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Fire and the Spirits

By

RENNARD STRICKLAND

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Karl Llewellyn dedicated his life to advancing the view that the "stuff" of the law lay not in abstracted or synthesized rules, but rather in those social and marketplace norms which regulate the conduct of day-to-day life.[1] With Hoebel, he tested his thesis in the study of the Cheyenne Indian legal institutions and found a legal structure of "juristic beauty."[2] In *Fire and the Spirits* Rennard Strickland gives us, in a well-researched, well-organized and highly readable form, a unique study of an instance where both the "stuff" of the law and the institutions which administered the law deviated in substantial respects from the prevailing social mores of the community. The chronicle is a sad tale of the unraveling and ultimate demise of the Cherokee Nation.

Professor Strickland's scholarly study of the evolution of the Cherokee legal system—from clan revenge to an approximation of the Anglo-American adversary system—is an allegory for the last third of this century. *Fire and the Spirits* raises the most important issue for Indians today: The survival of Indian tribal culture. Since their first contact with the Europeans the central issue for Indians has been survival, not only physically but culturally. In order for Indians to plan for cultural survival it must be understood that the threat to their culture is rooted in the very nature of society itself.[3]

The disparity between the philosophy of the American form of government and the actual treatment Indians have received at the government's hands has provided the basis for many articles and books of apology.[4] A common but erroneous conclusion of this reexamination is the "bad guy" theory. This theory posits that what has happened to Indians over the last three centuries was the result of evil men who set about each fiscal year to determine how best to lie, cheat and steal from Indians. If this be true, Indian survival would

1. *See* Llewellyn, *The Normative, the Legal and the Law–Jobs: The Problems of Juristic Method*, 49 Yale L.J. 1355 (1940).

2. K. Llewellyn & E. Hoebel, The Cheyenne Way *ix* (1941).

3. *See generally* R. Berkhofer, Salvation and the Savage (Atheneum 1972); L. Hanke, Aristotle and the American Indians (1975).

4. *See* H. Jackson, A Century of Dishonor: The Early Crusade for Indian Reform (Rolle ed. 1965); W. Jacobs, Dispossessing the American Indian (1972); Cohen, *Original Indian Title*, 32 Minn. L. Rev. 28 (1947).

turn on the quality of men in office and hope would exist through the ballot. But the variance between philosophy and practice is not of capricious design. Rather, the problem is far more deep-rooted, dangerous and intractable. The discrepancy is less a product of individual venality than a recognition that Indian societies and the dominent American society reflect different cultural norms. Thus, any norm of the dominated society that deviates significantly from that of the dominant society is in danger of abolishment. And its demise is not perceived as wrong, but rather is lauded as being in the best interests of the dominated culture. Today we can be amused over the seriousness of debate among the greatest of the Spanish jurists at Valladolid in 1550 concerning whether heathen Indians could be considered human beings.[5] Yet we become very serious and defensive when it is suggested that Indian tribes may have the privilege to deny to their members concepts of "due process" and "equal protection."[6]

II

In the eighteenth and nineteenth centuries, the Cherokee civilization underwent as substantial a dislocation as any civilization in modern times. Fraught with internal tensions and tribal schism, the demise of traditional values and institutions and the ascendency of new leadership and values, and plagued with a forced migration and an external war, the Cherokees fought hard, although not successfully, to preserve their tribal culture, integrity and, ultimately, their tribal existence. From this cultural pressure cooker, Professor Strickland dips into the social stew and describes the various changes in mores and institutions, admirably investigating cause and effect.

It is commonly assumed that with the adoption of a written constitution and laws and the assumption of the accoutrements of a nation-state, the Cherokees obtained legal order and institutions where none had before existed. As Strickland convincingly demonstrates, that was not the case at all. The Cherokee acceptance of positive law and formal legal institutions was both evolutionary and revolutionary. While adoption of a foreign legal order was designed to protect the Cherokees from external threat, it contributed substantially to social disintegration and the ultimate destruction of the Cherokee Nation.

