

Tulsa Law Review

Volume 15
Issue 4 *Forum: Indian Law*

Summer 1980

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Recommended Citation

Rennard Strickland, *The Price of a Free Man: Resources for the Study of Indian Law, History, and Policy at the University of Tulsa*, 15 *Tulsa L. J.* 720 (2013).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol15/iss4/3>

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THE PRICE OF A FREE MAN: RESOURCES FOR THE STUDY OF INDIAN LAW, HISTORY, AND POLICY AT THE UNIVERSITY OF TULSA

Rennard Strickland*

No jurisprudential field crosses more disciplines than American Indian law. Nowhere else is there such a practical and scholarly need to borrow from history and anthropology and economics and geography and education and biology and business. One cannot study or practice in the field of Native American law without drawing upon this extensive body of resources.

Only a few highly specialized libraries have collections of resources which are needed for a thoughtful study of Indian law. The explosion of Indian litigation and research in the last decade make it imperative that the availability of such materials be more widely known. Practitioners and scholars cannot be expected to be familiar with the nature or archival locations of the massive body of literature which bears upon the legal rights and responsibilities of America's indigenous peoples. Furthermore, no single institution is capable of amassing all of the primary resource materials of Indian law.

In 1976 the Indian Policy Review Commission highlighted the confused and disorganized state of Indian research materials. Perhaps as many as ten thousand primary sources such as federal, state, and territorial statutes, agreements, treaties, resolutions, court decisions, solicitor's opinions, Indian tribal statutes, constitutions and codes, Bureau of Indian Affairs regulations, leases, and contracts have governed the hundreds of separate Indian tribes, bands, and groups which were historically located in North America. Added to this are at least another ten thousand secondary sources including books and articles which

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contribute to our knowledge of specific Indian related legal or historical events. Indeed, the resources of Indian law seem endless.

The apparent Byzantine complexity of these thousands of legal documents can be reduced to a number of relatively simple and surprisingly consistent legal principles when viewed in the broader historical framework of the individual tribal experiences. The difficult research task for both the scholar and practitioner is bridging the gap between the specific historical experience of real world Indian tribes and the theoretical and constitutional base of Indian law. Thus, the researcher needs to have access to the highly specialized data often found only in rare manuscripts, obscure tribal publications, early maps, nineteenth century travel narratives, and regional economic studies. For example, to understand the results in the Arkansas Riverbed litigation the legal scholar needs to place the signing of Cherokee sand and gravel leases in relation to the equal footing doctrine and understand the nature of the Cherokee fee patent to land and the specific system for tribal allotment of Cherokee lands all within the context of the Dawes Act. A judge may need to place a Pawnee treaty in the varied contexts of tribal history, Marshall's opinion in *Worcester v. Georgia*, and the so-called Indian Commerce Clause.

The University of Tulsa has, in recent years, become a major center of scholarly resources for the systematic study of Indian law, history, and policy. The purpose of this essay is to examine the research materials in the University of Tulsa's Indian Law and History Collection, to review the development of the Collection, to highlight particularly outstanding and important books and manuscripts contained in it, and finally, as Benjamin Franklin explained in justifying his autobiography, to brag a little.

Among the thousands of pages of manuscripts in the Indian Law and History Collection at the University of Tulsa are the handwritten minutes of the negotiations at a treaty conference of Cherokees in 1795. In addition to traditional items of negotiation such as the surrender of land, the Cherokees and whites stipulated upon the price to be paid for the loss by the Cherokees of their run-away black slaves. However, the conference finally collapsed over the reparations to be paid to the Cherokees for their fellow tribesmen who had been captured and executed by the whites. As one chief eloquently noted: "I know not the price of a free man."

Documents like this rare manuscript give remarkable insight into

the thoughts of Native Americans. They also bear upon the treaty process and the relationship between whites and Indians in the formative years of the Republic. By reading the "give and take" of an actual treaty meeting one senses the sovereign nature of the Indian Republics themselves and begins to appreciate why the rules of modern treaty construction require resolution of ambiguities in favor of the interpretation of the native peoples.

