

KIA-KIP LAW OF INDIGENOUS PEOPLES IN THE AMERICAS

Introduction

Prospecting a new Class for the American Indigenous. The new classification schedule on *Law of the Indigenous Peoples in the Americas* (Classes KIA-KIP: North America), currently in draft stage, is a subclass of the Library of Congress Law Classification, Class K, and will conclude the regional/comparative law classification schedule for the Americas, Classes KDZ - KIP (see appended *Outline*).

The background story. Tribal law is - beyond the folkloric appeal of the subject - not common knowledge, although the Indigenous gained more visibility over the last decades as their pursuit for recognition of political and cultural rights grew more passionate and aggressive. The *UN Declaration on the Rights of Indigenous Peoples* in 2007- highlighted the global struggle for acknowledgment of Indigenous rights by the international political community. And the often contentious debate surrounding the questions of race, tribal sovereignty and citizenship has produced - and continues to produce - an unprecedented amount of materials relating to the subject.

The rising interest and marked increase in studies on contemporary indigenous law, environment, protection of cultural property and language is documented by steadily growing course offerings in U.S. and Canadian universities - as well as by inter-institutional collection development projects that give presence and visibility to the “heritage” of Indigenous peoples. All generated great demands for bibliographic keys to the hard to find materials on a broad and varied number of subjects.

To this date, however, both information seekers and information providers are hard pressed by an uneasy reality: the obvious gap between *availability* and *accessibility* of information. Search and research are still confronted with problems, such as

- paucity of (commercial) printing/publishing, in particular of primary sources;
- collections on law and sociology of the Indigenous, one of a kind and mostly little publicized, are held only by a few *bona fide* and specialist institutions;
- programs with limited access; or
- information on the subject which may be buried in relevant anthropological, archeological, or ethnological sources, usually in older collection on the *History of the Americas*.

Even LC Class KF (Law of the United States), which has a section on *American Indian law* and law-related materials (KF8220+), does not reflect the sovereign status and autonomy of the Indian nations, nor does it reflect current Indian law making and law developments.

For these reasons, LC took the lead with a new classification schedule for the law of Indigenous Peoples in the Americas in order to provide

- *first*, the organization, i.e. the categories/rubrics for Indigenous laws, and
- *secondly*, for broad and easy access, addressing in particular the information need of America’s *First Citizens*.

Emerging project. The various stages of the research for the subject classification of the initial classes KIA-KIK, and the “sifting” of the Web had revealed that the critical mass of information, i.e. primary and secondary sources produced by the individual tribal governments, and the output of major tribal organizations or inter-operational institutions, are largely to be found on the Web - dispersed, unorganized, and for that: obscure.

I. Re-tooling for discovery and education

These insights gave cause for a renewed investigation of the enormous, not fully exploited potential of the LC online classification system. The focus is on utility of the current system for a new and more effective access to the subject categories/rubrics for Indigenous law.

The development took full advantage of the linking and correlation functionality of Library of Congress *ClassificationWeb*. Multi-lateral links to areas in related disciplines in the LC Classification system provide rich information on anthropology, ethno-geography, local history, social and political sciences, law, etc., thus expanding the scope of the new class in the interest of a broader audience or special user community.

II. The subject: Legal status, rights and law of the Third Sovereign

1. Sovereignty and autonomy. Tribal government and legal/constitutional status.

In the 1930s, by authority of the U.S. Government, about a third of the tribes or tribal groups on US territory organized themselves as *federal corporations* by authority of the Act of Congress of June 18, 1934 (as amended by the Acts of June 15, 1935 and May 1, 1936), better known as the *Indian Reorganization (Wheeler-Howard) Act of 1934*. Those tribal entities have been formally recognized and are federally acknowledged to have immunities and privileges by virtue of their government-to-government relationship with the United States as well as powers, limitations, responsibilities, and obligations attributed to such tribes.