5. *See* Hanke, Aristotle and the American Indians 23-27 (1975).

6. *See* Indian Civil Rights Act, 25 U.S.C. § § 1302-03 (1970); de Raismes, *Indian Civil Rights Act of 1968 and the Pursuit of Responsible Tribal Self-Government,* 20 S.D. L. Rev. 59 (1975); Lazarus, *Title II of the 1968 Civil Rights Act: An Indian Bill of Rights,* 45 N.D. L. Rev. 337 (1969).

The ancient and traditional Cherokee way is best characterized as clannish, communal and religious. The tribe was organized around clans, and centralized leadership was informal and sporadic. Economic life was rudimentary, and the private accumulation of wealth was virtually unknown, limited primarily to ceremonial purposes. Social control was basically religious, both in its form and in its administering institutions:

> To the Cherokees law was the earthly representation of a divine spirit order. They did not think of law as a set of civil or secular rules limiting or requiring actions on their part. Public concensus and harmony rather than confrontation and dispute, as essential elements of the Cherokee world view, were reflected in the ancient concepts of the law.[7]

This spiritual view of the law was reflected in the social leadership. Except during wartime, the lawmakers were found in the priest class.

Strickland identifies three salient themes in the social history of the Cherokees in the eighteenth and nineteenth centuries: (1) the centralization of the tribal leadership; (2) the shift in economic organization from communalism to the accumulation of private property; and (3) the secularization of the law and concommitant demise of the priest class as lawgivers. While Strickland's treatment of the first two of these themes leaves much to be desired, the third is well analyzed and clearly described.

As to the first of these themes—the centralization of the tribal leadership—Strickland's description[8] is overly long and mechanical. He identifies in great detail seven stages in this centralization process.

> The Cherokee legal system, emerging from clan to court, went through many stages. These developments beyond the traditional system might be divided into steps, as follows: the secularization of tribal government (1710 to 1789), emergence of Tribal Council (1780 to 1808), council and regulation parties (1808 to 1817), Chiefs and Warriors in National Assembly with Standing Committee (1817 to 1820), reorganized government (1820 to 1827), constitutional Cherokee government (1827 to 1838), and Cherokee Nation united (1839 to 1906).[9]

The discussion is primarily discursive, sometimes leaving the reader wishing to know more about social, cultural and economic factors which pushed one stage into the next.

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7. R. Strickland, Fire and the Spirits 10-11 (1975).
8. *Id.* at 53-72.
9. *Id.* at 53.

While the discussion of the centralization of leadership may be too long, the discussion of the second theme—the shift from communalism to the accumulation of private wealth—is almost nonexistent. After describing the religiosity of the ancient Cherokee law and legal institutions, Strickland tantalizes the reader with the following: "The expansion of the Carolina trade changed all this. The values of the old life were significantly altered by shifts in the tribal economic base."[10] With the exception of briefly identifying two manifestations of this shift—participation in the fur trade and the development of commercial agriculture—this is the full extent of Strickland's discussion of the economic shift. Left unanswered are questions about the causative factors which influenced this change and the social dislocation effected by it. This is all the more distressing, since the little information Strickland does give us indicates that the shift in economic order was influenced at least partly by the Cherokee contact with the increasingly obtrusive European culture. Since the ultimate adoption of a legal order modeled after this dominant culture is the central thesis of the book, further exploration of this factor would seem desirable.

The defects in Strickland's discussion of these first two themes, however, are more than compensated for by his treatment of the third strand he develops in the fabric of Cherokee social history. Strickland finds several factors that contributed to the secularization of the law and the demise of the priest class. First, the priests did little to stem the economic shift to commercialism and private acquisition. Indeed, rather than resist this threat to their position and to the foundation of the Cherokee legal mores, the priests were coopted by the very commercialism which ultimately undermined their position of authority.

