and forty-four percent of the caseload. The next largest categories were offenses against the family, intoxicating liquor offenses, and offenses against public order, each of which accounted for more than 2000 cases and around eight percent of the remaining caseload.

54. Under the Indian Civil Rights Act, 25 U.S.C. §§ 1301–1303, tribal criminal court sentences are limited to no more than one year of imprisonment and a fine of no more than $5000. *See* 25 U.S.C. § 1302(7), as amended by Pub. L. 99-570, tit. IV, § 4217, 100 Stat. 3207 (Oct. 27, 1986). Because federal law classifies offenses by reference to the maximum term of imprisonment authorized for the offense and explicitly defines a crime punishable by one year or less of imprisonment as a misdemeanor, *see, e.g.*, 18 U.S.C. § 3559 (2000), then federal law would characterize crimes over which tribal courts exercise jurisdiction as misdemeanors. Under this scheme, no tribal offense could ever meet the federal definition of "felony." *See also* U.S.S.G. § 4A1.2(o) (2000) ("'felony offense' means any federal, state, or local offense punishable by death or a term of imprisonment exceeding one year, regardless of the actual sentence imposed"). Thus, as a matter of federal law, tribal court jurisdiction is limited to misdemeanors.

55. *See* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978).

56. *See* Strate v. A-1 Contractors, 520 U.S. 438 (1997) (explaining that tribal courts generally lack civil jurisdiction over non-Indians but noting that jurisdiction may exist over the "activities of non-members who enter consensual relationships with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements" or non-member activity that "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe").

57. *See infra* notes 64–67 and accompanying text.

58. *See infra* notes 68–82 and accompanying text.

59. *See infra* notes 92–111 and accompanying text.

60. *See infra* notes 113–115 and accompanying text.

61. *See, e.g., infra* note 64.

explicit.[62] No jurisdiction has created a single broad rule that would explain how tribal convictions may be used for all purposes within state courts. The various uses of tribal court convictions by state governments can generally be grouped as follows.[63]

### *A. As Relevant Criminal History in Sentencing*

Perhaps the broadest use of tribal convictions can be found in the state of Kansas. By statute, Kansas has mandated that tribal convictions be used like any other state or federal conviction in determining an offender's criminal history score for purposes of calculating a sentence under the state sentencing guidelines.[64] The Kansas approach contrasts markedly with the approach taken by the U.S. Sentencing Commission in the federal sentencing guidelines. The Sentencing Commission chose not to count tribal convictions routinely but to count them only in extraordinary circumstances.[65] Despite this pervasive general use of tribal convictions in sentencing, Kansas apparently does not use tribal convictions in any specific context, such as sex offender registration, or for driver's license revocation, or as a predicate offense for aggravated drunk driving prosecutions.[66]

Of the approximately twenty other states that utilize determinate sentencing regimes,[67] many of which formally consider a defendant's criminal history as part of the sentencing calculus, apparently no other state makes prior tribal court convictions routinely relevant. Nevertheless, some states use tribal criminal convictions for a variety of more specific purposes both within and outside the context of criminal justice.

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62. *See, e.g., infra* note 114.

63. What follows is an attempt to create a few broad categories in the interest of setting forth a coherent description of the various uses of tribal court convictions. The author recognizes that the categories are in some respects arbitrary and might easily be drawn differently.

64. KAN. CRIM. CODE ANN. § 21-4711(e) (West 2002) (providing that "[o]ut-of-state convictions and juvenile adjudications will be used in classifying the offender's criminal history" for sentencing purposes for drug and nondrug crimes, and that "[c]onvictions or adjudications occurring within the federal system, other state systems, the District of Columbia, foreign, *tribal* or military courts are considered out-of-state convictions or adjudications") (emphasis added).

65. In the federal courts, if a federal judge wishes to credit tribal court criminal convictions, the judge must take the extraordinary step of "departing upward" from the prescribed federal guidelines sentence. A judge may depart upward from the guidelines sentence only after determining that the failure to count the tribal conviction produces a criminal history score that fails to reflect adequately the seriousness of the defendant's past criminal conduct or likelihood of recidivism. U.S. SENTENCING GUIDELINES MANUAL §§ 4A1.2(i), 4A1.3(a). In numerous cases, federal judges have taken this extraordinary step and accorded respect to tribal convictions. In a recent article, the author has argued that the federal government should routinely recognize tribal criminal convictions in federal sentencing, particularly for crimes arising in Indian Country. *See* Kevin Washburn, *Tribal Courts and Federal Sentencing*, 36 ARIZ. ST. L.J. 403 (2004).

66. *See, e.g.*, KAN. STAT. ANN. § 8-262 (2002) (defining "conviction," in statute on suspension of driver's license, as including "a conviction of a violation of any ordinance of any city or resolution of any county or a law of another state"). Tribes are noticeably absent from this statute. *See also* KAN. STAT. ANN. § 22-4902 (2002) (sex offender registration statute triggered by convictions including "federal, military, or other state" convictions, and omitting Indian tribes).

67. Kevin Reitz, *The Disassembly and Reassembly of U.S. Sentencing Practices*, in SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 222, 225 (Richard Frase & Michael Tonry eds., 2001).

### *B. Sex Offender Registration*

Every state currently has some form of statute requiring the registration of sex offenders.[68] At least a dozen states explicitly require the registration of sex offenders convicted in tribal courts. Arkansas,[69] Georgia,[70] Idaho,[71] Iowa,[72] Maine,[73] Maryland,[74] Massachusetts,[75] Michigan,[76] Nevada,[77] Ohio,[78] Oklahoma,[79] and Vermont[80] all require a sex offender convicted in a tribal court to register if he comes to reside within the state.[81] In other states, registration requirements are not

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68. Congress conditioned certain federal law enforcement funding on state adoption of sex offender registration laws. *See* Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (2000) (setting forth guidelines for state programs to register sex offenders; allowing states three years to implement programs or lose ten percent of federal funds; further providing that complying states will receive the funds of any states that do not comply); *see also* Smith v. Doe, 538 U.S. 84 (2002) (describing the federal mandate for development of sex offender registration and "Megan's Laws"); U.S. DEP'T. OF JUSTICE, SUMMARY OF STATE SEX OFFENDER REGISTRIES (2001) (surveying the sex offender registration systems of all fifty states, including which state agency controls the registry, the number of offenders listed in each registry, whether DNA information is included in the registry, and what form of community notification is provided by each registry).

69. ARK. CODE. ANN. §§ 12-12-903(13)(A)(iii), 12-12-905 (2003).

70. GA. CODE ANN. § 42-1-12 (2003) (specifying that the term "sexually violent offense" includes "a conviction in a federal court, military court, tribal court, or court of another state or territory for any offense which under the laws of this state would be classified as a violation of a Code section listed in this paragraph," and that persons convicted of a sexually violent offense must register as sex offenders).

71. IDAHO CODE § 18-8303 (2003) (discussing the state registry of sexual offenders and defining "offender" as "an individual convicted of [a sex offense under Idaho law], or a substantially similar offense under the laws of another state or in a federal, tribal or military court or the court of another country").

72. IOWA CODE ANN. § 692A.2 (2003). Section 692A.2 states the following:

> A person who has been convicted of a criminal offense against a minor, an aggravated offense, sexual exploitation, an other relevant offense, or a sexually violent offense in this state or in another state, or in a federal, military, tribal, or foreign court, or a person required to register in another state under the state's sex offender registry, shall register as provided in this chapter.

*Id.*

73. Sex Offender Registration and Notification Act of 1999, ME. STAT. ANN. tit. 34-A, § 11203 (2003) (including "[a] conviction for an offense or for an attempt to commit an offense of the law in another jurisdiction, including, but not limited to, a state, federal, military or tribal court" in the definition of "sexually violent offense"). Section 11222 then requires the registration of sex offenders.

74. MD. CODE ANN., CRIM. PROCEDURE § 11-701 (2003) (requiring persons convicted of a variety of sex offenses, including those convicted in tribal courts, to register).

75. MASS. GEN. LAWS ANN. ch. 6, § 178C (2003) (including "any attempt to commit a [sex offense under Massachusetts law] or a like violation of the laws of another state, the United States or a military, territorial or Indian tribal authority" in the definition of sex offense, for which offenders may be required to register).

76. Michigan State Police Sex Offenders Act, MICH. COMP. LAWS ANN. §§ 28.722–23 (2003) (requiring individuals convicted of sex offenses in tribal court to register).

77. NEV. REV. STAT. 179D.210 (2002) (including an offense prosecuted in tribal court as "[a]n offense committed in another jurisdiction that, if committed in this state, would be [a crime against a child]").

78. 2003 OHIO LAWS 45 (including violations of tribal court laws in the definition of "sexually oriented offense" for which individuals may be required to register).

79. OKLA. STAT. ANN. tit. 57, ch. 8b § 582(b) (West 2003). Section 582(b) states the following:

> The provisions of the Sex Offenders Registration Act shall apply to any person who after November 1, 1989, resides, works or attends school within the State of Oklahoma and who has been convicted or received a suspended sentence in any court of another state, a federal court, an Indian tribal court, or a military court for a crime or attempted crime which, if committed or attempted in this state, would be a crime or an attempt to commit a crime.

