



Project
MUSE[®]

Today's Research. Tomorrow's Inspiration.

<http://muse.jhu.edu>

is emblematic of Plains culture, it is art and so must be aesthetically pleasing, it reflects its individual maker, it represents another reality like a mask, it is a story, and, finally, its shape is a meditation on life. Along with each prose poem we are introduced to an image of a shield, sixteen in all. The final section, "New Poems," presents poetry that relies more on Western poetic traditions and more universal human subjects such as parenthood, chastity, and futility.

The republication of Momaday's work is a testament to the interconnection between American Indian writing, oral traditions, histories, and cultures. His work shows the importance of language and words to his survival as well as the survival of American Indians. His work has captured our imagination for many decades. His voice helped redefine the American Indian voice from one of victim to one of survivor. Perhaps that is the reason his work continues to be in publication and read by new generations of readers.

Gelya Frank and Carole Goldberg, *Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries*. New Haven, CT: Yale University Press, 2010. 432 pp. Cloth, \$65.00.

Kristen A. Carpenter, University of Colorado Law School, Boulder

It has become popular for academic scholars to challenge American Indian assertions of "sovereignty" and "culture" in their legal claims.¹ Sovereignty, some critics argue, is a problematic term for Indian tribes because it originates in a Western European legal tradition of absolute dominion over territory, a notion that fits poorly with the colonized status of many indigenous peoples. Culture, the critics contend, has become meaningless because of its inextricably constitutive relationship with concepts such as law and because its fluid nature defies delineation. (What is Navajo culture if some Navajo traditions may have been borrowed from the Spanish, for example?) Moreover, both concepts seem fraught with normative limitations in a global community increasingly characterized by individual autonomy, mobility, and exchange across local and national borders.²

Similar skepticism about sovereignty and culture manifests in federal Indian law decisions. One U.S. Supreme Court justice recently suggested, in a criminal jurisdiction case, that tribal sovereignty may have "ended" in 1871, when Congress stopped signing Indian treaties.³ In another case, a federal appellate court denied application of the Native American Graves Protection and Repatriation Act where the human remains in question were apparently "too old" for the claimant tribes to prove their cultural affiliation.⁴ These decisions and many others ignore practical realities: Indian tribes *are* self-governing entities with civil and criminal lawmaking powers, and Indian tribes *do* maintain tra-

ditional lifeways such as intergenerational obligations to ancestral burial sites. Moreover, many tribal people have embraced the terms *sovereignty* and *culture*—originally applied to them by outsiders—to describe their own status and experiences, deploying these terms in legal struggles and imbuing them with indigenous meaning in the process.⁵ The refusal of courts, scholars, and others to listen to such advocacy is frustrating, to say the least, for tribal advocates.⁶

Defying the Odds: The Tule River Tribe's Struggle for Sovereignty in Three Centuries is refreshingly poised to free the discourse on tribal sovereignty and culture from its often stilted cadence. Coauthored by anthropologist Gelya Frank and legal scholar Carole Goldberg, the book models what anthropology and law can learn from one another, namely, that sovereignty and culture may well be mutually reinforcing, subject to legitimate substantive critique, and even blurry around the edges, but they are nonetheless meaningful concepts for those who wish to understand the experiences of indigenous people *on their own terms*. Employing what they call “post-colonialist scholarship,” Frank and Goldberg seek to give “equal weight” to “outward historical circumstances” (14) and “the ways in which those circumstances were experienced” (295n24) by indigenous peoples themselves.⁷ In the case of the Tule River Indian tribe, as for many Indian nations, giving weight to the tribal perspective requires viewing history in terms of sovereignty and culture, concepts that have animated centuries of indigenous struggle for survival.

The authors are well situated to present a tribally focused history of the Tule River people. Anthropologist Frank brings decades of fieldwork with the tribe as well as her insights into the research of anthropologists who have preceded her. Lawyer Goldberg has worked with the tribe in drafting the tribal constitution and code provisions. Describing themselves as “engaged scholars,” Frank and Goldberg aspire to share Tule River tribal viewpoints, offering what they describe as the first scholarly history of the tribe. The book is notably rich in first-person accounts, photographs, maps, timelines, and extensive footnotes, giving the reader the sense that *Defying the Odds* is not only a compelling story but also an important repository of tribal information.

The book begins with an introduction situating the Tule River tribal history in a broader review of “sovereignty,” providing a useful exposition of that term’s various meanings in international law, federal Indian law, and indigenous thinking. Influenced by numerous scholars, the authors explain their approach as “tracking the dynamic between political and cultural sovereignty.” In this framework, “political sovereignty” is an “external” designation, only partly recognized by the United States today. By contrast, “cultural sovereignty” (11) is (borrowing from Rebecca Tsosie and Wallace Coffey) an internal, indigenous practice of “defining our relationships to each other and to the United States, from within an indigenous concept of what those relationships entail.”⁸

The book then proceeds in three major parts: part 1, "Sovereignty and the Yokuts Tribes," part 2, "*United States v. Whaley* (1888): Tribal Sovereignty Compromised," and part 3, "Reconstructing Sovereignty after *Whaley*." Part 1 begins with the aboriginal culture and geography of the Yokuts people (ancestors of the Tule River Tribe), who traditionally resided California's Great Central Valley. This account begins with the creation story, in which Trokhil, the Golden Eagle, created the great valley for the Yokuts people. The equivalent of an unwritten tribal "constitution," the Yokuts creation story is, in the authors' view, a "source of native sovereignty" (26–27). Indeed, the creation story gives rise to governing values and practices, such as the Yokuts tradition of leaders descending from the Eagle lineage, a tradition that the authors trace from its ancient origins to modern adaptations.