The priests' position was further impaired by the advent of Christian missionaries. Carrying with them not only the word of God but presumably the word of commerce, the missionaries were quick to exploit the priests' faltering hold on the Cherokee people. Finally, the loss of faith in the priests was aggravated by the failure of the priests as public healers. Since, in the traditional tribal view, the law was personified in tribal leaders, the demise of the priest class brought with it the breakdown of the religious underpinnings of the law.

Something had to fill the vacuum created by the fall of the priests:

> The prime qualification for leadership in the new Carolina-dominated Cherokee world became the possession of commercial

10. *Id.* at 44.

> connections and an understanding of and ability to manipulate trade and colonial aspirations. The colonies themselves first turned to the priestly class to fill the vacuum. When it became apparent that priestly support was waning, a new class of "Indian Kings" was created by the South Carolina government. These were drawn from the old Red portion of the tribal government.[11]

While the ascendancy of the war leadership to fill the vacuum created by the demise of the priest class might have done much to stem the threat from the encroaching European culture, any such aspiration was short-lived. Tribal schism led to the exile to western territories of the most aggressive faction of the warrior leaders. This proved to be a staggering blow to the war leadership from which it never recovered, thus leaving the way open for the primacy of still a third group: the mixed-bloods, progeny of intermarriage between the Cherokees and Europeans. As the mixed-bloods attained leadership positions, the secularization of the law was accelerated. With a foot in each culture, the mixed-bloods became a significant conduit for the further supplanting of European values for traditional Cherokee values.

As Strickland persuasively argues, while the rapid succession of leadership did not alter the ultimate tribal goal—preservation of tribal lands—the rapid turnover in leadership, together with the factors that influenced the turnover, did undermine the ability of the Cherokees to resist the advancing European culture. Rather than fight the external threat with internal resources, the Cherokees looked elsewhere for means to resist. As Strickland states in what is the most concise exposition of the thesis of the book:

> Both full-blood and mixed-blood Cherokees stood united in opposition to pressures to surrender tribal lands. The history of the emergence of the Cherokee legal system might well be written as a futile effort to block the series of treaties and acts which surrendered more and more of the ancient dominion and ultimately led to the abolition of the Cherokee Nation.[12]

The adoption by the Cherokees of a constitution, written laws and governmental structure modeled after those of the encroaching European culture did not represent a triumph of adaptation and acculturation. Rather, it reflected a last-ditch attempt by a threatened culture to preserve itself and its traditional ways. "The Cherokees sincerely believed, as Jefferson suggested, that they might save their nation with the adoption of a new legal system of laws patterned

11. *Id.* at 47 (footnote omitted).
12. *Id.* at 51.

after those of the white man."[13] The Cherokees did adopt a written constitution, a plethora of written statutes and a court system for dispute resolution, all of which were fashioned after the Jeffersonian model.

While describing the constitution and the court structure in detail, Professor Strickland admirably resists the temptation to encumber the discussion with infinite detail concerning the substance of the various statutes. Rather, the discussion focuses on several examples by which Strickland describes the relative strengths and weaknesses of the adopted models. Thus, where the new laws closely followed and responded to traditional ways and values, commanding a consensus of support, the experiment was successful. Where, however, the adopted laws diverged substantially from ingrained custom and accepted practice, the experience was not only unsuccessful, but self-defeating.