Through the acquisition of materials such as this treaty manuscript, the University of Tulsa has been recognized as one of the three or four principal archives for the study of Indian law, history, and policy. With institutional roots stemming from the Presbyterian School for Indian Girls, the University of Tulsa has a historic commitment to Indian scholarship and a particularly close tie to American Indian law. Alice Robertson, one of the founders of the University, was the granddaughter of Samuel A. Worcester, the principal figure in the great Cherokee case of *Worcester v. Georgia*. Worcester's personal papers form an integral part of Tulsa's Indian Law Collection.

Indeed, the beginning of the Indian Law and History Collection is in Alice Robertson's gift of the Worcester-Robertson family letters, papers, books, and photographs. To these have been added a substantial number of published volumes collected by John Rogers, Richard Tenney, Robert Shaw, and John Ellenhausen. In 1975 a major and unexpected bequest of more than 10,000 items came to the University of Tulsa from the estate of John W. Shleppey. Since that time the University has systematically developed the collection to provide research opportunities to study American Indian law, history, and policy. A National Endowment for the Humanities Challenge Grant in 1977 provided resources to strengthen the Collection, as has special funding from the Pew Foundation, the Culpepper Foundation, Pauline Walter, and the Chapman-Barnard-McFarlin Interests. In 1978, a major collection of the papers and documents of the Indian Claims Commission was presented to the University. Most recently, in 1979 the National Endowment for the Humanities awarded a grant of \$150,000 to the University for the purpose of cataloging portions of the Collection.

The guiding principle of collection development has been to build a research archive which can be used by serious students, lawyers, historians, anthropologists, and others interested in the interrelationships between law, history, culture, and socio-economic change. While the Collection has a number of spectacular imprints, rare manuscripts, and

artifacts, the potential for balanced scholarly research has been the principal goal in selecting new materials. Therefore, imprints not available in original editions have been added in reprints and microprint. A microfilm edition of approximately 8,000 extremely rare items from the Yale Western American Collection, the Newberry Library, and the Bancroft Library has recently been purchased and indexed into the Tulsa Collection.

To supplement the strong historical base, a serious effort is made to acquire all contemporary Indian legal and historical imprints. Furthermore, a manuscript acquisitions program is aimed at building an archives of the papers of Indian leaders, public officials, and lawyers who have represented Indian peoples and have been involved in the development of Indian policy. The special Collection attempts to subscribe to all contemporary Indian periodicals including newspapers and journals. Older periodicals and their updates are generally available on microfilm, as are many other archival collections such as missionary materials of the Presbyterian Historical Society, the Indian Rights Association, and the Indian and Pioneer Papers of the Works Progress Administration.

Because of the complexity of the legal issues, the volume of relevant materials, and the scattered nature of Indian collections, location of and access to individual items is particularly difficult. In order to assist researchers, the University maintains a large number of bibliographic tools through which specific publications may be identified and resources beyond our Collection may be located. These include the reproductions of such card catalogues as those of the Newberry Library in Chicago, the Yale Western American Collection, the Bancroft Library, the Denver Public Library Western Collections, the Department of the Interior Library, and the New York Public Library Catalogue on Americana, as well as the standard bibliographies of Indian and frontier history.

The Collection is designed to be a working unit wherein students of Indian law, history, and policy may examine all aspects of the relationships between Indians and non-Indians. An obvious strength of the Collection is the concentration of primary documents and manuscripts of United States Indian policy, particularly statutory, court, and treaty actions as well as military operations. Missionary materials supplement these official policy documents particularly in areas where denominational Christianity served as a policy arm of United States

Indian programs. Perhaps the most unique and valuable resources of the Collection are the Indian documents authored by Native Americans, particularly tribal constitutions, speeches, protests to Congress, and court records. Included in the manuscript archives is a contemporary copy of the Seneca orator Red Jacket's famous oration.

