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Review of *The Indian Bill of Rights, 1968*. Volume 3 of *Native Americans and the Law: Contemporary and Historical Perspectives on American Indian Rights, Freedoms, and Sovereignty* Edited with introductions by John R. Wunder

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The Indian Bill of Rights, 1968. Volume 3 of *Native Americans and the Law: Contemporary and Historical Perspectives on American Indian Rights, Freedoms, and Sovereignty*. Edited with introductions by John R. Wunder. New York: Garland, 1996. xiii + 327 pp. \$70.00.

The extra-constitutional status of indigenous nations and their distinct political relationship with the United States government, no less than the equally distinctive nature of the relationship of individual Indians to their tribal governments and other sovereignties they are more problematically related to, the state and federal governments, is a most complicated subject. Individuals venturing into this intellectual and substantive thicket should be applauded for their academic bravery. The third of the six volume series edited by John R. Wunder sets out to explore that thicket.

Wunder claims the volume is "of particular significance," not only because of its subject matter, but also, in part, because it is "the first collection of essays published on the Indian Bill of Rights." The statutory creation of the Indian Civil Rights Act (ICRA) in 1968 was indeed a profound event. For the first time significant portions of the United States Constitution's Bill of Rights were imposed on the actions of tribal governments in relations with tribal members and other reservation residents.

The essays Wunder has selected (including the lead essay, extracted from an earlier work of his), nine in all, include pieces providing a historical backdrop to the Act, a legislative

analysis of its major provisions, legal summaries of the measure, and several that critically assess the ICRA's potential and possible pitfalls. The last two essays focus on the Supreme Court's important *Santa Clara Pueblo v. Martinez* decision of 1978, in which the Court held that since the ICRA had not waived tribal sovereign immunity, neither the tribe nor the tribe's officials could be sued over membership laws, despite the contentions of a female tribal member that such laws were discriminatory.

In pulling together a generally good and diverse set of writings about a vital subject, Wunder has produced a volume of real merit. Nevertheless, it is not without structural and substantive flaws. Aside from his own opening essay (unfootnoted), all of the pieces were written before 1980. Even his own discussion does not bring the reader up to date on recent developments and fresh challenges to the ICRA, including a series of hearings convened by the US Commission on Civil Rights beginning in 1986. The study also would have been strengthened by a detailed index and a comprehensive bibliography.

Substantively, the book excludes an even larger issue warranting attention: the degree to which the US Constitution and its amendments can even be said to apply to Indian tribes since tribal nations predate the Constitution and were not parties to its development. It does not, generally speaking, protect tribes, their resources, or their rights from the federal government. Yet through the 1968 ICRA some constitutional provisions were made applicable to the relationship between tribes and their members and other persons within their jurisdiction.

Wunder should have tackled this powerful irony head-on in an extended introduction or concluding chapter. The question of whether American Indians are or are not a part of the constitutional matrix, which ought to be at the very heart of the book, is never openly addressed by its editor or essayists.

One cannot undervalue, however, the contribution of *The Indian Bill of Rights* to the

literature in bringing together in a single volume an assorted set of writings about one of the most important pieces of federal Indian legislation enacted in this century.

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