

Book provides insight into sovereignty

by G.D. Renkes
for the Tundra Times

Indian tribal sovereignty is now regularly acknowledged by the U.S. Supreme Court and constitutes the fiber of modern Indian law.

The resurgence of American Indian tribalism has been implemented in large part through court decisions of the modern era. Indian tribes have become permanent entities in the American political system, and they possess a right to change and grow, relying on the old federal promises of measured separatism.

In a powerful book, *American Indians, Time, and the Law*, Charles F. Wilkinson evaluates the U.S. Supreme Court's work in Indian law during the last quarter century in an edifying, nontechnical style.

A recurring question before the court has been the extent to which old promises should be honored in today's changed circumstances. Wilkinson focuses on the effects of time on the law.

This book provides valuable insights into the meaning of tribal sovereignty and the utility of that concept for all Native Americans.

The sovereignty concept has been employed in modern contexts in the narrow sense of the power of a people to make governmental arrangements to protect and limit personal liberty by social control.

Sovereignty presupposes a culturally distinct people within defined territorial limits and is utilized as a means of distinguishing the formation of a government from the creation of a business entity or a social organization.

Indians have pressed for acceptance — as the philosophical centerpiece of federal Indian policy — of the principle that Indian tribes are permanent institutions in national policy.

Congress has primary constitutional authority to recognize tribes and determine whether federal financial support and legal protection will be permanent or temporary. Yet the Supreme Court, in the modern era, has established that tribes have an existence independent of any recognition by Congress.

The court's decisions establish that tribalism is ultimately a matter of self-definition — tribalism continues until the members themselves extinguish it. Tribalism depends on a tribe's own will.

Author Wilkinson served for four years as a staff attorney at the Native

American Rights Fund. Since 1975, he has been professor of law at the University of Oregon and the University of Colorado. He also has written numerous books and articles on law, history and policy relating to Indians and the American West.

In this book, Wilkinson looks at Indian law and policy in an innovative way, drawing together historical sources such as the records of treaty negotiations, classic political theory on the nature of sovereignty and anthropological works dealing with societal change.

Wilkinson finds that the Supreme Court has recognized Indian tribes as permanent governments within the federal constitutional system and, on the whole, has tended to honor the old promises.

He states: "Somehow, those old negotiations — typically conducted in but a few days on hot, dry plains between mid-level federal bureaucrats and seemingly ragtag Indian leaders — are tremendously evocative.

"Real promises were made on those plains, and the Senate of the United States approved them, making them real laws.

"My sense is that most judges cannot shake that. Their training, experience, and, finally, their humility — all of the things that blend into the rule of law — brought them up short when it came to signing opinions that would have obliterated those promises."

Wilkinson has pulled together the Supreme Court's Indian law opinions of the modern era, beginning with *Williams v. Lee* in 1959, and explained and justified the elaborate structure the court has built in this field.

He has taken an area of law that appeared to lack coherent doctrine and revealed clear rules laid down by the Supreme Court that have resolved conceptual issues of great importance to Indian law and policy.

This book brings understanding to the complex and often conflicting statements of Indian law in the modern era and makes this information accessible to the lay reader.

It is essential reading for those who wish to grasp hold of the concepts of sovereignty and tribalism and bring them to bear on the present circumstances of Native Americans.

American Indians, Time, and the Law is available from the Yale University Press, New Haven, Conn.

G.D. Renkes is an attorney working for the Alaska Court System.



The book's cover features "The Creation of Order," by Ben Harjo Jr.