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Book Review of Felix S. Cohen's Handbook of Federal Indian Law

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BOOK REVIEW

Felix S. Cohen's Handbook of Federal Indian Law, 1982 Edition. Edited by Dr. Rennard Strickland and several others. Michie Bobbs-Merrill, Charlottesville, Va., 1982. Extensive tables of statutes and cases and an index.

I simply do not understand why this book bears the name it does. Anyone who has any familiarity with the field of Indian law knows of the book entitled *Handbook of Federal Indian Law*¹ written by Felix S. Cohen, that paragon of legal scholars, and published by the United States Printing Office in 1942. That book is, of course, the work to which the title of this book alludes. What, precisely, is the relationship between the two, and does that relationship justify the title of the subject of this review?

Before I alienate my several friends who have contributed to this work, let me state my summary judgment of the book: This work comes close to—if it does not equal—being the contribution for *this* time that Cohen's work was for *its* time.

But back to my quarrel with its title. The book being reviewed is in no sense the work of Felix S. Cohen. It is neither a facsimile reprint, a new edition, nor an updating of the Cohen work.

The Cohen name in the title does distinguish the work from the other Solicitor for the United States Department of Interior document, *Federal Indian Law*, a 1958 publication of the United States Printing Office.² The popular name for the 1958 work is the "Bennett Handbook of Federal Indian Law," even though Elmer Bennett in the preface suggests that the revision was done by others and largely before he became Solicitor. The 1958 book is a self-confessed product of the switch of congressional policy from tolerance to termination:

Much of the earlier Federal law and many Indian treaties now have only historical significance. As national development and progress continue and as new patterns of policy evolve, legal answers to questions of Federal Indian Law will be found predominantly in the latest statutory law and judicial determinations of justiciable issues. Those are stressed in this revision for

1. For the sake of clarity, each book mentioned in this review will be identified in the appropriate footnote by the entry number assigned it in GASAWAY, HOOVER & WARDEN, *AMERICAN INDIAN LEGAL MATERIALS: A UNION LIST* (1980) [hereinafter cited as the UNION LIST]. The book being reviewed has no such number because it was published two years after the *Union List*. The entry numbers for the 1942 Cohen work are 1527 and 4210.

2. UNION LIST, *supra* note 1, entry # 4206.

the purpose not only of seeking balance, to the extent practicable, but also for the purpose of foreclosing, if possible, further uncritical use of the earlier edition by judges, lawyers, and laymen.³

Because the policy of termination was unpopular with Indian leaders and pro-Indian activists, it was inevitable that the "Bennett Handbook" would also become unpopular. Perhaps the most succinct articulation of the criticism of the Bennett book is to be found in the foreword and the publisher's note in the facsimile reprint of the Cohen book.⁴

It is hard to find evaluations of the Bennett book that are less than acrimonious, and the only contemporaneous review located is by my colleague, Dr. Maurice Hitchcock Merrill, George Lynn Cross Professor Emeritus at the College of Law at the University of Oklahoma.⁵ The ever objective Dr. Merrill found the Bennett book to be a reflection of the congressional reappraisal of its policy toward the Indians. Dr. Merrill's conclusion was that both the Cohen book and the so-called Bennett book ought to be in one's library.

When the policy of termination gave way to the policy of self-determination, it was obvious that a new treatise on Indian law was needed. The story of the production of this latest treatise is

3. U.S. SOLICITOR FOR THE DEPT OF THE INTERIOR, *FEDERAL INDIAN LAW 1* (U.S. Printing Off. 1958). This book was reprinted in 1966 by the Association on American Indian Affairs, New York. The verso of an additional title page inserted before the reproduction of the original title page of the 1958 edition also carries the information that it was printed for Oceana Publications, Inc., Dobbs Ferry, New York. Apparently some librarians cataloged the reprint using only the Association of American Indian Affairs as the "publisher." See *UNION LIST*, *supra* note 1, entry # 4208. Others apparently used only the Oceana Publications, Inc. as the "publisher." See *id.*, entry # 4207. Perhaps this accounts for the belief of Robert L. Bennett and Fredrick M. Hart, the authors of the additional foreword in the 1971 reprint of the original Cohen book, that the 1958 edition, so offensive to them, had been reissued "by two other publishers." See *infra* note 4.