Strickland demonstrates this in comparing the laws regulating slavery[14] with those regulating wealth devolution.[15] The model for the regulation of slavery was borrowed from the proximate southern culture and was designed not to reflect traditional tribal values but to protect the interests of a small class of wealthy mixed-bloods. While the traditional Cherokee approach to slavery had not been reflected in any substantial formal regulation, there had developed over the eighteenth century well-recognized and adhered-to customs establishing social control. The positive law adopted by the Cherokees in the nineteenth century was substantially inconsistent with this ingrained customary approach. The result was that "the needs of the Cherokees [the wealthy mixed-bloods] responsible for the enactment of the [slavery] legislation were at such variance with the needs and expectations of the majority of the tribe that the laws were widely ignored."[16]

Such was not the case with the Cherokee legislation regulating wealth devolution, however. Since the ancient Cherokee economic life was basically communal, the traditional Cherokee ways had little concern for the regulation of transfer of wealth upon death. Thus, when the Cherokee government in the nineteenth century passed legislation regulating wealth devolution, it broke new ground. Rather than emulating the experience with the regulation of slavery, however, the laws enacted concerning transfer of wealth identified with

13. *Id.* at 52.
14. *Id.* at 78-83.
15. *Id.* at 84-101.
16. *Id.* at 83.

and advanced traditional and universally accepted tribal goals and values:

> At least five major social policies or goals of Cherokee society are reflected in the inheritance laws. Perhaps the most obvious of these is the policy of strengthening the family social unit. Another equally clear policy is the prevention of tribal lands from passing into the control of non-citizens. A third is preventing marriage between Cherokees and Negro slaves. The idea of equality of women is also reflected in these inheritance laws. Finally, the anounced resistance to Cherokee migration to the Cherokee Nation West motivated these laws.[17]

The result was that the experience in regulating wealth devolution was substantially more successful than the experience with respect to regulation of slavery.

Superficially, the Cherokee experience in the eighteenth and nineteenth centuries was the paradigm of successful Indian policy, both from the Indian and European perspectives. From first contact with the Europeans to the complete reconstruction of their society after removal, the Cherokees appeared to have met numerous challenges at each stage, adapting their society to include new values along with the traditional values. This process of acculturation staved off—at least for a period of time—the encroaching European culture. Professor Strickland refutes the concept that the Cherokees became "White Indians." Indeed, Strickland forcefully establishes the opposite conclusion: The Cherokee Nation at the time of its destruction was an Indian government with a strong foundation in traditional tribal values.

It is evident, however, that ultimately the Cherokee policy of adaptation and acculturation was a failure. Certainly the Cherokees did not survive as a nation. More fundamentally, while the process of adaptation may have forestalled for a period the ultimate triumph of the Europeans, it did so at enormous costs. The process not only sapped the Cherokees' will to resist, it also deprived them of the most effective weapons with which to resist. The adoption of a European-modeled legal system both undermined the traditional repositories of cultural stability and imposed social norms foreign to the traditional culture. The external threat, to a large extent, had been internalized.

A similar dilemma faces the American Indian in the last third of the twentieth century. Having been deprived of most of their lands, Indians are now faced with a serious theat to their remaining culture

17. *Id.* at 97.

by the imposition of Anglo-American legal norms. This twentieth-century threat may be as substantial as was the nineteenth-century threat to Indian lands. And it is to this problem that the Cherokee experience addresses a particularly perverse allegory. For just as the Cherokees, in the process of retaining as much of their culture as possible, lost their lands and their status as a nation, twentieth-century Indians, in preserving the remainder of their lands and tribal status, are faced with the serious and immediate threat to their very cultural existence.

III

The Cherokees correctly perceived the major protection for their culture to reside in tribal lands, which would provide both a crucible for the evolution of their own culture and a refuge from the encroaching European culture. The Cherokees ultimately lost their lands, their status as a nation and the struggle. The two-fold importance of tribal land to Indian culture has not changed in the century since the dissolution of the Cherokee nation. For contemporary Indians, however, the major threat to their culture comes not from loss of land, but from loss of control of the remaining land. This threat finds its most vivid manifestation in the Indian Civil Rights Act of 1968.[18] The intent of this legislation, which requires that tribes adhere in their internal practices to constitutional-type, enumerated duties, is to ensure that no American citizen be denied certain fundamental liberties. While this motive may appear admirable in the abstract, the broad application of the statute by the federal courts has created a serious threat to the survival of contemporary Indian cultures, a threat not unlike that presented to the Cherokees in the eighteenth and nineteenth centuries.