A crucial dimension reflective of the values which motivated American Indian policy is supplied by the white man's interpretation of the Indian found in captivity narratives, dime store novels, popular songs, plays, wild west show posters, almanacs, and other nontraditional research materials. A goal of this Collection is not only to provide access to the primary legal documents of Indian policy, but to provide the researcher with the social, economic, and political documents which reflect the historical milieu in which Indian policy functioned within the broader context of the national experience. It is, therefore, important that Indian researchers have access to documents of settlement and commerce, of the railroad and the cattle industry, and to the narratives of the men and women whose lifestyles challenged, directly and indirectly, the ways of the Indian.

It is difficult to imagine a better foundation collection to fulfill these goals than the Worcester-Robertson Papers presented to the McFarlin Library of the University of Tulsa by Alice Robertson in 1930. Consisting of more than 2,000 calendared letters of a pioneer missionary family plus hundreds of published books, newspapers, and photographs, the Worcester-Robertson Papers document the development of American Indian policy as reflected in the life of four generations of a remarkable family. The patriarch, Samuel A. Worcester, the central figure in *Worcester v. Georgia*, is represented in the collection by diaries, letters, papers, and a particularly interesting wooden chest which he made while imprisoned in Georgia awaiting the Supreme Court's decision in the most widely quoted American Indian law case of all times.

John W. Shleppey, a pioneer advertising and real estate speculator, had already left his student days at the University of Tulsa and begun his remarkable collection by the time Alice Robertson presented her collection to the University. Forty-five years later in the fall of 1975 the John W. Shleppey Collection joined the Worcester-Robertson Collection at the University of Tulsa. Together, these Collections provide remarkable insight into the development of Indian law and policy. Shleppey devoted his life to building his massive library and sought

books and documents published by Indian people. He had thus gathered, what was without question, the finest and most complete set of published laws, constitutions, and regulations of American Indian tribes.

Furthermore, Shleppey had seen the significance of official government records and publications at a time when most other Indian collectors were seeking only rare overland narratives or beautifully printed white men's observations. Although not a writer himself, Shleppey had the instinct of a serious student and occasionally marked passages in obscure books which published scholars had overlooked. More importantly, his acquisitive, almost "pack-rat" instincts have provided a place to which scholars can turn to find many of those overlooked sources. Shleppey's collection contains a significant number of books, broadsides, and pamphlets which exist in a single or only two or three copies. Many manuscripts, such as handwritten constitution, Sequoyian syllabary, minute books, and bylaws of the traditional Kee-Too-Wah Cherokees are absolutely unique.

The research potential of the University of Tulsa Collection was significantly strengthened in the Fall of 1978 when the Indian Claims Commission expired and a major portion of the personal files, briefs, exhibits, and documents of members of the Commission were presented to the Indian Collections at the University of Tulsa. The papers of Commissioners Vance and Yarborough, as well as portions of Commissioner Blue's, were thus saved from destruction. The University literally rescued the papers on the last day of September, just ahead of the trash collectors. A complete set from another Commissioner was transferred to the Court of Claims. The Indian Claims Commission Papers now in the Collection total more than 500 linear feet of records and are arranged by docket numbers.

A unique chance to strengthen the historical materials in the Collection came as a result of the sale of the Eberstadt Collection to John Jenkins of Austin, Texas. The Eberstadts, a distinguished family of book dealers and collectors, had accumulated one of the finest collections of materials on westward expansion and the American Indian. The happy coincidence of the Eberstadt sale, occurring at about the time of the Shleppey bequest, enabled the University of Tulsa to purchase a major body of specialized materials which would not otherwise have been available. Particularly important are the Eberstadt's collection of original printings of American Indian treaties. A similar

purchase of almost 300,000 printed serial set and governmental items accumulated by the Lowdermilk Book Shop filled important gaps in federal materials.