Once Europeans arrived in the Central Valley, the Yokuts people avoided the Spanish mission experience that characterized many other California tribes' early contacts. In 1851 Yokuts leaders negotiated the Treaty of Paint Creek, setting aside two reservations in their traditional territories, only to have the United States Senate fail to ratify this, and many California Indian treaties, in 1852. While this act of federal bad faith was devastating, some Southern Valley Yokuts tribes acquired a reservation base, first occupying a reservation at the Tejon Pass, then a small successor reservation from which they were summarily removed by authorities, and, finally, a more substantial reservation established by the executive order of October 3, 1878, that the tribal people continue to occupy today. The Yokuts people's determination to maintain a land base (originally and against subsequent threats of encroachment, allotment, and fraud) within their aboriginal territory is one of the sovereign successes that Frank and Goldberg emphasize throughout the history of the tribe. Part 1 further provides meticulous coverage of tribal relationships with various Indian agents and the political economy of the reservations, with particular attention to issues of irrigation and farming.

In part 2 Frank and Goldberg introduce what they see as the pivotal event in the modern story of Yokuts sovereignty: the legal case of *United States v. Whaley* (1888). In the events leading up to the federal case, a Yokuts council decided, after some deliberation, to execute an "out of control shaman" who was responsible for killing the tribe's *tiya* (chief) and twelve other tribal members (102–3, 128–31). The council selected four individuals, several of whom were leaders in the community, to carry out the execution; all four were later convicted of federal manslaughter pursuant to the Major Crimes Act of 1885. This was a travesty, in Frank and Goldberg's view, for several reasons: (1) the prosecution mischaracterized the shaman's execution, carried out under Yokuts procedural and substantive law, as a criminal killing; (2) the federal court ignored that the Major Crimes Act's extension of federal jurisdiction over crimes between In-

dians in Indian Country did not extinguish concurrent tribal jurisdiction; and (3) sentencing the tribal leaders to lengthy federal prison sentences disrupted the succession of traditional Yokuts leadership, which had already been severely compromised by the colonial process and the specific events of *Whaley*.

Whaley largely succeeds as the centerpiece of the book. The trial is told in compelling, dramatic terms. Moreover, the case illuminates issues that are, in 2010, being considered by Congress, including the enhancement of tribal powers over crimes committed on reservations.⁹ In the Tule River history, *Whaley* serves as a stark example of the tribe's attempts to maintain its traditional forms of justice ("cultural sovereignty") despite active coercion by the Indian agent, Christian missionaries, and federal and state law enforcement—all of whom were working to eradicate the very Yokuts law and culture that led to the shaman's execution. In Frank and Goldberg's view, the federal authorities seized on the case as an opportunity to "teach the Indians a lesson"—even though the trial record shows that many non-Indians in the community, most notably, the Tule River Agency farmer, understood perfectly that the shaman had been properly executed as a matter of Yokuts law and culture. Through a detailed review of historical, anthropological, and legal documents, the authors make a strong case that the *Whaley* decision was both legally unjust and socially disruptive for the Tule River people.

In part 3, the last major section of the book, the authors analyze the Tule River Tribe's efforts to revitalize its sovereignty in the post-*Whaley* era. Notable events included the turn-of-the-century federal allotment policy (which the Tule River Tribe successfully resisted) and the Indian Reorganization Act (IRA) of 1934 (which imposed a form of government that the tribe adapted to its own needs). In the period of self-determination, the Tule River Tribe achieved the 1980 restoration of a timber-rich portion of reservation lands and played an active role in the 1990s political debate over Indian gaming in California, leading to the establishment of the tribe's Eagle Mountain Casino. Through discussion of housing and irrigation issues, the authors demonstrate that the well-being of individual tribal members is often enhanced by tribal sovereignty on a collective basis. Interestingly, in light of the *Whaley* discussion, the Tule River Tribe vests its tribal council with the day-to-day job of mediating disputes between tribal members and has never set up the adversarial court system required by the tribe's own IRA constitution. Frank and Goldberg observe in these actions an abiding collective commitment to "individual autonomy, consensual decision-making, decentralized family-based social organization, and traditional sources of leadership" (285). These are the aspects of cultural sovereignty, subject to "adaptations and innovations" (285), that, in the authors' view, have allowed the Tule River Tribe to thrive against the significant "odds" against them.

