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Author

Cook, Samuel R.

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ics receive the attention they deserve. In this sense, Hook's later reflection, as quoted above, accurately describes his book. It serves better as a reflection or impression—a think piece of sorts—than a comprehensive and rigorously researched monographic history. Yet in spite of this observation and the author's disclaimer, Hook's study contributes to dialogues within academe regarding social memory, ownership of history, identity, and the preeminence of Indian voices; it raises important questions and provides a useful springboard for further scholarship.

Daniel M. Cobb

University of Oklahoma

American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice. By David E. Wilkins. Austin: University of Texas Press, 1997. 403 pages. \$40.00 cloth; \$24.95 paper.

In his seminal *American Indians, Time, and the Law* (1987), Charles F. Wilkinson argues that the U.S. Supreme Court has, over the past quarter-century, been a fairly consistent and positive force in upholding the sovereign status of Indian tribes. In *American Indian Sovereignty and the U.S. Supreme Court: The Masking of Justice*, David Wilkins disagrees—so much so that he characterizes the current conservative Court as an “Imperial Judiciary.” If this seems like a loaded description, Wilkins reaches this conclusion by way of a meticulous historical analysis of two hundred years of U.S.-Indian legal relations. In this book, the author examines fifteen of the most salient and devastating Supreme Court decisions regarding tribal and individual Indian rights, beginning with *Johnson v. McIntosh* (1823) and concluding with the more recent *County of Yakima v. Yakima Nation* (1992).

Context is the operative term in this multilayered analysis. Wilkins' goal is to illustrate through these fifteen examples that the Court “...has applied linguistic semantics, rhetorical strategies, and other devices to disempower tribal governments and to disenfranchise Indians” (p. 3). In short, Wilkins attempts to dispel the myth of judicial neutrality by illuminating the extent to which judicial self-interest, political motives, and so forth have been at the root of contradictions and sometimes extralegal disparities in the Court's rendering of “the law” where Indians are concerned.

Two major theoretical perspectives guide this analysis. First, Wilkins draws on the tools of critical legal theory (CLT) to determine the extent to which a distinctive and autonomous *legal consciousness* serves as a perceptual filter through which the judiciary has historically articulated Indian law. Second, Wilkins elaborates on John T. Noonan's proposition that people involved in the American legal system are often given “masks” by the judiciary that conceal their true character (*Persons and Masks of the Law*, 1976). Masks are “...legal constructs which mask the humanity of a participant in the process” (p. 8). Just as the mask of “property” was used to justify the enslavement of African Americans in the nineteenth century, Wilkins attempts to expose the

manifold legal devices that the Court has invented and elaborated on in order to diminish the sovereign rights of tribes, and even the constitutional rights of individual Indians. Wilkins gives as an early example of such a mask Justice John Marshall's interpretation of the "discovery doctrine" as granting the United States government a superior title to the continent, despite a paucity of supporting historical or legal evidence.

This book provides a good example of how CLT can be *applied*. Based on his expertise in the field of Indian law, Wilkins posits three types of legal consciousness regarding Indians that Supreme Court justices have developed and subscribed to in varying degrees and combinations over the years: (1) constitutional/treaty, (2) civilizing/paternalistic, and (3) nationalist/federalist. Wilkins only deals with the constitutional/treaty legal consciousness in a cursory manner, as it seems to occur less frequently and consistently than the others. This type of legal consciousness is characterized by a judicial acknowledgment of the sovereign status of tribes based on treaty and constitutional considerations, and generally results in a favorable decision for Indians. Wilkins gives as an example John Marshall's opinion in *Worcester v. Georgia* (1832), which recognized the sovereign right of tribes to govern their own affairs without state interference.