The Indian Civil Rights Act is the culmination of a slow but steadily intensifying progress of legislation intruding on the freedom of tribal governments to conduct the internal affairs of the tribe. Until the Major Crimes Act of 1885,[19] American Indian policy consisted of separating Indian tribes from non-Indians, leaving the tribes free to govern their people in any manner they wished. As Chief Justice Marshall held in the landmark case of *Worcester v. Georgia,*[20] Indian tribes were free to exercise all powers of government except those which Congress explicitly removed from them. This freedom was not constrained by constitutional limitations traditionally

18. 25 U.S.C. §§ 1302-03 (1970).
19. 18 U.S.C. § 1153 (1885), *der. from* Act of Mar. 3, 1885, ch. 341, § 9, 23 Stat. 385.
20. 31 U.S. (6 Pet.) 515 (1832).

applied to other governments. This "apartheid" policy was possible in a society in which an expanding frontier was both real and perceived. The Major Crimes Act of 1885 marked the end of two eras, one for the country and one for the Indians. With the passing of the last frontier, there were no longer lands to the west to which Indians could be pushed away. The Indians and their traditional ways came into closer physical proximity with the dominant American society.

As Indians and the dominant society settled into close physical coexistence, the dominant society had a greater opportunity to observe traditional Indian ways. Since there was no longer a frontier beyond which Indians could be pushed, if the dominant society disliked what it saw of Indian ways, it had no choice but to change those ways. The accomplishment of this end was sought through two major devices: The Allotment Act of 1887,[21] and the Major Crimes Act of 1885. Through the Allotment Act, tribal lands, traditionally held communally, were broken up and allotted to individual Indians. The goal was to turn Indians into the image of the dominant society: Yeoman farmers and God-fearing Christians. An incidental side effect was to open up tribal lands to the ever-advancing Europeans.

The passage of the Major Crimes Act was the direct result of the United States Supreme Court's holding in *Ex parte Crow Dog.*[22] In *Crow Dog* the Court held that the Dakota territorial courts were without jurisdiction to try an Indian accused of killing another Indian on reservation lands. The underlying issue in the case involved the punishment to be meted out to the convicted murderer. The tribe chose to punish the murderer in the traditional manner, by requiring penance and restitution. The neighboring settlers felt that this procedure was uncivilized and barbaric and that justice could only be served through execution by hanging.

The Major Crimes Act removed jurisdiction from the tribes to adjudicate enumerated offenses, leaving intact the tribes' power to adjudicate in any manner they wished offenses not specifically set out in the statute. While the Act constituted an incursion into tribal sovereignty, it was accomplished in a mode calculated to do the least harm to traditional tribal practices. Tribes could continue to govern themselves in their traditional manner except in those areas specifically removed by the statue. In those specific areas where Congress sought to interfere with tribal sovereignty, the power of the tribe to govern was completely removed; as to the residuum, however, there was no interference with the method or manner of tribal ways.

21. 24 Stat. 390.
22. 109 U.S. 556 (1883).

Survival of tribal culture relies on both a land base and some latitude on the part of tribal governments to govern in such a way as to promote the indigenous culture. The ultimate unraveling of the Cherokee culture resulted from the loss of the land base. While contemporary tribes may retain their land base, the modern threat is to the tribes' unfettered ability to exercise their jurisdiction on the remaining lands, and hence to utilize their lands as crucibles for the evolution of their own ways and as refuges from the ways of the dominant society. This threat is highlighted by comparing the Major Crimes Act with the Indian Civil Rights Act. While the Major Crimes Act did intrude on the Indians' ability to govern themselves, it did so with an almost surgical precision. As to those enumerated areas of concern, the governing ability of the tribe was completely removed, but as to everything else, the Act left to the tribes a high degree of freedom to construct their own internal forms of government and to administer them according to traditional ways.