*Id.*

80. VT. STAT. ANN. tit. 13, § 5401 (including those convicted in tribal court in the definition of "sex offender").

81. Presumably, states lack regulatory authority to impose a sex offender registration requirement on tribally-convicted defendants who reside on Indian lands. *Cf.* Okla. Tax Comm'n v. Chickasaw Nation, 515 U.S. 450, 453 (1996) (holding that Oklahoma lacks regulatory taxing authority over tribal members within Indian country).

explicit as to whether tribal convictions trigger a sex offense registration requirement.[82]

Sex offender registration requirements, if not punitive,[83] are tremendously intrusive. A registration statute may require a sex offender to provide law enforcement authorities in any jurisdiction where he resides (or perhaps even visits for two weeks)[84] his name, a photograph, a list of identifying features, home address, place of employment, date of birth, conviction information, driver's license number, information about vehicles to which he has access, and post-conviction treatment history.[85] He may be required to provide a DNA sample.[86] He may be required to provide an annual report on this information and, depending on the severity and number of the underlying offense(s), he may be required to provide such updates for a period of years or his whole life. The sex offender may be required to inform state police authorities if he shaves a beard, borrows a car, or seeks psychiatric treatment.[87] He may be required to report promptly a change of address even if the change occurs because of a "natural disaster."[88]

Sex offender registration is generally a regulatory requirement, not a penal one.[89] Thus, a state that recognizes a tribal criminal conviction is not, in the first instance, using the conviction as part of a state criminal proceeding. However, because most states make the failure to register as a sex offender a criminal offense rather than a mere regulatory violation,[90] the tribal conviction in such a case may provide the basis for a criminal prosecution if the offender fails to meet the extensive reporting requirements.

Due to the jurisdictional limitations of tribal courts, a person prosecuted in a tribal court can be convicted of, at worst, a gross misdemeanor.[91] In other words, a sex offender registration regime that considers tribal convictions may impose substantial and onerous requirements on an Indian person who has a single tribal misdemeanor conviction for a sex offense.

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82. *See, e.g.*, S.D. CODIFIED LAWS § 22-22-30 (Michie 2003) (South Dakota sex offender registration act, stating that a sex offense includes "[a]ny crime committed in a place other than this state which would constitute a sex crime...if committed in this state").

83. *See* Smith v. Doe, 538 U.S. 84 (2003) (holding that the Alaska Sex Offender Registration Act did not violate the constitutional proscription of ex post facto criminal laws because the act was civil and regulatory rather than criminally punitive in nature).

84. ARK. CODE ANN. § 12-12-906(c)(1)(A)(iii)(a) (2003).

85. *See, e.g.*, Smith v. Doe, 538 U.S. 84 (2003). *See generally* Koresh A. Avrahamian, *A Critical Perspective: Do "Megan's Laws" Really Shield Children from Sex-Predators?*, 19 J. JUV. L. 301, 306–07 (1998) (discussing sex offender registration and notification statutes); Beth Miller, *A Review of Sex Offender Legislation*, 7 KAN. J.L. & PUB. POL'Y 40 (1998).

86. *See,e.g.*, ARK. STAT. ANN. §12-12-906(c)(1)(B)(i) (2003).

87. *See Smith*, 538 U.S. 84 (describing Alaska's Sex Offender Registration Act).

88. ARK. STAT. ANN. § 12-12-906(c)(1)(A)(vi).

89. *See Smith*, 538 U.S. 84.

90. *See, e.g.*, N.J. STAT. ANN. § 2C: 7-2 (providing that failure to register as required is a crime of the fourth degree). Many states modeled their sex offender registration statutes after New Jersey's. *See* Avrahamian, *supra* note 85.

91. *See supra* note 54.

### C. License Revocation or as Predicate Offenses for Aggravated or Enhanced State Charges

Several states consider tribal court convictions as prior offenses for purposes of specific laws. Motor vehicle and domestic violence laws are two areas in which tribal court convictions are frequently afforded recognition by state courts.

#### 1. Motor Vehicles

Motor vehicle adjudications in tribal court are used in two different ways by state courts. At least five states recognize tribal motor vehicle adjudications for purposes of suspension or revocation of driver's licenses. These include Colorado,[92] New Mexico,[93] North Dakota,[94] Washington,[95] and Wisconsin.[96] In these states, a driver licensed by the state can lose his license by virtue of a motor vehicle conviction in a tribal court. Here, though recognition of the tribal criminal conviction is in the context of a state *civil* proceeding, the outcome of the civil proceeding can nevertheless have enormous ramifications for the person subject to the proceedings. Losing the privilege of driving a vehicle in any of these states can dramatically impact a person's employment opportunities, or the choice of where to live, even for those who live in urban areas.

Another common use of tribal convictions in the motor vehicle context involves tribal convictions for the criminal offense of driving under the influence of alcohol (D.U.I.). Under D.U.I. statutes enacted in Michigan,[97] Montana,[98] New Mexico,[99]

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92. COLO. REV. STAT. § 42-2-127 (2003). Note that the Colorado statute counts convictions only from one tribe's court, the Southern Ute Tribe, which is located within the State of Colorado.

93. New Mexico recently enacted N.M.S.A. 1978, § 66-5-27.1 (2003), which provides that the state may "suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court."

94. N.D. CENT. CODE § 39-06-27 (2003) (authorizing the suspension or revocation of "the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of that person in a tribal court or in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator").

95. *See* Wheeler v. State Dep't of Licensing, 936 P.2d 17, 18 (Wash. Ct. App. 1997) (broadly interpreting statute that did not mention tribal courts in holding that traffic convictions by a tribal court could be counted toward the number of traffic convictions that would justify suspension of a driver's license under the habitual traffic offender statute).

96. Wisconsin law provides for the revocation of driving privileges after certain enumerated offenses, including convictions "under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law." WIS. STAT. § 343.31 (2003). It also provides that convictions of a tribal court in the state of Wisconsin shall be counted by a state court in determining the proper penalty for subsequent D.U.I. offenses. WIS. STAT. § 343.307 (2003). *See also* State v. Schuman, 520 N.W.2d 107 (Wis. Ct. App. 1994).

97. *See* MICH. COMP. LAWS ANN. § 257.625 (West 1997) (allowing the use of prior D.U.I. convictions from other states) and § 257.65 (defining "state" as including Indian tribes); *see also* People v. Wemigwans, No. 239736, 2003 WL 734257, *3 (Mich. Ct. App. 2003). In allowing prior tribal court drunk driving convictions for sentencing purposes, the *Wemigwans* court indicated, "Based on our review of the entire record, we conclude that nothing occurred in the two prior tribal court proceedings that cast any serious doubt on the veracity or fairness of process of defendant's prior convictions. Use of prior foreign convictions for enhancement purposes under these circumstances is appropriate." *Id.*

98. State v. Spotted Eagle, 71 P.3d 1239, 1241, 1245–46 (Mont. 2003) (interpreting MONT. CODE ANN. §§ 61-8-731, 61-8-734, which provide that a defendant convicted of four or more D.U.I. offenses is guilty of a felony, explaining that tribal D.U.I. convictions count towards this number and holding that Spotted Eagle's tribal convictions were properly considered).

99. Under N.M.S.A. 1978, § 66-8-102 (2003), subsequent convictions for driving under the influence are penalized progressively more harshly. A fourth offense is deemed to be a felony and subjects the defendant to a

Wisconsin,[100] and Wyoming,[101] a prior tribal offense can serve as a predicate for more serious state charges or a more severe state sentence. In some contexts, the existence of a prior conviction, including tribal convictions, can result in enhancement of a state D.U.I. charge to a felony.[102]

The recognition of tribal D.U.I. convictions in New Mexico[103] seems to have been a legislative response to a high profile case in that state in which a federal Bureau of Indian Affairs (BIA) employee with a substantial record of tribal court D.U.I. convictions became intoxicated and drove his federal vehicle at high speed the wrong way on a major interstate highway until he collided with another vehicle carrying two elderly couples.[104] All four people in the second car were killed and the defendant, who was not seriously hurt, was prosecuted for second-degree murder.[105] After extensive media attention on that case, the New Mexico legislature amended state laws to consider tribal convictions and to make it possible for tribal driving records to be collected within the state motor vehicle records. It is likely that the developments in the other states were at least partially responsive to increasing public awareness of drunk driving and increasing pressure on lawmakers and judges to address this problem through punitive measures.

In general, these states tend to recognize the tribal criminal conviction as a matter of course with little analysis of the nature in which the tribal conviction was obtained.[106] In other words, the court does not apply any analytical framework for recognition but merely treats the tribal court judgment the same as one of its own.[107]

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mandatory minimum sentence of six months of imprisonment. *Id.* The statute explicitly indicates that tribal court convictions for driving under the influence are considered prior offenses. *Id.*

100. Under WIS. STAT. § 343.307 (2003), a conviction of a tribal court in the state of Wisconsin for driving under the influence shall be counted by a Wisconsin state court in determining the proper penalty for subsequent D.U.I. offenses. *See also* State v. Schuman, 520 N.W.2d 107 (Wis. Ct. App. 1994).

101. WYO. STAT. ANN. § 31-5-233 (2002) (providing for enhanced sentences for subsequent D.U.I. convictions and including tribal convictions as those that may be counted for this purpose).

102. *See, e.g., supra* note 99.

103. *See id.*

104. Joline Gutierrez Krueger, *Judge to Lloyd Larson: "It's Your Fault"*, ALBUQUERQUE TRIB., Jan. 7, 2004, *available at* http://www.abqtrib.com/archives/news04/010704_news_larson.shtml (last visited Feb. 14, 2004) (stating that Lloyd Larson, the ex-BIA employee who pled guilty to four counts of second-degree murder for the January 25, 2002, deaths of four people, was re-sentenced to twenty years, in part as a result of his lengthy history of D.U.I. arrests and convictions, including one arrest just two months before the fatal crash).

105. *Id.*

106. *See, e.g.*, MICH. COMP. LAWS. ANN. §§ 257.625, 257.65 (2003) (allowing the use of prior D.U.I. convictions from other states and simply including tribes in the definition of "state"); N.M.S.A. 1978, § 66-8-102 (2003) (allowing the use of tribal convictions as long as the tribal ordinance or law is equivalent to New Mexico law).

