

UCLA

American Indian Culture and Research Journal

Title

Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries. By Gelya Frank and Carole Goldberg.

Permalink

<https://escholarship.org/uc/item/4vc965rb>

Journal

American Indian Culture and Research Journal , 36(2)

ISSN

0161-6463

Author

Quesenberry, Stephen V.

Publication Date

2012-03-01

DOI

10.17953

Copyright Information

This work is made available under the terms of a Creative Commons Attribution-NonCommercial License, available at <https://creativecommons.org/licenses/by-nc/4.0/>

to acknowledge, if not incorporate, the practices and beliefs of indigenous societies in heritage management and policies is ever-present. Several authors address evolving roles in accountability to various publics. Maria Luz Endere, in “The Challenge of Protecting Archaeological Heritage in Argentina,” describes the impact of state formation on indigenous access to and control over sacred sites; David W. Morgan summarizes difficulties faced by policy makers and practitioners in honoring indigenous concepts of culture and heritage within the US national framework (chapter 15). His arguments complement several major points raised by Hester A. Davis, who notes that because under US law private ownership and individual rights reign supreme, this substantially affects cultural and heritage resource issues.

By contrast, authors Heather Burke and Claire Smith argue that in Australia, Aboriginal concerns have significantly contributed to a paradigm shift away from cultural resource management and toward cultural heritage management, a move which dismantles Western constructs of use and exploitation of property, and integrates concepts of conservation and acknowledgment rooted in indigenous means of knowing.

As with any wide-ranging, diverse collection, the articles vary in quality, but overall *Cultural Resources Management* testifies to the growing international importance of a broad concept of cultural heritage. Local, regional, and national identities are created, defined, and transformed by our relationships—past and present—to the past. Heritage, tangible or intangible, provides a sense of belonging, continuity, and collectivity. However, in baring the commonalities and disagreements among the various approaches to heritage practice and management, the contributions to this volume aptly illustrate that this is a complex arena. This book provides a framework for reflection and debate and offers valuable avenues for further discussion as the concept of cultural heritage rapidly evolves.

Gregory R. Campbell
The University of Montana

Defying the Odds: The Tule River Tribe’s Struggle for Sovereignty in Three Centuries. By Gelya Frank and Carole Goldberg. New Haven, CT: Yale University Press, 2010. 428 pages. \$65.00 cloth; \$40.00 paper.

This comprehensive, scholarly text commences with an introductory foray into theories of sovereignty espoused in political philosophy and international law, and compares them to the culture-based sovereignty claims of indigenous peoples. The authors show how the sovereignty claims of indigenous peoples

have gradually forced a reevaluation of these theories and the development of a new language of sovereignty, one that focuses more on “cultural and spiritual reaffirmation” than the independent political power and territorial integrity of states and nations. The exercise of this inherent “cultural sovereignty” by the Southern Valley and Foothill Yokuts tribes who comprise the Tule River tribe provides the spine for this story.

Providing an in-depth treatment of a single California tribe’s struggle to maintain its inherent authority as a self-governing entity in the face of momentous and unprecedented changes in the social, economic, and geopolitical landscape of its homeland, this retelling of the history of the Tule River people helps illuminate the opaque subject of how so many California tribes did survive and ultimately achieve recognition of their political sovereignty under federal law. The authors offer unique insights into the underlying reasons why some tribes emerged from this historic conflict with their culture of self-governance largely intact—though adapted to meet and withstand the shifting winds of federal Indian policy—while many others were exterminated, assimilated, forced to eke out a marginal existence on allotted lands as small communities, or reduced to a nominal sovereignty characterized by total dependence on the federal sovereign.