Not so with the Indian Civil Rights Act. As a consequence of the Act, many tribal practices which were previously unchallenged are now coming under federal court scrutiny. The Act strikes at two pre-existing protections of Indian cultural integrity. First, the tribes, as sovereigns, were considered to be immune from suit unless they had specifically waived immunity or Congress had clearly removed it.[23] Secondly, prior to the Act, the societal norms embodied in the United States Constitution were considered inapplicable to tribal government.[24] At once, the Act removed the sovereign immunity of the tribe for suits arising under the Act[25] and made applicable to tribal governments certain of the cultural norms embodied in the federal constitution, most notably the due process and equal protection norms.[26]

The Indian Civil Rights Act will irresistably influence tribes to change at least the facade, if not the substance, of their governmental structures to more closely approximate the appearance of Anglo-American legal institutions. This poses a two-fold threat to the tribes and Indian culture. On the one hand, there is the potential that Cherokee history will be recapitulated: tribal authority will wane as evolving legal institutions deviate substantially from traditional cultural mores. Secondly, a change in appearance in governmental

23. *See* United States v. United States Fidelity & Guar. Co., 309 U.S. 506 (1940).

24. *See* Talton v. Mayes, 163 U.S. 376 (1896); Native American Church v. Navajo Tribal Council, 272 F.2d 131 (10th Cir. 1959). *But see* In re SahQuah, 31 Fed. 327 (D.C. Alaska 1886).

25. Loncassion v. Leekity, 334 F. Supp. 370 (D.N.M. 1971).

26. *See* 25 U.S.C. § 1302(8) (1970).

and legal institutions may misrepresent the very nature of tribal government and culture.

This latter point was poignantly manifested in the Cherokee experience. As Professor Strickland points out, the Cherokee system was a melange of traditional practice overlayed with a legal system that increasingly diverged from the underlying values of the tribe. The dominant society viewed the appearance of the institutions and determined that the Cherokee Nation was "ready" for abolition. The Cherokees were not "ready" for abolition of their government. To a great extent, the touchstone for the Congressional decision to abolish the Cherokees' legal institutions was a facade. Similarly, contemporary tribal governmental structures and legal institutions may not be what they appear to be. This is especially so when the perceptions of the structures and institutions are filtered through the observer's own values and mores. This problem will intensify as tribes are forced to reform their governmental structures and legal institutions in response to the Indian Civil Rights Act.

It may be that due process and equal protection norms are not relevant to many Indian cultures. That observation, however, is of merely historical interest now that Congress has imposed a contrary judgment through the Civil Rights Act. What is more important, however, is that what is comprehended by due process and equal protection may be substantially different for Indian cultures than it is for the dominant Anglo-American culture. In short, the question is whether the Civil Rights Act will effectuate a wholesale importation of the dominant culture's notions of governmental fairness into Indian culture or whether Indians will be given the latitude to bend and shape these norms to their own cultural ends. A brief review of some specific formulations of the problem may expose the potential inherent in the Civil Rights Act for the destruction of tribal culture.

American society was founded on the eighteenth century ideal of individual liberty. An individual's freedom of action was to be constrained as little as possible and only out of a compelling necessity to protect the commonweal. This fundamental societal value is reflected both in our form of government and in our legal norms. Hence, every high school student learns in civics class that the wonder of the American system of government is said to lie in its tripartite division of power, with its attendant checks and balances. This system, in theory, provides internal controls on the growth of governmental power over individuals. We suffer this expensive form of government because we believe that the price of restricting governmental power and hence protecting individual liberty is worth paying. The legal norm of equal protection may also be viewed as another reflection of

the underlying social value of individual liberty: All Americans ought have equal legal opportunity; no greater right accrues by virtue of hierarchy or group affiliation.