107. For an alternative approach, consider, for example, *United States v. Small*, 333 F.3d 425 (3d Cir. 2003) (explicitly applying the doctrine of comity in affirming use of a Japanese felony conviction as the predicate to a federal prosecution for "felon" in possession of a firearm under 19 U.S.C. § 922(g)(1)) (2000)).

2. Domestic Violence

States are required by federal law to recognize tribal domestic violence protection orders.[108] States have taken different approaches to meeting this federal mandate.[109] Because there is a federal mandate, domestic violence protection orders are not particularly useful in describing how states have voluntarily chosen to address tribal criminal judgments. However, though such orders are civil in nature, they sometimes spring from tribal criminal prosecutions or as a condition of probation or release.[110] One state, Arizona, exceeds the minimum federal requirements for recognition of tribal domestic violence protection orders by also recognizing prior tribal court convictions in subsequent prosecutions for domestic violence.[111] In that state, the existence of a prior tribal conviction within five years can enhance the penalties that the judge may mete out for a state misdemeanor domestic violence offense.[112]

*D. Transfer or Waiver of Juveniles to Adult Status*

Tribal court convictions and other records have also been used widely in the context of prosecution of juveniles as adults. In most jurisdictions, the decision to prosecute a juvenile as an adult may be made only after considering a variety of factors, one of which is the juvenile's prior record of criminal or delinquent activity.[113] In interpreting "prior record," numerous federal courts have looked to tribal convictions or tribal juvenile adjudications.[114] Some state courts have followed

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108. The Violence Against Women Act, 18 U.S.C. § 2265(a) (2000), provides:

> Any protection order issued that is consistent with subsection (b) of this section by the court of one State or Indian tribe (the issuing State or Indian tribe) shall be accorded full faith and credit by the court of another State or Indian tribe (the enforcing State or Indian tribe) and enforced as if it were the order of the enforcing State or tribe.

109. *See generally* Tatum, *supra* note 15.

110. *Cf. id.* at 129, stating that

> [m]ost states allow individuals to directly petition the court for a protective order, but these orders may also be issued as part of a divorce or child custody action, any other civil proceeding, or even as part of a criminal case [and] the court may include the protection order or keep away provisions as part of pretrial release or bond conditions, as part of an anti-stalking case, as part of a probation order, or even as part of parole conditions.

111. Ariz. Rev. Stat. § 13.3601.01(b) (2003) states that

> [o]n conviction of a misdemeanor domestic violence offense, if a person within a period of sixty months has previously been convicted of a violation of a domestic violence offense or is convicted of a misdemeanor domestic violence offense and has previously been convicted of an act in another state, a court of the United States or a tribal court that if committed in this state would be a domestic violence offense, the judge may order the person to be placed on supervised probation and the person may be incarcerated as a condition of probation.

112. *Id.*

113. *See, e.g.*, WIS. STAT. ANN. § 938.18(5)(a) (listing the factors, including prior record, to be taken into consideration in determining whether a waiver of juvenile jurisdiction is appropriate); MINN. STAT. § 260B.125 subd. 4(3) (likewise listing prior record as one of the factors to be considered); *see also In re* Welfare of J.D.J., 2003 WL 21652325, *3 (Minn. Ct. App. 2003) (considering a juvenile's prior involvement with a tribal court, including sanctions for disorderly conduct, intoxication, and truancy, in deciding that it was appropriate to try juvenile as adult); *In re* Elmer J.K., III, 591 N.W.2d 176 (Wis. Ct. App. 1999) (holding waiver of juvenile status was appropriate based in part on the juvenile's history of involvement with the tribal court).

114. Transfer of juveniles to adult status in the federal system is authorized under certain circumstances. 18 U.S.C. § 5032 (2000). Prior records, including juvenile records, are relevant to transfer. *Id.*; *see also* Bradley T. Smith, *Interpreting "Prior Record" Under the Federal Juvenile Delinquency Act*, 67 U. CHI. L. REV. 1431, 1443–47 (2000). Numerous courts have concluded that tribal records are relevant to this inquiry. United States v. Juvenile

suit by considering a juvenile's tribal court record as a factor in considering whether to order transfer of a juvenile to adult court or "waiver" of juvenile court jurisdiction in favor of adult criminal proceedings.[115]

In summary, courts have used tribal criminal convictions in a variety of ways.

## III. INCOHERENCE IN THE RECOGNITION OF TRIBAL JUDGMENTS AND THE ARGUMENT FOR SYMMETRY WITHIN STATES

Given the diversity of the states and their strikingly different relationships with Indian tribes within their borders, it is perhaps not surprising that they have adopted different approaches to recognition of tribal court judgments.

### *A. Comparing State Recognition of Tribal Civil Judgments with Use of Tribal Criminal Convictions*

Even the cursory survey of the way states use tribal civil and criminal judgments set forth above yields some modest general observations. First, no state has adopted an approach of respect for all tribal judgments without regard to whether the

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Male, 336 F.3d 1107 (9th Cir. 2003) (decision to transfer to adult status remanded on procedural grounds but tribal record consisting of arrests for mischief, assault, disorderly conduct, and convictions for possession of firearms, illegal possession, carrying a concealed weapon, and disobedience to the tribal court was considered by the district court); United States v. Juvenile Male WW, 322 F.3d 482 (8th Cir. 2002) (noting district court's use of tribal juvenile records as predicates to mandatory transfer for a crime of violence under the federal juvenile transfer provisions and affirming, without reaching the question as to the use of the tribal juvenile records in this fashion, the district court's alternative discretionary transfer to adult status for prosecution for second-degree murder and assault resulting in serious bodily injury); United States v. Juvenile Male JG, 139 F.3d 584 (8th Cir. 1998) (noting district court's finding that tribal conviction for third-degree assault with a baseball bat was a predicate offense for mandatory transfer to adult status for a crime of violence under federal juvenile code, but affirming on the basis of the district court's alternative discretionary decision to transfer juvenile to adult status in prosecution for assault with a deadly weapon for using a "12 gauge shotgun or assault rifle to shoot into the home of [the defendant's] neighbors"); United States v. Juvenile LWO, 160 F.3d 1179 (8th Cir. 1998) (assuming that tribal court arrest and charging records are relevant to transfer but indicating that non-adjudicated conduct may not be considered as a prior record until adjudicated); United States v. One Juvenile Male, 51 F. Supp. 2d 1094 (D. Or. 1999) (transfer denied in murder case, but court noted that extensive tribal criminal history militated in favor of transfer); United States v. Anthony Y., 990 F. Supp. 1310, (D.N.M. 1998) (juvenile transferred to adult status based in part on a tribal record of frequent fighting, drug abuse, truancy, carrying a weapon on school grounds, physically assaulting a counselor, vandalism, and assaulting a teen with a bottle); United States v. Jerry Paul C., 929 F. Supp. 1406 (D.N.M. 1996) (juvenile transferred to adult status due in part to a tribal record consisting of a curfew violation, possession of alcohol, a firearm violation, intoxication, and assault and battery); *In re* T.W. & R.T., 652 F. Supp. 1440 (E.D. Wis. 1987) (juvenile transferred to adult status in light of tribal records including a violation of a drug ordinance by possessing marijuana at school, a police report alleging that juvenile stripped a bicycle, a citation for truancy, a court referral alleging that juvenile assaulted his mother's boyfriend, a citation for driving without a license, and a citation for violation of curfew); United States v. Means, 575 F. Supp. 1068 (D.S.D. 1983) (juvenile transferred to adult status partially on the basis of prior tribal juvenile record indicating offenses of escalating seriousness); United States v. E.K., 471 F. Supp. 924 (D. Or. 1979) (transfer denied in case involving a juvenile charged with burglary, theft, and assault with a deadly weapon, but the court indicated that it was obliged by federal statute as requiring consideration of the juvenile's lengthy tribal court adjudication record); *cf.* United States v. Leon D.M., 953 F. Supp. 346 (D.N.M. 1996) (denial of transfer to adult status based in part on the fact that the tribal record of malicious mischief, a minor drug violation, and disorderly conduct was not serious); United States v. B.N.S., 557 F. Supp. 351 (D. Wyo. 1983) (denial of transfer to adult status for juvenile in murder case based in part on a fact that tribal record, consisting of a curfew violation and possession of alcohol, was minimal).

115. *See, e.g.*, *In re* Welfare of J.D.J., 2003 WL 21652325, *3 (Minn. Ct. App. 2003) (considering a juvenile's prior involvement with a tribal court, including sanctions for disorderly conduct, intoxication, and truancy, in deciding that it was appropriate to try juvenile as adult); *In re* Elmer J.K., III, 591 N.W.2d 176 (Wis. Ct. App. 1999) (holding waiver of juvenile status was appropriate based in part on the juvenile's history of involvement with the tribal court).

judgment is civil or criminal. In other words, no state has yet adopted a fully symmetrical approach to tribal civil and criminal judgments.

Second, states have been far more idiosyncratic in their recognition of tribal convictions than in their recognition of tribal civil judgments. In the context of tribal civil judgments, each of the states that has considered recognition of tribal civil judgments has adopted a single uniform rule that applies to recognition of all civil judgments and orders.[116] In contrast, in considering tribal criminal judgments, states have not taken any such holistic or comprehensive approach. A state may recognize tribal convictions for some purposes but not others. It appears that little deliberation has been invested at the state level as to the broader questions of recognition of tribal convictions. As a result, it is impossible to find a coherent pattern in the way tribal criminal convictions are recognized in individual state jurisdictions in the United States. It is thus difficult to summarize the various approaches except to say that some states recognize tribal convictions for some purposes.