The age of exploration and colonization is represented in the Collection by both original manuscript and printed materials. A number of Spanish colonial manuscripts are supplemented with early editions of LaCasas and other commentators. The first book in an Indian language printed in the Spanish areas destined to become a part of the United States is found in the Collection. Equally dramatic are the British records and materials from North America. The Collection boasts an Eliot Bible (the first Bible printed in the United States and the first book ever published in an Indian language) and what is thought to have been Cotton Mather's copy of a tract on the salvation of the Indian. Early narratives include a first edition of Cook's Voyages (along with the second and third) complete with plates and a first edition of Captain John Smith's *The General Historie of Virginia*.

An important transition document, signed in 1776, is the enlistment papers of a group of American Indians in the Continental Army. No other similar formal enlistment is known to exist. From this same period are early treaty prints and laws, including the first printings of the Northwest Ordinance and the Indian Trade and Intercourse Act. A law enacted by Georgia in 1789 for the suppression of Indians is one of four known copies of a particularly disturbing document. The Act specifically places Indians beyond the protection of the law and is "an open season for killing." The act provides as follows:

Be it enacted by the Representatives of the Freemen of the State of Georgia, in General Assembly met, and by the authority of the same, That from and immediately after the passing of this Act, the Creek Indians shall be considered as without the protection of this state, and it shall be lawful for the Government and people of the same, to put to death or capture the said Indians wheresoever they may be found within the limits of this state; except such tribes of the said Indians which have not or shall not hereafter commit hostilities against the people of this state, of which the commanding officer shall judge.

Indian policy in the formative years of the Republic is strongly represented in the Collection. A letter from Thomas Jefferson in 1803 is thought to be the first official Presidential advocacy for the treatment of the so-called Five Civilized Tribes as a unit. The letter then sets

forth boundaries for the Creek Nation and outlines future plans. The Indian side of the frustration of federal policy is seen in a poignant letter from the Choctaw David Folsom back to his people announcing the death of the great Choctaw Chief Pushmataha. "I take pen in hand to announce that Pushmataha is no more. He died last night." A series of letters from the Black Hawk Wars record, in a soldier's own words, a first-hand account of this sparsely documented struggle.

The touching and tragic story of the Trail of Tears and the removal of the Indians from their original homelands can almost be felt in the surviving documents. Printed orders of both General Wool and General Winfield Scott foretold of the thousands who would die on forced marches from the southland to the Indian Territory. Even more poignant are the pleas written by the Indians themselves holding to the hope that the United States as a nation of laws would honor the Supreme Court's decision in *Worcester v. Georgia*. Samples of the petitions of more than a million white Americans protesting this brutal policy are found in these archives. Statute books, educational records and the economic reports tell of the successful struggle to rebuild the native republics of these Indian tribes in a new territory destined to become Oklahoma.

An original parchment treaty of the Missouri and Oto, along with almost two hundred other original treaty prints, copies of the drafts and the final prints of legislation, illuminate Indian law and policy in the period following Jacksonian removal and before the American Civil War. A particularly important and insightful document is a long, unpublished letter of Governor George Sibley of Missouri to Henry Clay, written in 1840, outlining much of what became American Indian policy. The significance of an interest in American Indian affairs might be guessed from a set of Schoolcraft's *History* specially bound and presented to the King of Belgium. Numerous travel narratives of the era before the American Civil War show both the lust for knowledge and the greed for lands which motivated settlement and scientific inquiry. The captivity accounts and romantic *idylls* of this age help one understand the duality of the American conception of the Indian as demonic savage and free and noble spirit.

The Tulsa Collection records much of that life which ended in the 1860s. The gathering storms which drew the American Indian into the War Between the States left much of the Indian way changed beyond recognition. This was particularly true for the tribes of the Indian Ter-

ritory, many of whom signed treaties with the Confederacy after they were abandoned by union agents and because of their historic ties to the South. The collection includes confederate and union imprints for Indian tribes such as treaties and military orders. There are also copies of reports on Indian conflicts during the Civil War, particularly the "Sioux Uprisings."

