

# UCLA

## American Indian Culture and Research Journal

### Title

Treaties on Trial: The Continuing Controversy over Northwest Indian Rights. By Fay G. Cohen.

### Permalink

<https://escholarship.org/uc/item/75p2s78v>

### Journal

American Indian Culture and Research Journal , 10(4)

### ISSN

0161-6463

### Author

Parman, Donald L.

### Publication Date

1986-09-01

### 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/>

The editors state that the federal Department of Indian Affairs is hindering the achievement of Indian control of Indian education because it wishes to transfer programs to Indian control without incurring additional costs. As this review is being written in 1987, the Department is prepared to offer Indians only "administrative control" of existing Departmental programs without any "enrichment." New tribal councils or educational authorities are not eligible for funding unless they agree to become, in effect, invisible administrative arms of the Department and enforce federal treasury board cutbacks on their own people.

So long as some of the highest officials in the Department continue to view Indian organizations as corrupt, self-serving and unrepresentative, the Department will continue to frustrate the development of educational systems designed by (not for) Native people. And until Canadian politicians recognize the right of self-government for aboriginal people in the Canadian Constitution, Indian-controlled educational institutions will be the exception, not the rule.

*John S. Long*  
Muskegog Cree Council

**Treaties on Trial: The Continuing Controversy over Northwest Indian Rights.** By Fay G. Cohen. Seattle: University of Washington Press, 1986. 229 pp. \$20.00 Cloth. \$9.95 Paper.

*Treaties on Trial* is the second report on Indian fishing rights sponsored by the American Friends Service Committee. An earlier work, *Uncommon Controversy: Fishing Rights of the Muckleshoot, Puyallup, and Nisqually Indians* (1970), dealt with similar subject matter, but its coverage stopped with the late 1960s. Cohen's book can stand on its own because it traces the background of recent controversies over Indian fishing rights, but it also offers a detailed discussion of events since the publication of *Uncommon Controversy*.

The subject Cohen treats involves perhaps the most important conflict between Indian treaty rights and state attempts to exercise authority over tribes since President Jackson's removal period. The off-reservation fishing rights of the northwestern Indians rest upon treaties negotiated by Isaac Ingalls Stevens, governor of Washington Territory, in 1854-1855. Typical of other

treaties of the time, Stevens convinced the local groups to cede most of their existing holdings and move onto reservations. The provisions, however, guaranteed the Indians "the right of taking fish as usual and accustomed grounds . . . in common with all the citizens of the United States . . ." (p. 38).

With increased settlement in the Northwest, the development of a large-scale salmon canning industry, and the popularity of sports fishing, the Indians found their fishing rights and livelihoods jeopardized by private pressures and by attempts of Washington and Oregon to limit fishing apparatus, season lengths, and catch sizes at the "usual and accustomed grounds." Although Indian treaties theoretically take precedence over state laws, the federal government, as Cohen repeatedly emphasizes, seldom intervened to defend the Indians from state controls. Federal court decisions, when rendered, usually upheld treaty rights in theory and established important legal precedents, but they brought little practical relief to hard-pressed Indians to whom fishing was both a livelihood and central to their cultures. After the fish-ins of the 1960s, however, the Justice Department initiated legal proceedings which climaxed in *U.S. v. Washington* (1974). The highly controversial decision by Federal District Judge George H. Boldt strongly reaffirmed treaty rights and interpreted "in common" to mean that Indians were entitled to fifty per cent of the salmon and steelhead runs which passed through the "usual and accustomed grounds."

In later chapters, Cohen turns to the aftermath of the 1974 case. Although Boldt's decision and subsequent rulings laid out clear guidelines and procedures to carry out *U.S. v. Washington*, Indians have experienced serious frustrations in harvesting an equal share of the runs. State game workers often ignored the illegal actions of non-Indian commercial and sports fishermen who willfully disobeyed Boldt's formula for equal allocation, and opportunistic officials of Washington State and members of the state's congressional delegation resisted implementation. The tactics, as one federal judge noted, often resembled those employed in the South by opponents of court-ordered desegregation during the 1960s (p. 100). Faced with such intense hostility, the federal government retreated several times to pacify public opinion. In addition, Cohen points out that increased salmon fishing on the ocean, before the fish enter the "usual and accustomed grounds" on their runs, and severe stream pollution and damage to the general habitat have created problems for the Indians.

Despite these dilemmas, the tribes' share of the catch and their income from fishing have risen sharply since 1974, resulting in a greater sense of community and self respect.

*Treaties on Trial* is definitely sympathetic to the Indians, but Cohen followed scholarly standards in preparing his study. In short, this is not a polemic. The author's research includes the formal sources—government records and reports, court proceedings, newspaper accounts, and secondary literature—but he also conducted over one hundred interviews of Indians and non-Indians and attended numerous meetings which dealt with Boldt's decision. The author also displays an admirable ability to discuss the endless legal and technical complexities of his subject in a readable and clear manner. Maps and charts scattered throughout the volume also enrich his narrative.

If any question should be raised about Cohen's treatment, it may be his tendency in the background chapters to attribute the national government's willingness or unwillingness to protect Indian fishing rights to existing federal Indian policy. While Indian policy doubtlessly acted as a factor, the personal diligence of agents, superintendents, government attorneys, and other federal officials, as well as the overall economical development of the Northwest, probably played more important roles.

Except for this caveat, however, *Treaties on Trial* is an excellent book. It offers intelligent and clear insights into a subject that is seldom treated except in legal journals and technical writings.

Donald L. Parman  
Purdue University

**Cherokee Tragedy: The Ridge Family and the Decimation of a People.** By Thurman Wilkins. Second edition, revised. Norman: University of Oklahoma Press, 1986. 416 pp. \$24.95 Cloth.

More than fifteen years ago Thurman Wilkins published the first edition of his *Cherokee Tragedy: The Ridge Family and the Decimation of a People*. The story which he told was of the Cherokee leader known as The Ridge, and his son, John Ridge. Major Ridge, the father, was regarded by the author "as a hero, a far-sighted torchbearer, the apostle of tribal salvation through enlightenment."<sup>6</sup> A Cherokee who grew to manhood in the last decades of the eighteenth century, the noble father sent his son