Third, because of the idiosyncratic and ad hoc nature in which states have chosen to use tribal convictions, it is much more difficult to evaluate state court respect for tribal courts in the criminal context. In the civil context, state approaches to recognition of tribal judgments can be plotted on a spectrum from highly respectful to relatively ambivalent to not respectful at all.[117] State use of tribal criminal convictions is simply not reducible to a one-dimensional quantum of respect. On the other hand, state court recognition of tribal convictions often occurs in a context that is devoid of the application of any formal analytical framework for recognition, such as rules of comity or full faith and credit. In some cases, the courts seem to treat tribal court judgments in the same manner as the state's own.[118] This must generally indicate either an utter failure to consider the matter, or a great respect for the tribal conviction. In context, it seems to reflect the former rather than the latter.

Fourth, state court recognition of tribal criminal convictions has developed in a far different manner than state rules for recognition of civil judgments. In the civil context, tribal court judges have worked hard nationwide to gain recognition for their civil judgments in state courts.[119] State rules for recognition of tribal civil judgments seem to have developed, in many instances, through careful and often lengthy legislative or judicial rule-making initiatives.[120] In contrast, state rules for recognition of tribal criminal convictions have developed in a far more organic fashion and apparently have not been the subject of focused attention by tribal court judges.

Rules for recognition of tribal convictions seem to have developed in three different ways. Some of the rules likely developed as legislative responses to

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116. Many states have particular provisions addressing the federal mandates for recognition of tribal court orders in VAWA or ICWA. For examples of VAWA provisions, see ARIZ. REV. STAT. § 13-3602 (2003); S.D. CODIFIED LAWS § 25-10-12.1 (Michie 2003); N.M.S.A. 1978, § 40-13-6 (1999)). For examples of ICWA provisions, see MINN. STAT. § 260.771, subd. 4 (2003); N.M.S.A. 1978, § 32A-6-21 (2003).

117. *See supra* notes 33–52 and accompanying text (plotting a hypothetical spectrum).

118. *See, e.g., supra* note 115 and accompanying text.

119. *See supra* notes 37, 45, 50.

120. *See generally supra* notes 31–32 (discussing the enactment of state rules, particularly in Minnesota, where the process stretched over several years).

specific problems that received widespread media attention.[121] For example, recognition of tribal D.U.I. convictions likely came about in some states through this method.[122] Other state laws recognizing tribal criminal convictions, such as the sex offender registration statutes, likely came from widespread adoption of model legislation.[123] As noted above, states were under pressure to adopt sex offender registration statutes quickly to avoid federal sanctions.[124] Finally, in some cases, recognition of tribal court convictions or other tribal records, such as juvenile adjudications, occurred in individual cases in which the court simply failed to deliberate carefully as to the issue[125] and other cases in which the court did deliberate carefully.[126] In sum, rules for recognition of tribal criminal convictions have come about in an ad hoc and far less organized and orchestrated fashion than rules for recognition of tribal civil judgments.[127]

Fifth, just as it is difficult to find coherence across the country as to the recognition of tribal convictions, it is exceedingly difficult to detect coherence *within* states as to recognition of such convictions. Why might a state such as Kansas be willing to use a tribal conviction for purposes of determining a defendant's criminal history in sentencing, but not as a predicate sentence for an aggravated drunk driving charge?[128] Why would a state be willing to credit a tribal sex offense conviction for purposes of imposing a registration requirement on the convicted defendant, but not credit a tribal drunk driving conviction in proceedings to suspend a state driver's license?[129] These inconsistencies are difficult to explain. Likely, they do not reflect any particular legislative design, but expose the lack of any careful or comprehensive deliberation within states as to the proper uses of tribal criminal convictions.

All of these observations suggest that few policy makers or judges have focused any attention on recognition of tribal convictions. The result is incoherence as to recognition of tribal criminal convictions within individual states and across the country.

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121. It is not uncommon for criminal laws and other laws dealing with public safety to develop in a reactive manner. Kenneth W Simons, *The Relevance of Community Values to Just Deserts: Criminal Law, Punishment Rationales and Democracy*, 28 HOFSTRA L. REV. 635, 645–46 (2000) (noting that "legislators are often willing to vindicate even the unreflective, highly emotional reactions of citizens who are familiar with criminal law issues only as the mass media sensationally reports them").

122. *See supra* note 105 and accompanying text (discussing the enactment of a New Mexico D.U.I. statute as a reaction to the fatal crash caused by a former BIA employee with a lengthy record of prior convictions for the same offense).

123. It is otherwise difficult to understand why states such as Georgia, Ohio, and Vermont, all of which lack any federally recognized Indian tribes currently within their borders, would grant recognition to convictions in tribal courts.

124. *See supra* note 68 and accompanying text.

125. *See infra* notes 139–143.

126. *See, e.g., supra* note 97.

127. It is not uncommon for states to adopt different rules in the criminal context as "states have varied greatly in their individual experiences of crime and their governmental responses to it." Kevin Reitz, *The Disassembly and Reassembly of U.S. Sentencing Practices*, *in* SENTENCING AND SANCTIONS IN WESTERN COUNTRIES 222–23 (Richard Frase & Michael Tonry eds., 2001). States have adopted tremendously diverse approaches to criminal justice and sentencing. *Id.*

128. *See supra* notes 64, 66.

129. *Id.*

### *B. Contrasting State Recognition of Tribal Civil Judgments with Use of Tribal Criminal Convictions*

In general, state courts and legislatures seem to have thought a great deal more about recognition of tribal civil judgments than tribal convictions. In their careful thinking about recognition of civil judgments, state courts have rarely linked civil recognition issues with criminal recognition issues.[130] One might argue that there are some distinctions between recognition of tribal civil judgments and use of tribal convictions and that these distinctions might justify a difference in treatment. One might argue first that criminal convictions and civil judgments are used for dramatically different purposes and second that they are subject to different legal regimes that justify different treatment. Each of these arguments is addressed below.

One reason courts may not generally think to draw the linkage between civil and criminal recognition is that use of tribal convictions arises in a different context than enforcement of tribal civil judgments. Indeed, use of tribal civil judgments poses a different immediate question than recognition of criminal convictions. The question at the heart of civil recognition analysis generally involves whether a state court should *directly* enforce a tribal court judgment or order that, in the prototypical case, involves enforcement of a judgment for money damages.[131]

In contrast, state court recognition of a tribal criminal conviction generally involves collateral or subsequent use of the tribal court conviction in a different proceeding. In the context of subsequent state criminal proceedings, recognition of tribal criminal convictions is thus once removed from direct recognition for enforcement purposes. Since the prior tribal conviction is likely to be just one of the background facts in a state criminal case involving a whole new offense related to an entirely different incident than the tribal conviction, the use of a tribal conviction in such circumstances is different in kind than directly enforcing a civil tribal judgment. Indeed, in contrast to the civil judgment context in which the tribal judgment occupies center stage, the matter of the tribal conviction may be something of a sideshow, or just a niggling detail, in a state criminal proceeding for a new offense.

Though this difference is genuine, and it is always appropriate to be cautious when comparing apples to oranges, it is difficult to see any compelling implications of the difference. Despite the fact that the use of the tribal criminal conviction is less direct and might be characterized as a collateral use, a tribal criminal conviction may nevertheless have profound effects on the defendant in the same way that enforcement of the judgment will have an effect on the civil litigant. First, use of a prior tribal conviction might result in a dramatically increased charge, such as a felony D.U.I. prosecution predicated on prior tribal D.U.I. convictions. Moreover, in some cases, jeopardy in state proceedings may be a direct result of the tribal

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130. The Montana Supreme Court has noted the linkage. As noted in *supra* note 98, Montana has a statute that allows use of prior tribal convictions as predicates to enhance a subsequent state D.U.I. prosecution from a misdemeanor to a felony. In one case, a defendant challenged the validity of the tribal conviction under Montana and federal law on the basis that he lacked counsel for the tribal conviction. *See* State v. Spotted Eagle, 71 P.3d 1239, 1241, 1245 (Mont. 2003). Because Montana accords comity to tribal civil judgments, the Montana Supreme Court upheld use of the tribal convictions even though they were issued against a defendant who was not represented by counsel. In employing Montana's rule of comity in the context of interpreting a state statute authorizing recognition of tribal court convictions, the court exhibited some awareness that the issues are related.

131. *See Negotiating*, *supra* note 22, at 375.

conviction. Consider for example the sex offender registration statutes or the statutes allowing revocation of a driver's license based on tribal traffic adjudications. In all of these circumstances, state recognition of the tribal conviction is likely to have severe ramifications on the person against whom the conviction is being used. In some instances, the defendant would not be subject to criminal jeopardy but for the prior tribal conviction.

The second possible argument that might be made to justify treating tribal civil judgments differently than tribal criminal convictions is legal in nature. It might proceed as follows: because the Indian Civil Rights Act[132] gives a tribal criminal defendant a federal right to habeas corpus, state courts can be assured that tribal courts in criminal proceedings followed procedures in accordance with that Act.[133] If not, the defendant presumably would bring an action in federal court under the habeas provisions in the federal law to challenge the tribal conviction. Moreover, because the Act mirrors, to a great degree, the same federal bill of rights protections that states must provide criminal defendants, states can be substantially assured that the tribal criminal proceedings conform to procedures that state courts would recognize as being fair. Although the Act requires that tribal civil proceedings also meet the due process requirements set forth in the Indian Civil Rights Act, there is no opportunity for habeas relief or other review in federal court.[134] Thus, one might argue that tribal criminal convictions are subject to a federal guarantee that is lacking in civil cases.