The overall premise is that the absence of state and federal recognition of the political sovereignty of California tribes forced them to rely on their inherent cultural sovereignty in order to maintain their status as self-governing entities. In a crucial early federal district court decision, the case of *United States v. Whaley*, four members of the Tule River tribe were convicted by a federal court for the tribally mandated execution of an Indian shaman who had poisoned the last hereditary *tiya* (chief) of the Yaudanchi (Yokuts). This decision not only refused to acknowledge the inherent self-governing authority of the tribe, but also upheld the criminalization of specific acts performed under such authority. The central thesis of this extensively footnoted work is that tribal culture and traditions played a key role in defending the Tule River tribe’s “distinct, kinship-based social and political order, linked to the spirit-world and a particular territory” (283).

The authors analyze the tribe’s reaction to the decision and its aftermath, which shaped the federal view of tribal traditions of self-governance and internal conflict resolution throughout the next 120 years. As the story unfolds, we see the tribe’s expression of cultural sovereignty apparently operating under the radar of federal administrators despite the *Whaley* decision’s criminalization of the tribe’s political process. The story commences with the federal district court’s erroneous assumption that federal law embodied in the Major Crimes Act of 1885 had displaced tribal systems of justice and punishment for criminal acts committed by Indians against Indians on a reservation.

The authors' meticulous reconstruction of the *Whaley* case is interwoven with several short biographies of Judge Erkin Ross, the prosecuting and defending attorneys involved, and the Indian defendants, making for interesting reading and providing essential background and context to understanding the conduct, bias, actions, and decisions of the key players.

In a parallel move, the authors recreate the dramatic exchanges among court, counsel, and witnesses in the Los Angeles federal district court in 1888 in order to demonstrate the wide sociocultural divisions in perception of the events. The Tule River Indians considered the killing of the shaman by four Indian men on Christmas Day in 1886 on the Tule River Reservation to be a culturally appropriate and tribally sanctioned execution, while outsiders, including Judge Ross, viewed them as a federal crime perpetrated by Indians taking the law into their own hands in a manner that reflected "[Indian] superstition, and ignorance" (100). The local Los Angeles newspapers reinforced this sociocultural bias, characterizing the tribal defendants not as executioners carrying out a sentence imposed by tribal authorities, but as "thugs" or "butchers" who killed the shaman in retribution for the practice of "Indian witchcraft." The newspapers completely denied the role of tribal political sovereignty in resolving a reservation dispute that had created widespread fear within the tribal community and had threatened the tribe's governing structure.

The Tule River tribe's resistance to the *Whaley* ruling spans three centuries. The authors focus their discussion on cultural sovereignty—the autonomy of a people to define itself, regardless of the laws and policies enforced by others—and its role in the interplay between California tribes and the external forces that had such a devastating impact on them. In addition to the brute military force exerted by federal, state, and private actors, after 1848 federal Indian policies were grounded in the cultural norms of the dominant American presence in California, which sought to destroy or severely limit any institutions or manifestations of tribal sovereign authority.

The legal theory of tribal sovereignty under US law had been expressed in tenets of Supreme Court decisions since the early nineteenth century. However, the exercise of political sovereignty by California tribes based on these tenets was quite simply out of the question because the US Senate rejected eighteen treaties submitted for ratification, which resulted in the wholesale loss of California tribal homelands. Moreover, federal Indian policy actively encouraged the allotment and sale of reservation lands and repeatedly undermined tribal initiative and institutions in order to reinforce tribal dependence on the federal government and its agents for the basic necessities of life.

For example, throughout a twenty-year period (1856–76), the disruption and dislocation of the Tule River people was momentous: a hunter-gatherer subsistence culture located in villages on aboriginal lands rapidly transformed

into one in which families were forced to plant crops and raise livestock on fixed land assignments located in a designated reservation. This new, federally controlled economy and “incipient class system” was defined by the accumulation of personal wealth and status independent of tribal sanction, threatening to dismantle Yokut traditions of self-governance based on inherited leadership, consensus, and communal effort. Following the Indian Reorganization Act, the Bureau of Indian Affairs (BIA) attempted to circumvent the tribal governing body and implement a livestock association on the reservation; as the book’s discussion of Tule River’s unique cultural resistance to this attempt demonstrates, the tribe’s resistance was not without internal conflict. Juxtaposing historical evidence of tribal actions with a discussion of contemporaneous changes in federal law and policy, the authors demonstrate the evolving differences over time between the federal and tribal views of culture and self-governance, including the resolution of internal disputes.

