2003

Review of *Uneven Ground: American Indian Sovereignty and Federal Law* by David E. Wilkins and K. Tsianinia Lomawaima

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Uneven Ground: American Indian Sovereignty and Federal Law. David E. Wilkins and K. Tsianinia Lomawaima. Norman: University of Oklahoma Press, 2001. xii+324 pp. Tables, bibliography, index. $39.95 cloth, $19.95 paper.

In *Worcester v. Georgia* (1832), Chief Justice John Marshall declared that Indian tribes should be acknowledged "as nations, . . . having territorial boundaries, within which their authority is exclusive. . . ." Justice John McLean, however, questioned whether Indians would always exercise the power of self-government, suggesting that Indian tribes would "become amalgamated in our political communities."

Justice McLean did not dispute that Indian tribes were sovereign; he questioned whether they would—and should—remain sovereign. Some people continue to raise this question. David Wilkins and Tsianinia Lomawaima, in *Uneven Ground*, begin with the premise that American Indian tribes remain sovereign nations, but acknowledge that political, historical, and legal developments have constrained tribal sovereignty. The authors note that Indian policy is indeterminate and inconsistent, resting in large part "on a foundation of racism, ethnocentrism, repression of tribal histories, inappropriate policy-making by judicial bodies, and inaccurate historical understandings."

To assess the resulting "uneven ground" of federal Indian law, the authors organize their discussion of tribal sovereignty by focusing on six legal doctrines (discovery, trust, plenary power, reserved rights, implied repeals, and sovereign immunity), and on the "disclaimers" over Indian property and persons found in the enabling acts and constitutions of most Great Plains and western states. The authors articulate three goals: (1) "to present a comprehensive overview written for the layperson or interested student"; (2) "to outline the history of each of these doctrines, to illustrate their point of origin, the times in which each was conceived, and the forces that have shaped the doctrines since"; and (3) "to make particular arguments for defining or implementing these doctrines today and into the future." Wilkins and Lomawaima argue that the "uneven, and inequitable, power relations" among tribes, states, and the federal government can and should be brought into balance.

The book is particularly strong in depicting the fallacies underlying the discovery and plenary power doctrines. Although some of the topics discussed (implied repeals and disclaimer clauses, for example) may be less accessible to lay readers, the depiction of recent legislative attacks (led by

former Senator Slade Gorton of Washington) on tribal sovereign immunity gives immediacy to that legal doctrine and is quite effective.

The discussion of the trust doctrine is especially topical. An unprecedented class action lawsuit recently established that the Treasury and Interior Secretaries have mismanaged Individual Indian Money accounts. In addition, in March of 2003 a deeply divided Supreme Court, reviewing two decisions holding the federal government liable for breach of trust, upheld a suit by the White Mountain Apache Tribe while striking down a Navajo Nation claim. In both cases the government urged the Court to construe narrowly the circumstances in which it should be liable to tribes for breach of its trust. The authors, in contrast, assert that the trust doctrine encompasses an enforceable obligation to "best manage" Indian affairs. Their assertion that the federal trust duty is best characterized as a treaty-influenced "trustee-beneficiary" relationship—and not as a paternalistic "guardian-ward" relationship—is a useful starting point for formulating an appropriate, reciprocal vision of trust.

Uneven Ground aptly summarizes the basic doctrines of federal Indian law and forcefully advocates for rejection or modification of many of the basic tenets. The book does not fully explore the tensions arising from the authors' proposals, such as rejecting the "expansive" discovery doctrine yet retaining the trust doctrine. Wilkins and Lomawaima, however, have achieved a primary objective: to "reinsert, and strengthen, an indigenous perspective in federal Indian policy and law." **Blake A. Watson**, *School of Law, University of Dayton.*