Perhaps the greatest strength of the University of Tulsa Collection is found in the period following the American Civil War. While the Collection contains many dramatic and important books and documents before this time, the holdings of the post-Treaty, Dawes, and Assimilation eras are absolutely unique. This is particularly so with reference to the efforts of Indian tribes themselves to prevent the distribution of their lands and the destruction of their way of life. It dramatically documents the end of the free reigning life of the Plains Indians and of the self-ruling republics of the southern tribes. There are hundreds of individual items—broadsides, pamphlets, speeches, protest letters—which record the Indian's predictions of the effects of programs advocated by the so-called "Friends of the Indians." There is a particularly ironic letter of Senator Dawes in which he proposes to go west to explore Indian issues. There are equally disturbing documents which show the support of Indians for the very schemes which would forever end their dreams of an independent Indian state admitted to the Union on their own terms. A copy of the constitution of that proposed state of Sequoyah survives as a bitter reminder of what might have been.

For the legal historian and legal anthropologist the Tulsa Collection is particularly rich in primary documents which reveal the evolution of social control in areas such as the Trans-Mississippi frontier. Among the published traveler narratives and overland adventures are glimpses of the interaction of Indians and whites as well as portraits of law in newly settled white communities. The unpublished manuscript account of "Reminiscences of Some Incidents in the Career of an United States Dragoon Between the Years 1839 and 1844" is a particularly interesting example of what, in the Indian community, is described as clan revenge operating in the Texas-Oklahoma borderlands.

On our way returning through Texas, one evening we encamped near a settlement, just began to be formed, composed of a few families of squatters, whom we found in great consternation on account of a Murder that had been committed the day before, 2 of them had quarrelled, one had beaten out the brains of the other, with a fence rail, being beyond juris-

diction or at least the power of the law, no Judges, no Sherrifs, no constables, although all deplored it, none were willing, or perhaps fearful to interfere none having authority, so they had to as they called it, "Let it Slide". The Murderer remaining unmolested among them. They in telling us of it, for they were too much excited to keep it to themselves, remarked how sorry they were for both, Murderer and Victim, that Jim the culprit was a first rate fellow, having but one slight fault, that was "That he would KILL," the victim was a stranger to the rest, or I suppose, had he any relations among them, that, that relation would have considered it his duty to have Shot Jim, then Jims friends would have Shot him and so on to the extermination of all the Men of the weakest side. But Jim would Kill.

Another early account, Cuming's *Sketches of a Tour to the Western Country* (1810), provides written confirmation of a widely held oral tradition that Indians sentenced to execution for murder would be released to plant crops or put their affairs in order and return in time for their scheduled execution. Cuming notes that among the Choctaws:

If any one maims or mutilates another, in a drunken or private fray, he must forfeit his life. A few days (or if necessary) even a few months, are allowed the offender to go where he pleases and settle his affairs, at the expiration of which has rarely if ever happened, that he does not surrender himself at the place appointed, to submit himself to the rifle of the injured party, or one of his nearest relatives, who never fails to exact the full penalty, by shooting the criminal. This is a very common circumstance, and is an instance of national intrepidity and obedience to laws, not excelled in the purest times of the Roman republick.

The process by which traditional native systems of aboriginal law were supplanted by white influenced legal systems is well documented in the Collection. The legal materials of the Southeastern and Northeastern Woodland Indians, particularly the Five Civilized Tribes, are uniquely rich. For example, there is among the manuscripts a Journal of the Chickasaw Supreme Court, the Western Creek Council Book, showing judicial as well as legislative actions, and a series of Cherokee language constitutions and by-laws. The printed copies of Choctaw, Creek, Cherokee, Chickasaw, and Osage laws, statutes, constitutions, and bills may be the most complete in existence. There are copies of the rules of the Cherokee Senate, House, and the Cherokee Supreme

Court, plus a significant number of messages of the chiefs and reports of the tribal departments, such as those regulating education and health. Similar collections exist for other tribes and for tribal associations. The printed reports of inter-tribal gatherings, such as the Okmulgee Convention and the International Congress for the Indian Territory, are also available. The Collection attempts to continue tribal governmental history into the twentieth century. For example, documentation of contemporary Creek government is found in the papers of Dode McIntosh, long-time tribal chief.