However, this argument is not very convincing for several reasons. First, none of the cases that have addressed the use of criminal convictions or civil judgments have noted this distinction and few of them have reflected any serious deliberation on the question. Thus, it would appear unlikely that this has been the theoretical or practical pretext for a distinction. Second, even the most respectful rules for recognition of tribal civil judgments—those that can be characterized as granting full faith and credit—offer a safety valve that allows a state court to avoid recognition. Typically, courts that grant full faith and credit will give the party against whom the judgment is being enforced an opportunity to demonstrate that the tribal court lacked jurisdiction[135] or that the judgment being enforced is reflective of a policy that the forum state does not share.[136] Many such rules also offer the objector the opportunity to demonstrate additional facts that would call into question recognition of the particular judgment, such as a lack of due process,[137] a lack of personal or subject-matter jurisdiction, a taint of fraud or duress, or a result contrary to state public policy.[138] In light of these commonplace safeguards inherent in rules for

132. 25 U.S.C. § 1303 (2000).

133. *Negotiating*, *supra* note 22.

134. *See id.* at 427–28; *see also* Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978).

135. Sheppard v. Sheppard, 655 P.2d 895, 902 (Idaho 1982).

136. Jim v. C.I.T. Fin. Servs. Corp., 533 P.2d 751 (N.M. 1975).

137. Given the Supreme Court's expansive notion that the due process clause in the Fourteenth Amendment incorporates most of the federal Bill of Rights, *see, e.g.*, AKHIL REED AMAR, THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION (1998), state courts would presumably have little difficulty concluding that a failure to meet one of the provisions of the Indian Civil Rights Act was a violation of due process.

138. See, for example, N.D. R. CT. 7.2(b) (2003), which states,

> If recognition of a judgment is objected to by a party, the recognizing court must be satisfied,

recognition of tribal civil judgments, it can hardly be argued that erroneous or untrustworthy tribal civil judgments will be enforced. Indeed, review of a judgment prior to recognition creates safeguards analogous to the right to federal habeas relief in the criminal context. In sum, the argument that there is a substantive legal justification based in the Indian Civil Rights Act for treating tribal criminal convictions with greater respect than tribal civil judgments simply is not convincing. The different considerations relevant to recognition of civil judgments versus criminal convictions are not compelling enough to justify the different treatment.

### *C. Troubling Asymmetry*

In some cases, states that exhibit great anguish about whether to adopt respectful approaches toward tribal courts in the civil context seemingly have been willing to recognize tribal criminal convictions without much analysis or any of the hand-wringing involved in their recognition of civil judgments. For example, from the fall of 2002 until December 2003, the Minnesota Supreme Court was publicly wrestling with the notion of how much respect, if any, to give to civil judgments from tribal courts. While that debate was playing out, the Court of Appeals of Minnesota decided a case entitled *In the Matter of the Welfare of J.D.J.*, decided in July of 2003. One of the issues in the case was how much consideration should be given to "tribal court sanctions for disorderly conduct and for juvenile intoxication" in reviewing a juvenile's "prior record of delinquency" for determining whether a juvenile should be prosecuted as an adult.[139]

Without any trace of irony and with none of the anguish exhibited by the Supreme Court in addressing how much respect to accord tribal civil judgments, the court of appeals brushed aside defense counsel's argument that there was no admissible "prior record of delinquency"[140] and was willing to allow consideration of these tribal adjudications.[141] As a result, based on no particular standard as to use of tribal adjudications and consideration of this record along with other statutory factors, the court of appeals upheld the juvenile's treatment as an adult and prosecution for murder.[142]

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> upon application and proof by the objecting party...that the following conditions are present: (1) The tribal court had personal and subject matter jurisdiction; (2) The order or judgment was obtained without fraud, duress, or coercion; (3) The order or judgment was obtained through a process that afforded fair notice and a fair hearing; (4) The order or judgment does not contravene the public policy of the state of North Dakota; and (5) The order or judgment is final under the laws and procedures of the rendering court.

*See also* WASH. SUP. CT. CIVIL RULES, C.R. 82.5 (2003) (providing that, in the State of Washington, tribal court orders will be recognized and enforced unless there was a lack of jurisdiction, due process, or reciprocity).

139. *See* Matter of the Welfare of J.D.J., 2003 WL 21652325, *2–*3 (Minn. Ct. App. 2003).

140. *Id.* at *3.

141. *Id.*

142. *Id.* at *5.

A Wisconsin court took a similar approach a few years earlier.[143] Despite a well-developed rule for recognition of civil judgments, the Court of Appeals of Wisconsin simply gave tribal juvenile adjudications the same weight as any other adjudication in "waiving" juvenile court jurisdiction and hailing the youthful offender into criminal court as an adult. It failed to invoke the recognition rule or otherwise give serious consideration to whether it should recognize the tribal records.

In short, there is a glaring inconsistency in the care with which some state courts treat tribal criminal convictions and tribal civil judgments. Some state courts seem willing to embrace tribal criminal convictions reflexively but remain highly mistrustful and cautious toward tribal civil judgments.[144] In other words, state courts have sometimes treated tribal convictions with great respect and tribal civil judgments with far less respect. This might be characterized as an asymmetric approach to respect for tribal courts.

The phenomenon in which a state court agonizes over whether to grant respect to a tribal judgment and then reflexively recognizes a tribal conviction is surprising because, in theory, one might expect any asymmetry to run in the other direction. The American legal system is predicated on the notion that adjudicating a person to be guilty of a criminal offense is of much greater moment than adjudicating a civil right to money damages. Indeed, federal and state constitutional provisions on criminal justice, and particularly the Federal Bill of Rights, are structured around the notion that courts and judicial processes must be far more careful in adjudicating criminal cases than civil ones. To put it differently, in the United States, property interests are deemed to be not as important as the paramount interest in liberty.[145] It thus seems ironic that state courts would exercise great caution in formulating and applying rules for recognition for tribal civil judgments and yet recognize tribal criminal convictions reflexively and without any substantive deliberation.

The asymmetric approach often has severe ramifications for the Indians against whom the tribal convictions are used. In one of the juvenile cases discussed above, a thirteen-year-old Indian child was held to answer as an adult for murder. [146] The dramatic difference in the care taken by the court in accepting the tribal court criminal record in that case is striking in light of the extensive procedures necessary for the recognition of a tribal civil judgment.[147]

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143. *In re* Elmer K., 591 N.W.2d at 181, n.8 (Wis. Ct. App. 1999). The Wisconsin decision is less troubling because Wisconsin law seems more respectful of tribal sovereignty. *See* WIS. STAT. § 806.245 (2003); *see also* Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 665 N.W. 2d 899, 902 (Wis. 2003) (holding that the "circuit court was required by [statute] to give full faith and credit to the tribal court judgment"). Still, one would expect to see a court go through the motions of considering how much respect to give to the tribal conviction or juvenile adjudication.

144. *See, e.g., supra* Part II.C.

145. *See, e.g.*, Ronald J. Krszynski, Jr., *Fundmental Property Rights*, 85 GEO. L.J. 555, 555–56 (1997) (noting that the protection of fundamental liberty rights by the Supreme Court has not been fully expanded to the protection of property rights but arguing that it should be).

146. Matter of the Welfare of J.D.J., 2003 WL 21652325 at *2–*3 (Minn. Ct. App. 2003); *see supra* note 139 and accompanying text.

147. *See, e.g., supra* notes 31–32 (discussing the enactment of state rules, particularly in Minnesota, where the process stretched over several years); *see also supra* notes 38–40 and accompanying text (describing the difficult process for getting a tribal court judgment recognized in the state of South Dakota).

Another example of the startling outcome is the tribal sex offender. The sex offender who leaves an Indian reservation with a tribal misdemeanor conviction for a sex offense and moves to a state that recognizes tribal criminal convictions may trigger automatic registration requirements in certain states without regard to any specific consideration of the details of the conviction.[148] As a result, without any affirmative action by any state court, the offender may be subject to a self-executing requirement that he report if he grows a new beard (or shaves off an old one) or borrows a friend's car when he leaves his own car for repair with an auto mechanic.[149]

Imagine the hurdles the same person used in these example above might be required to overcome if, as a civil litigant, he sought to have a valid tribal judgment enforced in state court in the same state in which he is registered as a sex offender if that state has not adopted any provision for the recognition of tribal civil judgments. Indeed, most of the states that require sex offender registration for those convicted of tribal sex offenses lack rules for recognition of tribal civil judgments. It remains subject to speculation whether those states would adopt rules for recognition of civil tribal judgments that are symmetrical to the provision in their sex offender registration statutes.

In summary, this asymmetrical approach seems biased in favor of greater care being used for the recognition of civil judgments than criminal convictions. One can make a compelling argument that this kind of asymmetry is troubling. For reasons explained more below, asymmetry in the opposite direction (in which the jurisdiction is highly respectful of tribal civil judgments but does not use tribal convictions for broad purposes) is far less troubling.

### *D. An Argument for Symmetry*

Numerous states have not yet explicitly decided whether or how they will recognize tribal civil judgments. Those states that have opted to recognize tribal convictions for any purpose, however, have already evinced a respectful position toward tribal courts. If state courts trust tribal courts enough to justify heightened jeopardy for Indian defendants through recognition of tribal convictions, those state courts ought to trust tribal courts just as much when they render civil judgments. States that have not decided these issues should strive toward internal coherence or symmetry. Symmetry is not simply an aesthetic concern; it is preferable for the following reasons.

