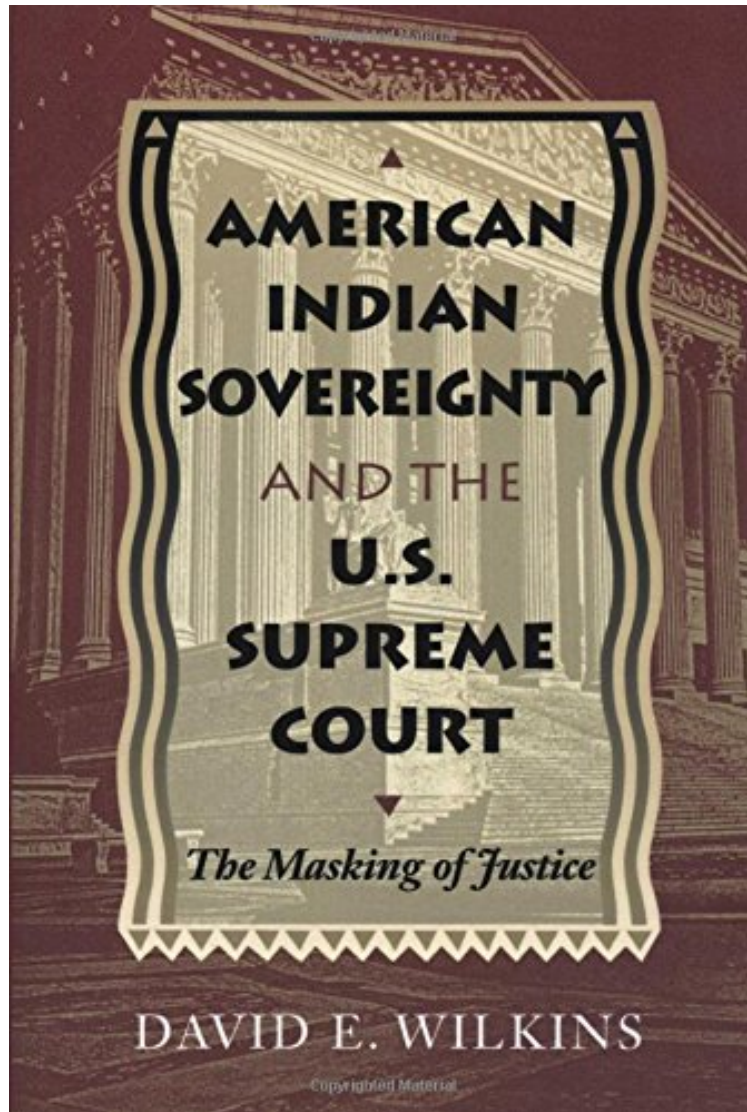


(Download) American Indian Sovereignty and the U.S. Supreme Court : The Masking of Justice

American Indian Sovereignty and the U.S. Supreme Court : The Masking of Justice

David E. Wilkins

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David E. Wilkins : American Indian Sovereignty and the U.S. Supreme Court : The Masking of Justice before purchasing it in order to gauge whether or not it would be worth my time, and all praised American Indian Sovereignty and the U.S. Supreme Court : The Masking of Justice:

7 of 7 people found the following review helpful. The facts themselves are a profound indictment of "law" By Arthur Digbee American Indian law represents an extraordinarily incoherent set of decisions and principles, with results that

are not only bad public policy but indefensible in any terms that I know. To take only one example, the jurisdiction of a police force depends not only on whether a crime occurred on white-owned or tribally-owned land inside a reservation but on whether the criminal and the victim are Indians or not. All of this also varies by the nature of the crime. When you consider that some criminals, such as poachers, move from land parcel to land parcel without it being obvious where the actual crime occurs, and that the identity of the criminal is generally unknown at the start of an investigation, you have a recipe for non-Indians to get away with many crimes against Indians through legal maneuvering. The "sovereignty" of each Nation is similarly confused, especially with respect to the state in which each reservation finds itself. Why is Indian law so confused? In this book, David Wilkins attributes it to a "legal consciousness" held by jurists and others. He divides this into three themes: constitution/treaty, civilizing/paternalistic, and nationalism/federalism. To read these cases is to shake one's head and wonder, "What on earth were they thinking?" Much of Indian law rests on claims that have no foundation in law, starting with the notion that the tribes are "domestic-dependent nations." Racism, paternalism, ignorance, and a mind-boggling belief that Congress reigns supreme over people who have never acknowledged its supremacy run through these pages. Thus, we have treaties with tribes that take legal effect even if Congress doesn't ratify them, and that Congress can violate, reinterpret, or denounce but the tribes cannot. Native Alaskans were even subject to US law without treaties at all. Though eventually incorporated into the political system, Indians were not given the same legal rights as others. They do not have redress against their governments. The Supreme Court refuses to protect their rights against the federal government. If you're not an Indian, this matters to you - - if the Court will not uphold the constitution or the law to protect Indians, why do you think it will protect you either? Indian law is incoherent. It's indefensible. We need to start over. Read this book and learn why.

"Like the miner's canary, the Indian marks the shift from fresh air to poison gas in our political atmosphere; and our treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith," wrote Felix S. Cohen, an early expert in Indian legal affairs. In this book, David Wilkins charts the "fall in our democratic faith" through fifteen landmark cases in which the Supreme Court significantly curtailed Indian rights. He offers compelling evidence that Supreme Court justices selectively used precedents and facts, both historical and contemporary, to arrive at decisions that have undermined tribal sovereignty, legitimated massive tribal land losses, sanctioned the diminishment of Indian religious rights, and curtailed other rights as well. These case studies and their implications for all minority groups make important and troubling reading at a time when the Supreme Court is at the vortex of political and moral developments that are redefining the nature of American government, transforming the relationship between the legal and political branches, and altering the very meaning of federalism.

"A detailed, thorough analysis of 15 US Supreme Court cases involving Native Americans. . . . The cases range from the well-known *Johnson v. McIntosh* to the little-known *Ward v. Racehorse*, but all are instances in which the Court has mistakenly limited or terminated the rights of indigenous peoples. In each case the author notes the errors the justices made and the judicial masks that have often enabled them to ignore reality and morality. . . . Judicious and persuasive, he provides new information and insights in this important field. A must read for tribal officials, attorneys, judges, public officials, and others concerned with Native American affairs." (Choice 1998-04-01) "This book offers a framework in which Supreme Court decisions can be analyzed and criticized. It is, on account of this framework, a wholly new kind of writing and one that is badly needed." (Vine Deloria Jr., author of *American Indians, American Justice*) "This book offers a framework in which Supreme Court decisions can be analyzed and criticized. It is, on account of this framework, a wholly new kind of writing and one that is badly needed." (Vine Deloria Jr., author of *American Indians, American Justice*) About the Author A Lumbee Indian, David E. Wilkins is Associate Professor of Political Science and American Indian Studies at the University of Arizona.