Another fascinating phase of the legal relation between Indians and whites may be studied in the books, briefs, printed opinions, manuscripts, and testimony relating to the so-called "Outlaw Era" in Oklahoma and Indian Territory, particularly the operation of Hanging Judge Parker and the United States District Court for the Western District of Arkansas and the Indian Territory. In addition to many of the papers of Marshall Tillman's family are court papers in cases such as *United States v. Rogers* and *United States v. Belle Starr* for larceny in the Indian Country. These legal documents suggest that many of the Old West concepts of law and order are simply myth. Judge Parker, speaking before a Congressional committee, noted that most of the lawlessness of the Indian Territory was caused by white intruders and that the area was more law abiding than the surrounding states of Kansas, Texas, Missouri, or Arkansas.

Many of these historical items have contemporary legal significance, particularly in land and water claims cases. Furthermore, traditional lawyer-like documents, particularly early deeds, permits, and regulations, abound in the Indian Collection. These range from the Georgia laws of the 1820s (prohibiting Indians from being witnesses in court,) and the earliest Arkansas Session Laws, to a sizeable collection of briefs and memos in a variety of Sioux controversies. Tulsa University has attempted to acquire all textbooks, casebooks, treaties, and studies focusing on Indian law and land claims. A copy of the extremely rare fifty volumes of mimeographed materials gathered by Felix Cohen in the late 1930s has recently been added. Legal documents of early Indian oil controversies involving the Creek Indian Jackson Barnett tell the fascinating story of "the richest Indian in the world."

Several apparently unrelated collections, including the library of literary critic Edmund Wilson, may be of value to Indian researchers. Wilson's interest in Indian law reached its height in a New York power

and dam controversy which inspired his book *With Apology to the Iroquois*. There is a richness in the Indian photography collection which illuminates seemingly dull aspects of Indian life, particularly governmental and legal functions. Several paintings by Indian artists such as Fred Beaver, Cecil Dick, and Terry Saul have ethnographic significance for students of Indian law, especially Beaver's "Last Creek Execution" and "Creek Punishment." A library of records and tape recordings including the originals of the KVOO "Voice Library" include not only Indian cultural materials but interviews on settlement, Indian land, development of tribal oil, and tribal government. The relevancy of the map collections is obvious, as are a number of documentary films in the collection.

At the heart of Indian law research and at the heart of the University of Tulsa Indian Law and History Collection are government publications. It is here that the researcher finds the primary documents: treaties, ethnographic studies, bills, and agency reports. In addition to these, there are government manuscripts such as the letters and papers which the National Archives has microfilmed including the letters sent and received by Indian tribes and agents. Tulsa's Indian Documents Collection includes 4,000 to 5,000 selected and disbound Indian items from the Serial Set of government publications plus another almost complete serial set, including rare items on the Dodge Expedition and the Louisiana Purchase. Other valuable research materials such as Commissioner's Annual Reports, House and Senate Special Studies, the Bureau of American Ethnography, and Office of Indian Affairs reports are virtually complete. Finally, the government documents collection contains not only enacted final versions of Indian laws but a great many early nineteenth century preliminary, draft, and committee versions of crucial bills which were amended at later stages, many of which do not even exist at the Library of Congress.

While a listing of the rare government documents, beautiful books, and dramatic manuscripts in the University of Tulsa Collection is particularly impressive, serious students expect such resources to work for them. They must ask: "What can these materials tell us? What do they suggest about the nature of Indian law and history? About the price of a free man and the cost of tyranny?"

The advocate of Indian legal rights knows that it is only through the use of research materials such as these at the University of Tulsa that the contemporary rights of Native peoples can be preserved. For

Indian law and history are the opposite sides of the same coin. No contemporary lawyer can function in the best interest of the modern Indian without an understanding of the experiences of previous generations. It is the historical nature of Indian law which makes it unique and which makes Indian societal and economic protection matters of right and not of legislative caprice.