4. This reprint is *Union List* entry # 1526. It was published by the University of New Mexico Press in 1971. In addition to the reprint of the original Cohen work, it contains a foreword by Robert L. Bennett, Director of American Indian Law Center and Fredrick M. Hart, Professor of Law, both at the University of New Mexico. There is also a biography and a bibliography of Cohen. These are reprinted from 9 *RUTGERS L. REV.* 345-53 (1954). The bibliography had been compiled by Cohen. It is interesting that Cohen indicates that there was a revision in the fourth printing, 1945. A comparison between the fourth printing and previous ones revealed only one difference and that was the addition of a map of the United States showing the location of Indian reservations. The map is tipped-in at the front of the book.

5. 44 *A.B.A.J.* 1072-73 (1958).

well told in the introduction. Still, I hark again to the *name* of the book. It should be noted that when the facsimile reprint of the 1942 Cohen work was published it was done under the title *Felix S. Cohen's Handbook of Federal Indian Law*. It is difficult to quarrel with this departure from the name of the original book. It does not suggest that which is untrue, and at the worst, one might complain that in addition to the reprint of Cohen's book there are some fifteen pages of new material.

It is suggested, however, that the use of *Felix S. Cohen's Handbook of Federal Indian Law* for this present work is misleading. When I began writing this review, I had no proof of this accusation. Then, I had to leave this task to grade final examinations and, more materially, to participate in judging papers submitted to the annual writing competition sponsored by the *American Indian Law Review*. It was in this judging process that I was to find the proof I sought. It is not necessary here for me to identify the articles, but I have, of course, retained copies of those upon which I rely in my files.

In two of the eight articles assigned to the judging panel, the authors used these expressions: "Felix Cohen has stated," "Cohen notes," and "_____, F. Cohen," in quoting the book being here reviewed. There can be no doubt that the authors believed they were quoting Cohen himself. Perhaps in one of the two cases no great intellectual deception was involved; Cohen had in fact made statements corresponding in the most minute detail in the 1942 edition. In the other case, however, the result of quoting Cohen was to have Cohen relying on cases that were decided years after his death!

No desire to honor Cohen nor to garner luster for this book by ambiguous suggestions of authorship can justify the trap set for the unwary in the title of this book. Cohen's reputation needs no polishing; this work is so fine and strong that it does not need any reflected glory.

Just as Dr. Merrill suggested that every library ought to contain both the original Cohen and the so-called Bennett Handbook, I advise that every law library ought to contain the original Cohen or its 1971 reprint, the Bennett Handbook or its 1966 reprint, *and* a copy of the book reviewed here. Moreover, I would add that reference to it as the "Strickland Handbook" would not be misplacing credit.

This book has been reviewed twice before. Stephen Jones, a lawyer practicing in Enid, Oklahoma reviewed it very favorably in a format more traditional than this one, summarizing the areas

of Indian law covered.⁶ Russell Lawrence Barsh, who was at the time of the publication of his review an Associate Professor of Business, Government and Society at the University of Washington Graduate School of Business Administration, was somewhat less enthusiastic about the book.⁷ His primary complaint, if it can be stated in a few words, is that the editors, as had Cohen before them, too readily accepted the legitimacy of the federal government's power to limit the sovereignty of the tribes and hence their powers of self-determination. Professor Barsh's parting shot is that the book "is literate, thorough, and speaks with the voice of enlightened modern authority—an awesome and fascinating intellectual dinosaur."⁸

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6. 53 OKLA. B.J. 1306 (1982).

7. 57 WASH. L. REV. 799 (1982).

8. *Id.* at 811.