By comparison, Indian tribes are typically centered around clans or hierarchies; the interests of the individual are subjugated to those of the clan or hierarchy. Thus, the imposition of the dominant society's governmental structure and legal norms on the tribes not only fails to recognize the traditional tribal values but may be antithetical to those values. This results in a two-fold distortion. On the one hand, the imposed governmental structures and legal norms distort the traditional tribal values. Concomitantly, the tribes' attempts to govern consistently with traditional values must distort the foreign structures and norms. Appearance and reality diverge. While many tribal governments retain the appearance of a tripartite governmental structure, the reality of governance is quite different. Thus, often the neat separations attendant to the tripartite structure of government are ignored by the tribes, and the legislative and judicial functions are combined. This may seem to create conflicts of interest in decision-making when viewed through the values of the dominant culture; there may be no conflict, however, when viewed through the values of traditional tribal culture.

An unreflective application of the Indian Civil Rights Act by the courts may serve either to intensify existing distortions or to strike directly at the ability of the tribes to retain their traditional culture. This is best exemplified by looking to one case decided under the Civil Rights Act. In *White Eagle v. One Feather,*[27] a federal court applied the equal protection norm of the Civil Rights Act to require "one man, one vote" in voting procedures on the Standing Rock Sioux Reservation. The court found that the "tribe itself . . . has established voting procedures precisely paralleling those commonly found in our culture. . . ."[28] Upon this finding, the court concluded, "we have no problem of forcing an alien culture, with strange procedures, on this tribe."[29] The result was a wholesale importation of the "one man, one vote" formulation of *Baker v. Carr*[30] to an Indian society.

The "one man, one vote" formulation of the equal protection norm is of relatively recent origin in American society. Moreover, it may be viewed as flowing directly and essentially from the societal value of individual liberty. Yet, the *White Eagle* court found "no

27. 478 F.2d 1311 (8th Cir. 1973).
28. 478 F.2d at 1314.
29. *Id.*
30. 369 U.S. 186 (1962).

problem" in imposing the dominant society's legal norm and its concomitant societal value on the Indian culture because the Indian's institutions appeared to the court to resemble our own. No attempt was made to investigate the applicability of the norm or value to traditional tribal values. Conceivably, voting districts for purposes of tribal elections might legitimately reflect clan representation or other such pre-European power distributions. What is most distressing about the *White Eagle* approach to the Indian Civil Rights Act is not the application of the equal protection norm to the tribe, but rather the perception that the tribe should be precluded from working out its own formulation.

To the extent that the Standing Rock procedures had reflected a hierarchical or clan-oriented culture, the result of the *White Eagle* decision will be to disrupt further the social fabric. In this respect, the Civil Rights Act may have a perversely intensifying effect. As successive constitutional norms of the dominant culture are imposed on the tribe, the tribe will come more closely to resemble, at least superficially, the dominant culture. And, as the *White Eagle* decision reflects, the greater the superficial resemblance of the tribal institutions to those of the dominant culture, the more prone courts will be to impose additional constitutional norms of the dominant culture through the Civil Rights Act.

The lessons to be drawn from the Cherokee experience are clear and portentious. As Professor Strickland demonstrates, even though many of the forms and structures that the Cherokees adopted appeared to be similar to the European forms and structures, the reality was quite different. Yet, the dominant culture, in making decisions of vital import to the Cherokees was influenced by appearance and not reality. The Civil Rights Act poses a similar threat to the remaining Indian cultures. The willingness of courts to be governed by appearances and their failure to probe those appearances to ascertain the realities of tribal values and structures will severely aggravate the dangers inherent in the Indian Civil Rights Act. The result may very well be that while the tribes may be allowed to preserve their present land-holdings, they may be deprived of the ability to utilize their lands for the preservation of their cultures. The threat to the Cherokees was posed by the "manifest destiny" of the dominant, American society. The threat to the remaining Indian cultures from the Indian Civil Rights Act is as real.

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