One question remaining at the end of the book is whether Tule River tribal

members share the authors' view that the *Whaley* case was a critical moment in their history. The authors do not address this issue explicitly, which seems somewhat surprising in a book that is otherwise devoted to tribal perspectives on history. They do recount Gelya Frank's conversations with Philip Hunter, a contemporary tribal member and descendant of the *tiya* who was killed by the shaman preceding the *Whaley* case. According to Frank and Goldberg, Hunter "couldn't add any information concerning the *Whaley* case," but he shared a dream about "restoring peace and eliminating conflict" (20) on the reservation. The authors frame the exchange with Hunter as demonstrating the ultimate resilience of "the old ways" against contemporary pressures. Perhaps the exchange also illuminates something about the ways in which tribal members talk (or don't talk) about the *Whaley* case. In any event, the publication of *Defying the Odds* may itself inspire conversations about the significance of the case and other historical events among tribal members.

In the conclusion, Frank and Goldberg return to the broader philosophical, theoretical, and political questions of sovereignty and culture that confront lawyers and anthropologists, connecting the Tule River struggle with the situation of indigenous peoples and others around the world. They ultimately call for a "pragmatic" approach to these questions that "should be grounded in careful studies rather than facile assumptions" (287) about Indian tribes. With its thoughtful telling of Tule River history and its substantial advancement of the discourse on sovereignty and culture, *Defying the Odds* is an important and deeply satisfying work of scholarship.

NOTES

1. Michael F. Brown, "Sovereignty's Betrayals," in *Indigenous Experience Today*, ed. Marisol de la Cadena and Orin Starn (Oxford: Oxford University Press, 2007); Naomi Mezey, "The Paradoxes of Cultural Property," *Columbia Law Review* 107 (2007): 2004.

2. John Lie, *Modern Peoplehood* (Cambridge, MA: Harvard University Press, 2004).

3. *U.S. v. Lara*, 541 U.S. 193, 219 (2004) (Thomas, J., concurring).

4. *Bonnichsen v. U.S.*, 367 F.3d 864, 875–82 (9th Cir. 2004).

5. Walter Echo-hawk, *In the Courts of the Conqueror: The 10 Worst Indian Law Cases Ever Decided* (Golden, CO: Fulcrum Publishing, 2010); Charles Wilkinson, *Blood Struggle: The Rise of Modern Indian Nations* (New York: W. W. Norton, 2005).

6. Vine Deloria, Jr., *We Talk, You Listen* (New York: Macmillan, 1970).

7. Quoting Robert J. C. Young, *Postcolonialism: An Historical Introduction* (Malden, MA: Blackwell, 2001); also citing Linda Tuhiwai Smith, *Decolonizing*

Methodologies: Research and Indigenous Peoples (New York: Palgrave, 1999) and other sources.

8. Citing Wallace Coffey and Rebecca Tsosie, “*Rethinking the Tribal Sovereignty Doctrine: Cultural Sovereignty and the Collective Future of Indian Nations*,” *Stanford Law & Policy Review* 12 (2001): 191, 198. Frank and Goldberg’s discussion of tribal sovereignty draws from the works of S. James Anaya, Thomas Bilolsi, Philip S. “Sam” Deloria, Vine Deloria Jr., K. Tsianina Lomawaima, Robert Odawi Porter, Siegfried Wiessner, David E. Wilkins, Charles Wilkinson, Robert A. Williams, Jr., and others cited in chapters 1 and 9.

9. Frank and Goldberg provide a helpful explanation of Indian criminal law, including the relationship between the Major Crimes Act (1885), Public Law 280 (1953), and the Indian Civil Rights Act (1968). Following the book’s publication, Congress passed the Tribal Law and Order Act (2010), which, among other things, gives tribal courts the power to impose three-year sentences for Indian criminal offenders (up from one year) and makes the federal government more accountable to tribal communities in the exercise of prosecutorial discretion in Indian Country.

Ronald Niezen. *The Rediscovered Self: Indigenous Identity and Cultural Justice*. Montreal, QC: McGill-Queen’s University Press, 2009. 236 pp.
Cloth, \$85.00, paper, \$24.95.

Brendan Hokowhitu, University of Otago

The Rediscovered Self follows on from Niezen’s two most recent books, *The Origins of Indigenism* (2003) and *A World beyond Difference* (2004). The present book provides a junction where the previous two left off. That is, in both *Origins* and *The Rediscovered Self*, Niezen examines the concept of “indigenous peoples” as a legal rights neotransnational formation, while *A World beyond Difference* focused on the “cosmopolitan imaginings” of ethnic formalism. Likewise, in *The Rediscovered Self* Niezen circumscribes such imaginings onto the new ways that indigenous peoples are engaging politically, including recovering suppressed histories as foundations of belonging. In *The Rediscovered Self*, Niezen reengages these two key ideas by establishing the preeminent postcolonial studies dialectic in relation to identity, that is, essentialized notions of indigenous being and what he determines as “humanistic cosmopolitanism,” or what Homi Bhabha might refer to as “third culture.” Interestingly, while Niezen mentions Edward Said, the other two pillars of postcolonial studies, Bhabha and Gayatri Spivak, do not appear in this new work.¹ This is surprising, given that what the author sets out to articulate through historical, legal, and ethnographic material pivots around the way indigenous people have profited through postcolonial