Other historical moments in which the tribe asserted its cultural sovereignty include resolving controversies over tribal resources; mobilizing an effort to regain the northeast corner of its reservation; refusing to capitulate in the face of federal and state efforts to shut down a gaming operation that offered the best economic opportunity on an impoverished reservation; and developing its own cooperative approach to resolving a water rights dispute with its non-Indian neighbors. This demonstrates, in the authors’ view, that “a balance between cultural and political sovereignty can be found” (282). The authors then broaden the discussion to include the views of other commentators who suggest that more than a “balance” in the interplay between the two expressions of tribal sovereignty is needed. Now that federal law and policy has evolved to an era of tribal self-determination based on a clear recognition of tribal political sovereignty, seeking to fully integrate tribal cultural and political sovereignty in the modern era may more effectively advance indigenous survival. The challenge is to integrate a tribe’s expression of its cultural traditions and mores into its exercise of the right to self-determination embodied in federal law and the UN General Assembly’s 2007 Declaration on the Rights of Indigenous Peoples: In essence, this redefines political sovereignty by integrating traditional theories of the expression of tribal culture in order to minimize its reliance on territorial control because this reliance has proved problematic for tribes completely dispossessed of their aboriginal lands.

Importantly, the Tule River tribe likely would not have succeeded in “defying the odds” in its struggle for sovereignty without a land base set aside by executive order in traditional Yokuts territory located in relative isolation from the massive western migration to the gold fields of north central California. Because the exercise of cultural sovereignty requires a place, a refuge, set aside and protected by federal law where tribal traditions and practices could

be maintained, even if covertly, this land base enabled the tribe to resist the allotment of its reservation and the forces of termination. Landless California tribes, on the other hand, were dispersed, subjected to the onslaught of a hostile non-Indian population as individuals and family units, and compelled to assimilate and abandon traditional ways and practices as a means of survival.

At times the detailed biographies of protagonists and extensive footnotes weigh down the pace of the underlying narrative. However, this attention to detail, especially the interweaving descriptions of Tule River culture and its influence on tribal self-governance over time, distinguishes this narrative from earlier works that address the history of the interplay between Indian cultures and federal laws and policy in California more generally. Details about the role played by Tule River leaders and their families enrich the story and reveal the human element and internal conflicts that underlie the tribe's resistance to federal laws and individual officials who denied recognition of hereditary "or any tribal government after *Whaley*" (195). References to archival materials and personal interviews with descendants of the original actors and Tule River elders make an interesting and challenging read for those readers interested in the history of California's indigenous tribes who aspire to more than a superficial overview.

The narrative of the Tule River tribe's struggle is enhanced by both authors' extensive work with and on behalf of the tribe. Author Gelya Frank's experience as an anthropologist, knowledge of Tule River culture through more than thirty years of work with the tribe, and extensive interviews and research provide an interesting and compelling reconstruction of the events surrounding the decision in *United States v. Whaley*. Author Carole Goldberg, who has also worked with the tribe for many years, lends her expertise as a legal scholar and expert on Public Law 280 to complement the narrative of tribal history and actions with an overview and analysis of the federal laws and policies that drove the decision in *Whaley* and those that eventually undermined and cast aside its erroneous conclusions. In many respects, Goldberg's analysis of the legal issues in *Defying the Odds* provides a specific California tribal context for her earlier scholarly legal treatise, *Planting Tail Feathers: Tribal Survival and Public Law 280* (1997). Thus *Defying the Odds* serves as an insight into the operation of cultural sovereignty in the Tule River tribe's reaction and resistance to *Whaley* and a valuable legal template for analyzing the status of tribal criminal jurisdiction in California in general.

Stephen V. Quesenberry
Law Offices of Stephen V. Quesenberry