

Book Review by: Walter L. Williams. *Pacific Historical Review*, Vol. 54, No. 1 (Feb., 1985), pp. 88-89. Published by: University of California Press.

*American Indians, American Justice*. By VINE DELORIA, JR. and CLIFFORD M. LYTLE. (Austin, University of Texas Press, 1983) .

This well written book focuses on the past and present situation of American Indians in relation to the judicial system. While not slighting the crucial role of Congress, the authors argue that the judicial branch is more important for modern Indians. They cover all aspects of the justice system, from traditional aboriginal forms to federal, state, and modern tribal courts.

Beginning with a much more moderate survey of Indian legal history than one would expect from the author of *Custer Died for Your Sins*, Vine Deloria and Clifford Lytle focus on the treaties, removals, and allotments as backdrops for recent federal Indian policies. They point to substantial progress in tribal self-government in the 1960s and 1970s, with drastic setbacks for tribes in the 1980s due to the Ronald Reagan budget cuts. The authors conclude that the judiciary has on the whole been quite supportive to Indians. While such a view might be true for many decisions since 1905, it is not the case for earlier periods. But the courts have usually helped protect tribes from state interference, and have interpreted treaty rights favorably for Indians. What is missing here is a discussion of the intense struggle that Indians made just to get their viewpoint heard in the courts. Moreover, the traditionalist position that favors the return of lands guaranteed by the treaties, instead of money payments, has still not been accepted by the courts.

In discussing recent court decisions, the authors recognize that they are trying to make sense out of a chaotic multiplicity of laws. A chapter on the definition of "Indian Country," for example, is difficult to read because of this confusion. On the other hand, the chapter on tribal governments is extremely interesting. The authors explain clearly the nature of aboriginal government and they argue that its emphasis on harmony led to a superior form of justice. The focus of aboriginal law was to negotiate a settlement that was perceived as fair to all - for example, the obligation of a wrongdoer to offer restitution to the victim. In contrast, the Anglo emphasis on punishment leaves the victim still wronged, and the "winner take all" approach in court decisions allows some wrongdoers to escape punishment altogether.

Tribes today are in a confusing jurisdictional mess. In discussing the pros and cons of tribal governments created since 1934 under the Indian Reorganization Act, Deloria and Lytle suggest that tribes are losing their old mediating roles and are instead becoming more like Anglo governments. Despite an incomplete bibliography, this book is full of insights that make it valuable to anyone concerned about the legal status of modern Indians.

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