2. Indian law. Younger tradition has cast laws relating to Indigenous Peoples in North America into two categories. Termed as

(a) National/Federal law impacting on Indigenous Peoples (in the US: “Federal Indian law”, in Canada “Indian law”), the category refers to Federal laws and regulations on tribal rights and affairs. In the LC Law Classification, this law is classed with the national legal systems, e.g. Class KF (Law of the US), Class KE (Law of Canada), etc. The category termed as

(b) Tribal (Native or Aboriginal) law, refers to the law as it was developed by an Indigenous Nation (Tribe), and practiced within the tribal territorial boundaries, i.e. applied by, and to, the members of the group residing on the territory (e.g. a region, a reservation, municipality, ranch, or other geographic entity). Included are the constitutions and by-laws, that were adopted pursuant to that Indian Reorganization Act. Many were in recent years amended or rewritten and adopted.

The sub-classes KIA-KIK of the new schedule are only concerned with the category “Tribal Law” for the time being. This does not preclude that, at an appropriate time, the Federal Indian law could be removed from KF8200+ and transferred to KIE, where ample space is left for such a developments. The rationale by analogy: law classification in all instances has classed colonial and transitory law as the law of the colonized territory, and not with the “colonizing” jurisdiction. Once the law is put in force, it becomes the “Law of the territory governed,” i.e. law that is imposed on, and governs, a jurisdiction, is the law of that jurisdiction.

III. The structure of the regional class for the Law of the Americas (KDZ-KIX)

The layout of the draft schedule is based on the geo-political information contained in LC Class G (Geography). Regional arrangements in related or overlapping LC Classification fields, in particular Class F (America. Local history), were evaluated for the structure as well. Since Class E99+ (by old LC policy) includes *all* subjects, this class and the collections built by it have been scrutinized.

(1) In **concept**, the new class (a sequel to Class KDZ, KG-KH, see appended Outline) adheres to the geographical principles common to all LC law classes which dictates the hierarchy,

- *first*, by **regions**, in which the sovereign tribes reside. The regional Indigenous law, the introductory chapter of each regional schedule, comprises true comparative and international components such as inter-tribal organizations and corporations on the regional or on the supra-regional level;
- *second*, by **jurisdictions**, i.e. the constitutional/corporate organization of Indigenous groups residing in a particular geographic region, cast in a “list of jurisdictions” as in other regional law schedules.

The indigenous law proper is presented in a set of uniform subject tables to be applied to the jurisdictions as instructed.

States or provinces - in the US and Canada the 1st order subdivisions - are absent from the new development, since the Indigenous are on a one-to-one level with the Federal government.

(2) For **patterning** of the subject arrangements of the particular sections of the schedule, the Classes K (Law in General), KF (Law of the United States), and KE/KEO (Law of Canada) were comparatively consulted.

(3) The **language** of the schedules, the fine differences in terminology, takes local lingua in account. This is easily discerned by a parallel study of the schedules for the Arctic, Canada, and US. Differences in terms for the same subject are not editorial oversights, but reflects in general the language taken from local or regional sources themselves, providing for access the right "meta data."

IV. Tribal jurisdictions

The term “tribal jurisdiction” means in general that the 564 tribes recognized by the U.S. government and operating within the US federal and state structure are independent, autonomous political entities with the power of self-government inherent in tribal culture. They exercise ideally constitutional and legislative powers, and they have their own judicial system. Virtually all federally recognized tribes have jurisdiction over some delimited area of land, a geographic place. Only since the late 1960s (during the Johnson Administration), has Congress promoted the sovereignty and autonomy of tribal entities, and prohibited states’ exercise of authority over Indian reservations and land deals.

(1) **The “List of Jurisdictions.”** Instead of one alphabetical list of jurisdictions for the entire region of the United States, respective Canada, the indigenous jurisdictions are presented region by the region in which those tribal jurisdictions reside. Each jurisdiction is assigned a unique number or number span with instruction which of the three subject tables is to be used.