First, in deciding to recognize tribal criminal convictions for any of the purposes discussed above, a state court has placed substantial faith in tribal courts. It has said, in effect, that it trusts the tribal courts' judgment on a matter of the highest importance within the American judicial system. If the same state court refuses to recognize civil judgments in the same manner, the court exposes itself to serious criticism of its motives. Indeed, the asymmetric model that seems to prevail in some states creates troubling implications, at least where state courts automatically recognize tribal convictions and deny or give only grudging respect to tribal civil

148. *See supra* Part II.B (discussing sex offender registration statutes).
149. *Id.*

judgments. Since tribal courts possess criminal jurisdiction over Indians only, recognition of tribal criminal convictions for any of the purposes outlined above will always place Indians in greater jeopardy than they would face absent such a rule and it will *only* harm Indians.[150]

In contrast, tribal courts sometimes possess *civil* adjudicatory jurisdiction over non-Indians. Thus, denial of recognition of a tribal civil judgment will sometimes have the effect of denying an Indian the ability to satisfy a judgment against a non-Indian in state court.[151] In short, the asymmetric model in which the state recognizes tribal convictions but denies recognition to tribal civil judgments would result in a system that always jeopardizes Indians on the criminal side and yet obstructs potential benefits to Indians on the civil side. Asymmetry of this type has a disparate and unjustifiable impact on Indian litigants. Such an asymmetric approach may expose a state to a charge of institutional or systemic racism. It could fairly be characterized, intentionally or not, as an approach carefully designed with one goal in mind: to always "screw the Indians."[152]

Such a charge would be difficult to refute. Given the enormous consequences for Indian convicts of using tribal criminal convictions in the various contexts set forth above, such asymmetry seems perverse. If a state court is willing to trust a tribal court when it exercises the weighty responsibility of adjudicating a criminal conviction, courts in the same state ought to trust a tribal court when that court lawfully adjudicates a civil dispute, which involves, by definition, a comparatively less weighty matter.

A public choice theorist might be able to craft a cynical argument as to why some states are willing to create rules that respect tribal criminal convictions and thus increase jeopardy for Indian criminal defendants and yet decline to adopt symmetrical rules of respect for tribal civil judgments. Indians vote at a lesser rate than non-Indians[153] and Indian criminal defendants likely vote even less. It may be that convicted Indian defendants lack the political influence to prevent state recognition of criminal convictions, but non-Indian interests are powerful enough to block enactment of rules favoring recognition of civil judgments by state courts or legislatures.

Another explanation of this outcome might be theorized from the scholarship of critical race theorist Derrick Bell. Professor Bell has expressed the view that members of minority groups will receive favorable treatment only when their interests align with the interests of the majority.[154] Viewing tribal courts as the

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150. *See* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978) (noting that tribes have no jurisdiction over non-Indians).

151. *See* Strate v. A-1 Contractors, 520 U.S. 438 (1997).

152. This quotation is a censored version of the reaction one constitutional scholar gave when such a regime was explained to him.

153. *See, e.g.*, Robert B. Porter, *The Demise of the Ongwehoweh and the Rise of the Native Americans: Redressing the Genocidal Act of Forcing American Citizenship upon Indigenous Peoples*, 15 HARV. BLACKLETTER L.J., Spring 1999, at 107, 146–47 (noting that Indians are much less likely to participate in federal elections than they are to participate in tribal elections and that in 1992 the percentage of Indians participating in federal elections was about twenty percent, but this percentage has been increasing somewhat in the past ten years or so).

154. Derrick Bell, *The Racism Is Permanent Thesis: Courageous Revelation or Unconscious Denial of Racial Genocide*, 22 CAP. U. L. REV. 571, 575 (1993) ("[African-Americans are] disadvantaged unless whites perceive that nondiscriminatory treatment for us will be a benefit to them."); *see also* Derrick Bell, *Racial Libel as American*

relevant minority group under such a theory, the notion is that certain states are willing to credit tribal court convictions because it serves the public safety interests of the non-Indian majority.[155] In contrast, the recognition of tribal civil judgments serves no such interest and, thus, under Professor Bell's theory, the non-Indian majority is less willing to respect such judgments.[156]

Given the troubling implications of an asymmetric state regime that provides easy recognition to tribal convictions and yet forces tribal civil judgments to run a gauntlet, it is difficult to justify such a regime. The obvious conclusion is that symmetry within state systems is preferable to asymmetry.

To provide a concrete example, a state such as Kansas, which has accorded the broadest recognition to tribal convictions in its sentencing regime,[157] should be careful not to erect substantial barriers to recognition of tribal civil judgments. Doing so would expose it to just this sort of criticism. On the other hand, some states demonstrate remarkable symmetry between recognition of civil judgments and certain uses of criminal judgments. For example, Oklahoma's rule on full faith and credit for Indian tribes is one of the most respectful in the country toward tribal civil judgments.[158] The only obstacle to full recognition of tribal court judgments is the requirement that the tribe grant reciprocal status to state court judgments.[159] In that respect, Oklahoma's sex offender registration statute, which contains strict reporting requirements, nevertheless cannot be criticized as asymmetrical. Likewise, Michigan's treatment of tribal convictions and civil judgments is also fairly symmetrical.[160] Michigan courts grant near-full faith and credit to tribal civil judgments[161] and recognize tribal criminal convictions for purposes of enhancement of drunk driving laws[162] and sex offender registration.[163]

Asymmetry is not always troubling. Take, for example, New Mexico. In granting full faith and credit, New Mexico is perhaps the most respectful jurisdiction toward tribal courts on the civil side. It has, however, only lately come to respect tribal convictions and only in the narrow context of driver's licenses and drunk driving laws. In that respect, New Mexico law is asymmetric in how it distributes its respect for tribal courts, but the asymmetry is not in a direction that is particularly troubling.

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*Ritual*, 36 WASHBURN L.J. 1, 11–12 (1996) ("The law recognizes the rights of black people only when such recognition serves some economic or political interests of greater importance to whites."). Professor Bell has come to refer to this theory as interest-convergence; *see* DERRICK BELL, SILENT COVENANTS: *BROWN V. BOARD OF EDUCATION* AND THE UNFULFILLED HOPES FOR RACIAL REFORM 49–58 (2004).

155. Moreover, crediting tribal convictions provides respect to tribal courts, but doing so comes at the expense of Indian defendants who will suffer greater jeopardy.

156. The author is grateful to Professor Gloria Valencia-Weber for recommending consideration of Professor Bell's work in this context.

157. KAN. CRIM. CODE ANN. § 21-4711(e) (West 2002).

158. *See* Grunsted, *supra* note 37.

159. *See* OKLA. DIST. CT. R. 30(b) (2003).

160. Michigan's sex offender registration requirement arises automatically. In contrast, a tribal civil judgment must withstand any objecting party's allegation that it was obtained by fraud or was the result of a tribal court procedure that did not afford due process. Thus, Michigan's rule would be more symmetrical if it adopted an approach to tribal civil judgments that was more in keeping with full faith and credit.

161. *See supra* note 45.

162. *See supra* note 97.

163. *See supra* note 76.

Given the type of respect for tribal civil judgments in states such as Michigan, New Mexico, and Oklahoma, it would not be at all troubling for these states to grant more general respect to tribal convictions.

## IV. CONCLUSION

Some scholars look forward to the time when there will be a virtually seamless American judicial system composed of complementary and functionally integrated tribal, state, and federal courts. Others worry that integrating the tribal courts into the American system will impose significant costs on tribal courts, forcing them to adopt an unnecessary uniformity and ultimately will result in "a North America rather less Indian than today's."[164] This article advocates neither extreme but encourages deliberation and, ultimately, some sense of consistency within each state as to its treatment of tribal court rulings, particularly in those states that have expressed respect for tribal convictions.

As of this writing, at least twenty states recognize tribal criminal convictions for one purpose or another.[165] In stark contrast to the hand wringing and anguish that has accompanied many states' decisions about how to recognize tribal civil judgments, decisions by state courts and legislatures to recognize tribal criminal convictions have too often involved little careful deliberation. Such asymmetry is troubling. While states need not recognize tribal convictions, any state that is willing to recognize tribal convictions reflexively and without consideration will have a difficult time justifying different treatment for tribal civil judgments.

The purpose of this essay is not to argue that states should not recognize tribal criminal convictions. Indeed, quite the contrary. Despite the serious ramifications of recognition of tribal criminal convictions, it is entirely appropriate for states to respect the criminal convictions of tribal courts. Tribal courts are required by federal law to provide substantially the same procedural protections to defendants in tribal courts as states provide to defendants in state courts.[166] In practice, tribal courts are not fundamentally different than state courts in adjudicating misdemeanor criminal cases. Indeed, most tribal judicial systems are structured very much like the state and federal court systems, and state and federal law heavily influence tribal court procedures.[167] As one scholar who has studied the issue intently has noted, some tribal courts "operate as nearly exact replicas of state courts." [168] In short, tribal courts have earned the respect of state courts and legislatures. In deciding to respect tribal convictions, state decision-makers presumably are demonstrating that respect.

State civil and criminal law with regard to respect for tribal courts should be symmetrical. A state that is willing to respect a tribal court enough to use its criminal convictions to place a convicted tribal defendant in greater jeopardy in a later state proceeding ought to be willing to respect the civil judgments by the same

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164. *Unlikely Case*, *supra* note 17, at 56–57.

165. *See supra* Part II (discussing the use of tribal criminal convictions by states).

166. Indian Civil Rights Act, 25 U.S.C. §§ 1301–03 (2000).

167. *See* Tom Tso, *The Process of Decision Making in Tribal Courts*, 31 ARIZ. L. REV. 225, 227 (1989); *cf.* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 211–12 (1978) (noting that "some Indian tribal court systems have become increasingly sophisticated and resemble in many respects their state counterparts").