Adding to the complexity of this analysis is the fact that each chapter deals with a historical epoch in the development of Indian law in which the Court's legal consciousness seems to be fine-tuned to contemporary social and political circumstances. Chapter three, for example, entitled, "The Era of Congressional Ascendancy Over Tribes," focuses on how the nationalist/federalist legal consciousness became blatantly manifest in the post-Civil War years. The conclusion of the Civil War spawned a sociopolitical environment in which nation-building and national integration became paramount goals on the federal political agenda. Accordingly, argues Wilkins, the Court developed a legal consciousness advancing these goals "...in such a way that there [was] no room for, sometimes not even any acknowledgement of, any other sovereign than that which is the sole expression of national unity (i.e., the federal government and the constituent states)" (pp. 64–65).

Lone Wolf v. Hitchcock (1903) was the quintessence of decisions during this period expressing the nationalist/federalist consciousness. In this most devastating blow to tribal sovereignty, the Court elaborated on several previously (albeit vaguely) articulated legal "masks," including the *plenary power* doctrine—in this case acknowledging *absolute* congressional (ergo federal) power over tribes. To further justify this congressional omnipotence, Justice Edwin White elaborated on the historically ungrounded notion that Indians were helpless "wards" of the federal government (incorporating the civilizing/paternalistic legal consciousness), thereby setting a firm precedent for the mask of dependency. The issue at hand, of course, was whether Congress had the authority to abrogate foreign or Indian treaties. Through a meticulous examination of the legal history of this case, along with pertinent political documents, contemporary periodicals, and judicial biographies, Wilkins explores all of the salient social, political, and economic factors that moved the Court to affirm (if not invent) congressional primacy in this case. Notably, this thorough historical method is applied to all the cases examined herein.

This book is an important contribution to the understanding of the scope and status of tribal and individual Indian rights. It is reminiscent of Barsh and Henderson's landmark critique of the destructive capacity of the federal judiciary (toward tribal sovereignty) in *The Road* (1980), but with a significantly greater empirical orientation. For each case examined, Wilkins not only provides a nearly definitive (but concise) compendium of previous analyses of the opinion in question, but he synthesizes these analyses with his own unique insights. Definite patterns of judicial consciousness emerge as he relates each rendering to its historical context.

The theoretical dimension of this book warrants attention as well. This is a notable contribution to the field of critical legal studies. This is not only evidenced by Wilkins' methodological precision in scrutinizing judicial semantics and historical events from a critical perspective, but in his elaboration of critical legal concepts as well. In the final chapter Wilkins introduces three distinctive "semantic techniques" which the Court has developed over the years and which he argues have led directly to the violation of tribal and individual Indian rights. The first is a judicial assessment of the absence or presence of congressional authority in Indian issues, in which the Court generally argues that congressional plenary power is in effect if Indian actions are perceived as challenging federal primacy. The second is a judicial tendency to generate an *implied* congressional intent without factual grounding. Such was the case in *Ward v. Racehorse* (1896) when the Court held that Shoshone Bannock treaty-based hunting rights were implicitly ephemeral. Finally, cases such as *Racehorse* exhibit a judicial tendency to formulate scenarios in which treaty provisions are at odds with general statutes. In these cases, argues Wilkins, the Court chooses the one that best meets its political agenda.

This book is solidly academic. Thus the greatest criticism this reviewer can offer might also be taken as a call to action. The book is not intended for a general readership, but the ideas and information presented herein should be made accessible to such an audience. On the other hand, this book promises to provide an essential text for Indian law and policy courses and an indispensable research tool. Not only are the analyses complex, informative, and well-documented, but Wilkins provides an insightful glossary of legal terminology and concepts, as well as several appendices that help contextualize cases historically and politically.

The Masking of Justice is particularly timely in light of recent events in the federal political and legal arenas. As the American public's faith in the executive and legislative branches bends under the weight of the presidential impeachment issue, a recent survey has revealed negligence on the part of the federal judiciary in its hiring of minorities. As these events unfold, Wilkins' book not only reminds us of the precarious and anomalous position Indians occupy vis-à-vis the federalist system, but also that the Supreme Court itself has become a blatantly *political* entity.

Samuel R. Cook
Virginia Polytechnic Institute