(2) **Name authorities.** Authority work plays a very important role for establishing and accessing of all tribal jurisdictions/organizations in the catalog. As a first step at the begin of this

project, the LC Policy and Standards Division (previously CPSO) has determined that the appropriate MARC 21 field for names of the US Government recognized tribes as autonomous/sovereign entities in name authority records will henceforth be the 151 (Geographic name) field instead of the previously used 110 (Corporate name) field. This was in keeping with the guidance provided in rule 21.35 of the *Anglo American Cataloguing Rules 2nd edition* (AACR2) to **treat tribal entities as national governments.**

(a) United States. For establishing or upgrading the names of indigenous jurisdictions in US regions,

- the *Bureau of Indian Affairs/US Department of the Interior* is to date the principal/authoritative list of *Indian Entities Recognized and Eligible to Receive Services from the US Bureau of Indian Affairs*, maintained by the Bureau, and has been used and compared against the LC authority files, i.e. name authorities and subject authorities, as well as against other bona fide resources, such as those of the
- *US Department of Justice*, and
- *United States Government's Official Web Portal*, and
- Tribal Websites themselves.

(b) Canada. For aboriginal jurisdictions and organizations in the Canadian regions, principal resources consulted are:

- the *Canadian Department of Justice*;
- the *Department of Indian Affairs and Northern Development*;
- the *Aboriginal Canada Portal* (ACP) launched in 2001 under the auspices of the *Department of Indian Affairs and Northern Development*. The latter offers access through over 7,500 websites and portals to Aboriginal organizations and communities of the *Inuit, First Nations, and Métis*, and
- *Library and Archives Canada*

(3) Web Resources. For the jurisdictional and organizational structure, the development has drawn heavily on Web sources. In instances where a website offers information otherwise difficult to obtain, the schedule could actually link from topic to the electronic resource, predominantly authoritative government Web sites (tribal governments included), or those of institutions which provide either full-text digital collections, or serve as conduits (indexes) to other Web resources on modern style constitutional and organizational developments of a tribe or tribal association, federation, etc.

The general bibliography, a very important component of the regional schedules, provides the listing for the major governmental, organizational, or bibliographic institutions' Web sites.

V. Maps and other cartographic sources as visual aids

This classification pioneers also the use of cartographic materials as visual aid for the user in accessing information, i.e. guiding by diagrams (maps) - which overlay the current geopolitical arrangement of North America - into the geographic *region* of the schedule.

In addition, cartographic reviews and references to cartographic materials are used to visualize the historical territorial evolution of Indian country, such as

- Land tenure changes by major events, such as removal and relocation, or
- land cessions (either by treaty or deed), or
- as consequence of allotment legislation (regional as well as local),

and impact thereof on Indian culture areas, environment, and resources. This information is introduced either as reference to Class G, or with links to digital images of maps as further illustration of the subject .

(1) United States. Inasmuch as maps are important for all aspects of Indian territoriality, e.g. treaty research, border settlements, and the “allotment questions” in the Indian Territory, the *Library of Congress Geography and Map Division* (G&M) is the most significant repository of such cartographic information (e.g., on the historical westward expansion of the burgeoning white population and their military operations). And present-day maps show the current extent of the Indian country in the US. G&M has richly contributed to this project. A small sampling of maps of the Indian territory are added here:

(a) The most noted is the *Royce Map* consisting of a set of over 60 Maps of Indian Land cessions, describing all States from formation of the United States to 1894

- Charles C. Royce (1845-1923; maps)
<http://hdl.loc.gov/loc.gmd/g3701em.gct00002>

(b) An important official set was prepared or published between 1898-1903 under supervision or authority of the U.S. Geological Survey and the U.S. Indian Inspector or Commissioner for the Indian Territory, concerning land allotment, progress of township appraisements, and the developing railroad system (Cf. G4020-4022), as the sampling below demonstrates:

- IT 1898 <http://hdl.loc.gov/loc.gmd/g4020.ct002099>
- IT 1898 (Sub-Division) <http://hdl.loc.gov/loc.gmd/g4020.ct002102>
- Creek Nation (Allotments) 1899 <http://hdl.loc.gov/loc.gmd/g4022c.ct002106>
- IT 1902 (Townships) <http://hdl.loc.gov/loc.gmd/g4021g.ct002104>
- IT 1903 (Railroads) <http://hdl.loc.gov/loc.gmd/g4021p.ct002110>
- Cherokee Nation (Allotments)1903 <http://hdl.loc.gov/loc.gmd/g4022c.ct002107>

(2) Canada. On the historic evolution of Canada, the

(a) *Atlas of Canada* (online) has done a fine job in documenting with a most interesting set of maps relating to treaties the date-by-date geopolitical, dynamic changes of Canada from the date of Federation (1867) to creation of Nunavut as an independent political entity (1999)

- *Territorial evolution maps* <http://atlas.nrcan.gc.ca/site/english/maps/historical/>

(b) The other samples are massive information aggregates consisting of up-to-date *topics* in different formats, generated by different agencies or organizations, and linked to or from regional maps:

- *Aboriginal Canada Portal*
<http://www.aboriginalcanada.gc.ca/acp/site.nsf/en/ao20009.html>
- or the Arctic Statistical portal, *ArcticStat*, a kaleidoscope of information on the Arctic and its Indigenous population, accessed through an interactive map
<http://www.arcticstat.org/Map.aspx>
- or a set of maps produced by the *Arctic Council* on population distribution and administration in the Arctic:
http://arctic-council.org/filearchive/AHDRmap_lan-3..jpg

VI. KDZ-KIX OUTLINE

Law of the Americas

KDZ	America. North America
KDZ3001+	General (Comparative)
KE	Greenland
KF	Canada
KG-KGH	United States
KGJ-KGZ	Mexico and Central America
	West Indies. Caribbean Area

KH-KHW

South America

KIA-KIX

LAW OF INDIGENOUS PEOPLES IN THE AMERICAS

KIA-KIP	North America
KIA1-15.8	General
KIA15.9-19	History
KIA21-9151	Arctic and sub-Arctic Regions
KIA21-100	Regional Comparative Indigenous Law
	Greenland , see KDZ3001+
	Northern Canada
	General (Comparative)
	Indigenous jurisdictions. Inuit
	Alaska
	General (Comparative)
	Indigenous jurisdictions. Alaska
	Natives. Aleut
KIA111-300	
KIA351-1745	
KIA1741-2050	
KIA2101-9151	
KIB-KID	Canada
	Including First Nations, Inuit, and Métis
KIB1-1000	Regional comparative Indigenous law
	Northern Canada , see KIA111+
	Eastern Canada
	General (Comparative)
	Indigenous jurisdictions
	Western Canada
	General (Comparative)
	Indigenous jurisdictions
KIB1101-1129.2	
KIB1131-9511	
KIC2001-2043.2	
KIC2081-KID6031	
KIE-KIK	United States
KIE1-3925	Regional comparative Indigenous law
	Northeast Atlantic
	Including New England
	General (Comparative)
	Indigenous jurisdictions
KIF221-293	
KIF301-3251	

LAW OF THE AMERICAS

KIA-KIX

LAW OF INDIGENOUS PEOPLES IN THE AMERICAS

North America

KIE-KIK

United States - Continued

South

Including the **Old Southwest**

KIF3301-3451

General (Comparative)

KIF3381-3454

Indian Territory (Proposed) State of
Sequoia

KIF3501-7400

Indigenous jurisdictions

North Central

Including the old **Northwest Territory**

KIG1-112

General (Comparative)

KIG201-7440

Indigenous jurisdictions

Pacific Northwest

Also known as the **Old Oregon Country**

KIH1-112

General (Comparative)

KIH401-7100

Indigenous jurisdictions

New Southwest

KIJ1-93

General (Comparative)

KIJ101-9220

Indigenous jurisdictions

KIL-KIP

Mexico and Central America (currently explored)

KIL1+

General comparative Indigenous law

Countries with Indigenous population

(KIS-KIX)

South America