168. Newton, *supra* note 5, at 311.

tribal court. In other words, state court respect for tribal court judgments should not stop at the boundary line between civil and criminal law.

As one scholar has recently demonstrated, even when states adopt respectful rules for recognition of tribal court judgments, there is no guarantee that state courts will recognize even those tribal court orders that are required by federal law to be recognized.[169] Trust is a two-way street. As Indian tribes become more economically successful, enforcement of state judgments on Indian reservations will become an ever more important issue to state citizens. Though occasional failures will inevitably occur in both state and tribal courts, creating a system of laws that eliminates unjustifiable systemic biases will go a long way toward preserving the integrity of state and tribal courts and maintaining trust among sovereigns. State courts should endeavor to adopt rules that accord with the notion of symmetry outlined above.

169. For an interesting analysis of this issue, see Leeds, *supra* note 14, at 346–60 (noting that state courts sometimes refuse to recognize tribal court orders even when recognition is federally mandated).

# APPENDIX

| STATE | TREATMENT OF TRIBAL CRIMINAL CONVICTIONS | TREATMENT OF GENERAL TRIBAL CIVIL JUDGMENTS |
|---|---|---|
| ALABAMA | | |
| ALASKA | | ALASKA STAT. § 25.23.160 (Michie 2002) (ICWA mandate);170 John v. Baker, 982 P.2d 738, 763 (Alaska 1999) (Alaska courts should, as a general rule, "respect tribal court decisions under the comity doctrine"); Hernandez v. Lambert, 951 P.2d 436 (Alaska 1998) (ICWA case). |
| ARIZONA | ARIZ. REV. STAT. § 13.3601.01(b) (2003) (stating that a person with a tribal conviction for a domestic violence offense who subsequently commits another domestic violence offense within sixty months may be placed on probation and/or incarcerated). | 17B ARIZ. REV. STAT. TRIBAL CT. CIV. J. RULES 1-7 (2000) (establishing full faith and credit for tribal courts, unless objection filed); 17B ARIZ. REV. STAT. TRIBAL CT. INVOLUNTARY COMMITMENT ORDERS, RULES 1-6 (1994) (governing the recognition of tribal commitment orders); ARIZ. REV. STAT. § 12-136 (2003) (making involuntary commitment orders of Arizona tribal courts enforceable in state court); ARIZ. REV. STAT. § 13-3602 (2003) (VAWA mandate);171 ARIZ. REV. STAT. § 25-1004 (2001) (ICWA mandate); Brown v. Babbitt Ford, Inc., 571 P.2d 689 (Ariz. Ct. App. 1977) (determining that "Territory" under the federal Full Faith and Credit Act does not include Indian reservations, so Arizona state courts were not required to give full faith and credit to enactment of Navajo tribal council). |
| ARKANSAS | ARK. CODE ANN. § 12-12-903(12)(A)(iii) (2003) (sex offender registration law). | ARK. CODE ANN. § 9-15-302 (Michie 2003) (VAWA mandate); ARK. CODE ANN. § 9-19-104 (Michie 1999) (ICWA mandate). |
| CALIFORNIA | | People v. Super. Ct. Kern County, 274 Cal. Rptr. 586 (1990) (holding that the Navajo nation is a "Territory" for purposes of the Uniform Act to Secure the Attendance of Witnesses from Without the State in Criminal Proceedings, so that California courts must honor requests of Navajo Nation courts for the appearance of witnesses at criminal proceedings). |

170. Statutes effectuating the federal Indian Child Welfare Act mandate will be referred to simply as "ICWA mandate" throughout this chart.

171. Statutes effectuating the federal Violence Against Women Act mandate will be referred to as "VAWA mandate."

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| COLORADO | COLO. REV. STAT. ANN. § 42-2-127 (1999) (the state may suspend a driver's license after repeated convictions for traffic violations, including convictions in Southern Ute tribal court). | COLO. REV. STAT. ANN. § 42-2-126.5 (2001) (full faith and credit to a tribal revocation of the reservation driving privileges of an Indian; however, "tribe" only means the Southern Ute tribe); COLO. REV. STAT. ANN. § 18-6-803.8 (2001) (VAWA mandate). |
| CONNECTICUT | | Mashantucket Pequot Gaming Enter. v. DiMasi, 25 Conn. L. Rptr. 474 (Conn. Super. Ct. 1999) (holding a money judgment of tribal court enforceable in state court as a matter of comity). |
| DELAWARE | | |
| FLORIDA | | |
| GEORGIA | GA. CODE ANN. § 42-1-12 (2003) (sex offender registration law). | |
| HAWAII | | |
| IDAHO | IDAHO CODE § 18-8303 (2003) (sex offender registration law); State v. Tesheep, 838 P.2d 888, 890 (Idaho Ct. App. 1992) (considering prior tribal court convictions as part of defendant's character in order to determine whether the district court abused its sentencing discretion in a related offense). | IDAHO CODE § 7-1001 (2003) (defining "state" as including tribes for purposes of the Uniform Interstate Family Support Act); Sheppard v. Sheppard, 655 P.2d 895 (Idaho 1982) (full faith and credit to tribal court adoption decree). |
| ILLINOIS | | *In re* Armell, 550 N.E.2d 1060 (Ill. App. 1990) (holding that transfer of ICWA case to tribal court was appropriate). |
| IOWA | IOWA CODE ANN. § 692A.2 (2003) (sex offender registration law). | |
| INDIANA | | IND. CODE ANN. § 34-26-5-17 (Michie 2000) (VAWA mandate). |
| KANSAS | KAN. CRIM. CODE ANN. § 21-4711 (West 2002) (out-of-state convictions, including those of tribal courts, are used in classifying an offender's criminal history for sentencing purposes). | KAN. STAT. § 21-3843 (2002) (VAWA mandate). |
| KENTUCKY | | |
| LOUISIANA | | |
| MAINE | ME. REV. STAT. ANN. tit. 34-A, §§ 11203, 11222 (2003) (sex offender registration law). | 25 U.S.C. § 1725(g) (2001) (full faith and credit between Passamaquoddy Tribe, Penobscot Tribe, and the State of Maine); ME. REV. STAT. ANN. TIT. 5, § 4659 (2003) (VAWA mandate with criminal enforcement provision). |
| MARYLAND | MD. CODE ANN., CRIM. PROCEDURE § 11-701 (2003) (sex offender registration law). | MD. CODE ANN., FAM. LAW § 4-508.1 (2001) (VAWA mandate). |
| MASSACHUSETTS | MASS. GEN. LAWS ANN. ch. 6, § 178C (2003) (sex offender registration law). | |

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| MICHIGAN | MICH. COMP. LAWS ANN. §§ 257.625 and 257.65 (West 1997) (allowing the use of prior D.U.I. convictions from other states, and defining "state" as including Indian tribes); People v. Wemigwans, No. 239736, 2003 WL 734257, *3 (Mich. Ct. App. 2003) (allowing the use of prior tribal court drunk driving convictions for sentencing purposes); Michigan State Police Sex Offenders Act, MICH. COMP. LAWS ANN. §§ 28.722, 28.723 (2003) (sex offender registration). | MICH. CT. R. 2.615 (2003) (judgments and orders of tribal courts granting reciprocity to Michigan courts presumed valid and given full faith and credit unless objecting party proves one of enumerated factors); MICH. CT. R. 2.112(g) (2003) (for the purpose of pleading special matters, "[a] judgment or decision of a...tribal court of a federally recognized Indian tribe...must be alleged with sufficient particularity to identify it; it is not necessary to state facts showing jurisdiction to render it"); MICH. COMP. LAWS ANN. §§ 600.2950h , i (2002) (VAWA mandate). |
| MINNESOTA | *In re* Welfare of J.D.J., 2003 WL 21652325, 3 (Minn. Ct. App. 2003) (considering juvenile's prior involvement with tribal court, including sanctions for disorderly conduct, intoxication, and truancy, in determining that the juvenile should be treated as an adult). | MINN. CT. ORDER 018, GEN. PRAC. R. 10 (effective Jan. 1, 2004) (full faith and credit for tribal court orders where federally mandated; comity where recognition of tribal court orders and judgments is discretionary); MINN. STAT. § 260.771, subd. 4 (2003) (ICWA mandate); Desjarlait v. Desjarlait, 379 N.W.2d 139, 145 (Minn. 1985) ("Principles of full faith and credit and comity do not require state courts to recognize a tribal custody order when the tribal court lacked subject matter jurisdiction and did not afford the parties due process."); *In re* Custody of K.K.S., 508 N.W.2d 813 (Minn. Ct. App. 1993) (in order to further the purposes of the Parental Kidnapping Prevention Act and the Child Custody Act, tribal court found to have properly exercised jurisdiction over child custody dispute involving Indian child taken from the Red Lake reservation,). |
| MISSISSIPPI | | Uniform Interstate Family Support Act, MISS. CODE ANN. § 93-25-5 (1997) ("The chancery courts, circuit and county courts, family courts and tribal courts are the tribunals of this state."); MISS. CODE ANN. § 97-3-107 (1997) (VAWA mandate). |
| MISSOURI | | MO. STAT. § 455.067 (2003) (VAWA mandate). |

