

SAMUEL J. BRAKEL. *AMERICAN INDIAN TRIBAL COURTS: THE COST OF SEPARATE JUSTICE*. American Bar Foundation: Chicago, 1978. 142 pp. \$10.00 hardcover, \$5.00 paper.

This monograph (111 pages of text) is part of a larger research endeavor being conducted by the American Bar Foundation and sanctioned by the American Bar Association and the American Bar Endowment, among others. According to the American Bar Foundation: "Its mission is to conduct research that will enlarge the understanding and improve the functioning of law and legal institutions (pp iv)." This particular project was initiated to investigate the cost of separate tribal justice.

Towards this end, twelve reservations were investigated and analyzed. Five reservations had tribal courts while seven did not. Standing Rock (North and South Dakota), Devils Lake (South Dakota), the Unintah and Ouray Ute (Utah), Blackfeet (Montana) and the Navajo Nation (Arizona and New Mexico) represented the reservations with tribal courts while the Creed, Western Cherokee, Osage and Pawnee of Oklahoma, and White Earth and Leech Lake reservations of Minnesota and the Eastern Band of Cherokee Indians (North Carolina) were the non-tribal court reservations visited. Two targeted reservations, Red Lake and Nett Lake in Minnesota, refused to participate.

The method of investigation involved general observations of the functioning of justice within these tribes and comparisons made between those with tribal courts and those relying on non-Indian adjudication. Approximately a week was spent at each target reservation for these observations. No formal or standardized investigative technique was administered. Moreover, the investigation did not directly involve any of the major Indian legal organizations such as the Native American Rights Fund (NARF) or the Institute for the Development of Indian Law.

The author recognized the fact that it was difficult to address the issue of Indian justice without first discussing the general conditions of reservation life. Clearly, this is the best part of the book. Unfortunately, this section comprises less than ten percent of the text. Here, the issue of tribal sovereignty is presented including the initial 1831 "Cherokee Nation v. Georgia" and the 1932 "Worcester v. Georgia" U. S. Supreme Court decisions. He followed through with the Dawes Act (1887), Indian Reorganization (1934) and the Termination Policy of the 1950's (1953).

Correspondingly, Brakel introduced the reader to the development of tribal justice tracing this phenomenon from the Major Crimes Act of 1885 to the 1968 Indian Civil Rights Act noting, correctly, that these actions actually served to restrict tribal autonomy. Brakel then related these issues to the development of tribal courts concluding: "Perhaps the most significant fact about the origin and development of the tribal courts is that they are white American creations, and quite recent ones at that (pp 9)."

Next, the report presented the observations made during these visits to the target reservations. This section comprises the bulk of the text and takes on a rambling fashion. Brakel mentioned that reliable statistics on Indian legal needs and the quality of justice are unavailable but, according to the data available, a high volume of cases heard in tribal courts involve personal offenses, many alcohol-related. Even then, he pointed out that these statistics usually represent police discretion and tribal politics.

The report analyzed tribal courts according to an "ideal type" white model. And from this ideal white model, Brakel concluded that tribal courts are inferior to white-run systems. He claimed that tribal judges are undertrained without professional schooling and, that on most reservations, there are no trained prosecutors or defense attorneys. Moreover, judges are usually selected by the tribal council and, therefore, subject to tribal politics.

In summary, Brakel concluded: "It would be more realistic to abandon the system altogether and to deal with Indian civil and criminal problems in the regular county and state court systems (pp 103)." He based this conclusion upon certain disclaimers, notably: (1) that there is no real difference between Indian and white justice, (2) that Indians are not treated more fairly in Indian courts than they are in white courts, (3) that tribal courts do not offer a more informal and individualized justice, and (4) that Indian courts do not facilitate Indian culture.

Besides, Brakel went on to make certain subjective judgements relevant to tribal judges: "In addition to being professionally inadequate, the tribal judges are politically and socially insecure (pp 95)." About the tribal court system itself, he stated: "The present performance of the tribal courts can hardly be said to indicate the vitality of Indian tribal culture. Terminating their operation does not mean the end of Indian culture, realistically defined. Finally, in contrast with tribal leaders or spokesmen, the average reservation resident has little interest in seeing the tribal court system maintained or expanded (pp 100)."

The basic flaw in Brakel's argument is his assumption that non-Indian courts and civil and criminal adjudication operate according to their ideal mandate without the problems of self - or political interest. Another major misconception was his contention that tribal courts are white American creations and always have been. This is an especially dangerous assumption since the author, like many others, expand this premise by claiming that Indians do not maintain the same quality of white justice as do whites themselves.

Brakel's ignorance of traditional Indian courts is unfortunate since much has been written on this subject. *Priests and Warriors*, by Gearing, and *A Law of Blood*, by Reid, are but two well documented

manuscripts on aboriginal justice prior to white contact. Numerous other sources depict the customary justice of Plains and other tribes as well.

Finally, Brakel's ethnocentrism obviously blinds him to certain realities concerning local white courts located near reservations. Anti-Indian biases are quite evident in all the areas analyzed for this report. Perhaps the American Bar Foundation and the American Bar Association should familiarize themselves with some of the Native American legal and criminal justice agencies and organizations and their studies to get a more realistic picture of what "Indian justice" entails and what steps need to be taken to improve legal-service delivery to these people. Clearly, it is not enough for the white-dominated American legal community to merely dismiss Indian courts as inferior to white courts and then suggest that they be dismantled.

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Gerald Vizenor. *WORDARROWS: INDIANS AND WHITES IN THE NEW FUR TRADE*. Minneapolis: University of Minnesota Press, 1978. 164 pp. \$7.95.

It was George Orwell who saw, more clearly than most, that "newspeak" was often used by government and public institutions in communicating with their public. He warned that such jargon would separate government from the governed.

In Gerald Vizenor's brilliant, humorous, sad and biting series of vignettes on Indian life in mainstream America collected together in *Wordarrows*, we see Orwell's concerns made manifest. For nowhere, it seems, does "newspeak" or "bureaucratese" flourish so well as between non-Indian public service professionals in public institutions and the Indians whom they are hired to serve. Even when there is good will and a genuine effort to reach out to the community, non-Indian public service professionals do not seem to be able to communicate well with their Indian communities. If good will does not exist, the non-Indian public service professionals seem to take offense at just about everything Indians say or do, and compound the problem by retreating behind a smokescreen of their own special jargon to avoid real issues. This use of jargon disenfranchises Indians and further increases the social distance and perceived status differences between Indian and non-Indian. An Indian person's cultural background and life experiences have not prepared him/her for decoding jargon. A perpetual cycle of alienation is thus formed and maintained between public service institutions and the Indians they serve.