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| MONTANA | MONT. CODE ANN. § 61-8-734(1) (2000) (a D.U.I. conviction from a federally recognized tribe may be used to enhance a D.U.I. sentence in state court); State v. Spotted Eagle, 71 P.3d 1239, 1241 (Mont. 2003) (holding that tribal D.U.I. convictions were properly considered in District Court for the purpose of enhancing state D.U.I. conviction to a felony). | MONT. CODE ANN. § 25-9-503 (2000) ("A copy of any foreign judgment authenticated *in accordance with an act of congress or the statutes of this state may* be filed in the office of the clerk of any district court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of a district court of this state.") (emphasis added); Day v. State Dep't Social & Rehabilitation Servs., Child Support Enforcement Div., 900 P.2d 296 (Mont. 1995) (concluding that tribal child support order and judgment are enforceable by Child Support Enforcement Division without initiating a separate action in state court); Wippert v. Blackfeet Tribe, 859 P.2d 420 (Mont. 1993) (comity for tribal court judgments). |
| NEBRASKA | | NEB. REV. STAT. 28-311.10 (2003) (VAWA mandate). |
| NEVADA | NEV. REV. STAT. 179D.210 (2002) (sex offender registration law). | NEV. REV. STAT. 33.090 (2003) (VAWA mandate). |
| NEW HAMPSHIRE | | N.H. REV. STAT. ANN. § 173-B:13 (2002) (VAWA mandate). |
| NEW JERSEY | | Mashantucket Pequot Gaming Enter. v. Malhorta, 740 A.2d 703 (N.J. 1999) (tribal money judgment is enforceable in state court). |
| NEW MEXICO | N.M.S.A. 1978, § 66-8-102 (1999) (providing increased penalties for subsequent D.U.I.s; providing that a fourth offense results in a felony; specifying that tribal court D.U.I. convictions are considered prior offenses); N.M.S.A. 1978, § 66-5-27.1(b) (2003) ("The division is authorized to suspend or revoke the driver's license or driving privilege of a person who has been convicted of a motor vehicle offense by a tribal court."). | N.M.S.A. 1978, § 40-13-6 (2003) (VAWA mandate); N.M.S.A. 1978, § 32A-6-21 (2003) (ICWA mandate); Jim v. CIT Financial Servs., 87 N.M. 362, 533 P.2d 751 (N.M. 1975) (holding that the Navajo Nation is a "territory" for purposes of the federal Full Faith and Credit Act and therefore Navajo tribal court judgment entitled to full faith and credit); Halwood v. Cowboy Auto Sales, Inc., 1997-NMCA-098, 946 P.2d 1088 (holding that a tribal court punitive damage award was enforceable under both principles of comity and full faith and credit); Spear v. McDermott, 121 N.M. 609, 916 P.2d 228 (N.M. Ct. App. 1996) (affirming a fine imposed for the disobedience of a Cherokee Nation court child custody order). |
| NEW YORK | | N.Y. INDIAN LAW § 52 (McKinney 2003) (providing since 1909 that decisions of the peacemaker courts of the Seneca Nation are enforceable in state court). |

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| NORTH CAROLINA | | N.C. GEN. STAT. §§ 50B-4(d) and 50B-4.1 (2003) (VAWA mandate); N.C. GEN. STAT. § 1E-1(a) (2003) ("The courts of this State shall give full faith and credit to a judgment, decree, or order signed by a judicial officer of the Eastern Band of Cherokee Indians and filed in the Cherokee Tribal Court to the same extent as is given a judgment, decree, or order of another state...provided that the judgments, decrees, and orders of the courts of this State are given full faith and credit by the Tribal Court of the Eastern Band of Cherokee Indians."). |
| NORTH DAKOTA | N.D. CENT. CODE § 39-06-27 (2003) ("The director may suspend or revoke the license of any resident of this state or the privilege of a nonresident to drive a motor vehicle in this state upon receiving notice of the conviction of that person in a tribal court or in another state of an offense therein which, if committed in this state, would be grounds for the suspension or revocation of the license of an operator."). | N.D. STAT. § 27-01-09 (2003) ("The district courts shall recognize and cause to be enforced any judgment, decree, or order of the tribal court of the Three Affiliated Tribes of the Fort Berthold Reservation in any case [subject to certain requirements, including reciprocity] involving the dissolution of marriage, the distribution of property upon divorce, child custody, adoption, an adult abuse protection order, or an adjudication of the delinquency, dependency, or neglect of Indian children if the tribal court had jurisdiction over the subject matter of the judgment, decree, or order."); N.D. R. CT. 7.2 (2003) (specifying that the orders and judgments of tribal courts in North Dakota are to be treated like those of foreign nations); Fredericks v. Eide-Kirschmann Ford, Mercury, Lincoln, Inc., 462 N.W. 2d 164 (N.D. 1990) (tribal court judgment enforceable in state court as matter of comity). |
| OHIO | 2003 OHIO LAWS 45 (sex offender registration law). | |
| OKLAHOMA | 57 OKLA. STAT. ANN. 582 (2003) (sex offender registration law). | OKLA. DIST. CT. RULE 30(b) (adopted 1994) (granting full faith and credit where tribal courts grant reciprocate); 12 OKLA. ST. ANN. § 728 (2003) (authorizing standards for the recognition of records and proceedings of tribal courts); 43 OKLA. STAT. ANN. § 551-104 (2003) (ICWA/child custody); Barrett v. Barrett, 878 P.2d 1051 (Okla. 1994) (holding that tribal court divorce was entitled to full faith and credit, but that wife was entitled to present evidence of invalidity of tribal proceeding). |

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| OREGON | | OR. LEGIS. 73 (2003) (amending OR. REV. ST. § 25.075) (Department of Human Services may enter into cooperative agreements with tribes regarding child support matters, provided certain conditions are met); Marriage of Red Fox, 542 P.2d 918 (Or. Ct. App. 1975) (tribal court divorce decree entitled to recognition in state court). |
| PENNSYLVANIA | | |
| RHODE ISLAND | | |
| SOUTH CAROLINA | | |
| SOUTH DAKOTA | | S.D. CODIFIED LAWS § 1-1-25 (Michie 2003) ("No order or judgment of a tribal court in the state of South Dakota may be recognized as a matter of comity in the state courts of South Dakota, except under [certain] terms and conditions" established by clear and convincing evidence."); S.D. CODIFIED LAWS § 25-10-12.1 (Michie 2003) (VAWA mandate); Red Fox v. Hettich, 494 N.W.2d 638, 643, 647 (S.D. 1993) (holding that tribal member didn't satisfy burden of proof necessary to show that tribal court had jurisdiction so that its judgment should be recognized under principle of comity outlined in S.D. CODIFIED LAWS § 1-1-25; clarifying the method of jurisdiction analysis for the recognition of tribal court judgments); Gesinger v. Gesinger, 531 N.W.2d 17 (S.D. 1995) (holding that tribal court judgment was entitled to comity, even though judgment was still on appeal). |
| TENNESSEE | | Uniform Child Custody Jurisdiction and Enforcement Act, TENN. CODE ANN. § 36-6-207 (2003) (child custody); TENN. CODE ANN. § 36-3-622 (2003) (VAWA mandate). |
| TEXAS | | |
| UTAH | | |
| VERMONT | VT. STAT. ANN. tit. 13, § 5401 (2003) (sex offender registration law). | VT. STAT. ANN. tit. 15, § 1101 (2003) (VAWA mandate). |
| VIRGINIA | | VA. CODE ANN. §§ 16.1-253.2, 16.1-279.1, 18.2-119, 18.2-308.1:4, 19.2-152.10 (Michie 2002) (VAWA mandate with criminal enforcement provisions). |
| WASHINGTON | Wheeler v. State Dep't of Licensing, 936 P.2d 17, 18 (Wash. Ct. App. 1997) (traffic convictions by a tribal court can be included in the 20 convictions that give rise to suspension of a driver's license under the habitual traffic offender statute). | WASH. R. SUPER. CT. CIV. C.R. 82.5(c) (1995) (full faith and credit to tribal court orders, judgments, and decrees as long as there is reciprocity, due process, and jurisdiction); *In re* Adoption of Buehl, 555 P.2d 1334 (Wash. 1976) (holding that tribal court custody order was entitled to full faith and credit). |
| WEST VIRGINIA | | |

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| WISCONSIN | WIS. STAT. § 343.307 (2003) (convictions of a tribal court in the state of Wisconsin shall be counted by a state court in determining the proper penalty for subsequent D.U.I. offenses); *see also* State v. Schuman, 520 N.W.2d 107 (Wis. Ct. App. 1994); WIS. STAT. § 343.31 (2003) (providing for revocation of driving privilege after certain offenses, including conviction "under a law of a federally recognized American Indian tribe or band in this state which is in conformity with state law"); *In re* Elmer J.K., III, 591 N.W.2d 176 (Wis. Ct. App. 1999) (considering tribal record in deciding to prosecute juvenile as adult). | WIS. STAT. § 806.245 (2003) (proclaiming full faith and credit for tribal courts, but setting forth a list of requirements that look more like comity); WIS. STAT. § 69.035 (requiring the state registrar to accept the vital records of tribal courts); WIS. STAT. § 344.25 (2003) (requiring the secretary to suspend the driving privileges of an individual who has not satisfied a damage judgment of a tribal court within 30 days of notice from the secretary). Teague v. Bad River Band of Lake Superior Tribe of Chippewa Indians, 665 N.W. 2d 899, 902 (Wis. 2003) (requiring full faith and credit for tribal court judgment). |
| WYOMING | WYO. STAT. ANN. § 31-5-233 (2002) (providing for enhanced sentences for subsequent D.U.I. convictions and considering tribal convictions as prior offenses). | WYO. STAT. ANN. § 5-1-111 (2002) (granting full faith and credit to the judicial records, orders and judgments of the courts of the Eastern Shoshone and Northern Arapaho Tribes of the Wind River Reservation, unless one of enumerated requirements is not met); Income Withholding Act, WYO. STAT. ANN. § 20-6-202 (2002) (including tribal court child and spousal support orders in the definition of "support order"). |