

RENNARD STRICKLAND: LEGAL HISTORIAN AND LEADER

*Charles Wilkinson**

Rennard and I were close friends and colleagues since the early 1970s and worked together on several projects but, closest to our hearts for both of us was when we, served on the Board of Authors and Editors for the 1982 edition of Felix S. Cohen's *Handbook of Federal Indian Law*. For seven years we and our seven other board members put everything we had into this law reform effort.

Felix Cohen's original *Handbook of Federal Indian Law*—a treatise of the field—was published in 1942. Cohen was a prodigious author in many areas in addition to Indian law. To this day, he is considered one of America's most eminent scholars in law, history, and philosophy.

At the time, Indian law was mostly dormant and Cohen brought the true nature of the field to light. In 1939, he was appointed by the Attorney General to write a treatise on Indian law to be published under the auspices of the Interior Department. He assembled some forty-seven staff members and contributors, worked around the clock, and published the 1942 edition. This was the first work of its kind in Indian law. He and his staff went back to the beginning of jurisprudence involving American Indians and exhaustively assessed the quality of all influences, including the foundational federal statutes and treaties and early opinions by Chief Justice John Marshall and others. He identified the key Indian law issues, tribal sovereignty, the trust obligation, and the limited jurisdiction of the states in Indian country, and integrated them into most aspects of Indian law. One of Cohen's many perspectives on Indian law was this:

Indian law is an extraordinarily rich and diverse field. The cases, both old and new, weave a fabric with threads drawn from constitutional law, international law, federal jurisdiction, conflict of laws, real property, contracts, corporations, torts, domestic relations, procedure, trust law, intergovernmental relations, sovereign immunity, and taxation. Typically, as those fields meld into Indian law, the blend produces a new variation that

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could not have been predicted by analysis of the applicable law from those other fields.¹

Given Cohen's stature, in our edition we correctly referred to him as "the Blackstone of federal Indian law."

By the 1950s, the termination policy was in full gear. In 1958, the Interior Department put together a hastily written, superficial, often inaccurate, and generally bastardized version of the Handbook. The constant theme was that federal power over tribes was essentially limitless.

But, by the 1960s, Indian tribes and their supporters were mobilizing and they realized that the progress they were proposing would be threatened by the bogus 1958 version. Congress, led by Senator Sam Ervin in the Indian Civil Rights Act of 1968, directed the Interior Department to produce and publish a new and more appropriate Handbook to reflect the values and quality of the original treatise.

Work on the revision stalled and the Interior Solicitor's office met with Dean Fred Hart and Philip ("Sam") Deloria of the University of New Mexico Law School; they agreed that a revised Cohen Handbook would be written by a team of Indian law professors. All of the invited professors, knowing a quality Handbook was desperately needed and that this was a historic opportunity, enthusiastically accepted. The nine board members were: Rennard Strickland (Editor-in-Chief), College of Law, University of Tulsa; Charles F. Wilkinson (Managing Editor), School of Law, University of Oregon; Reid Peyton Chambers, Law Center, Georgetown University; Richard B. Collins, School of Law, University of Colorado; Carole E. Goldberg-Ambrose, School of Law, University of California, Los Angeles; Robert N. Clinton, College of Law, University of Iowa; David H. Getches, School of Law, University of Colorado; Ralph W. Johnson, School of Law, University of Washington; and Monroe E. Price, School of Law, University of California, Los Angeles.

We board members all realized that Rennard was of special importance in this enterprise. Until very recently, Indian law wasn't being taught in any law schools. Eight of us had been teaching Indian law only a few years. Rennard was the only American Indian law professor in the country. (This was inevitable at the time, since around 1970 there were only a dozen Indian people in the whole country who were attorneys. Now there are more than 2,500 Indian attorneys and many American Indian law professors.) Rennard also had the strongest background in Indian law of all

1. FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW 1 (Rennard Strickland et al. eds., 1982).

of us. He had several years of law teaching and was intellectually deep in the history of federal Indian law. In addition, he had researched traditional and contemporary laws of individual tribes. His research was very creative. Rennard had strong personal qualities. He was a leader but also open and inclusive. He was a true gentleman. And he had a great sense of humor.

All of us on the board agreed that he should be the Editor-in-Chief.

We knew that we had a great amount of work to do in the next several years and that we would need to have many full board meetings. That turned out to be true. At the very beginning, we held four meetings in Albuquerque and Denver to imagine the Handbook as a whole and what our approach to it would be. There were many meetings on individual subjects and chapters. Toward the end of our work, when we had full edited chapters done, we met in Los Angeles for seven days and four days in Boulder. Along the way, there was an uncountable number of meetings on individual subjects and chapters, which often included outside scholars, lawyers, and tribal representatives.

While we were nine strong individuals, we needed to become a tight-knit group and that definitely happened. Everyone was important, and surely Rennard's unique contributions were welcomed. We wanted to avoid the perils of multi-author treatises. Draft chapters would be written by a member of the editorial board but it would then be circulated to several readers, usually including people not on the board. Then, in our last group meetings, all draft chapters would be reviewed and edited by the full board. The result was that every part of the volume would be the product of many minds. No chapter or section was the work of any single person. Rennard's belief in egalitarianism came through here.

Rennard looked to culture, history, and philosophy more than any of us. His conviction that law has a habitat, as evidenced in this profound quotation from his *Fire and the Spirits: Cherokee Law from Clan to Court*, was reflected in our discussions and in the Handbook: "For law is organic. Law is part of a time and a place, the product of a specific time and actual place." He once told me: "You have to understand. These people denied our humanity. *Our humanity*. And it continued well into the 20th century."

He had a way of reminding us of the sacred nature of our work. Just once, after an evening dinner, knowing that we all knew the passage, Rennard read out loud Felix Cohen's famous passage: "It is a pity that so many Americans today think of the Indian as a romantic or comic figure in American history without contemporary significance. In fact, the Indian plays much the same role in our society that the Jews played in Germany."

Like the miner's canary, the Indian marks the shifts from fresh air to poisonous gas in our political atmosphere."

Rennard knew that Lucy Kramer Cohen, Felix's widow (he had died young, at forty-six) was still alive and working fruitfully at Yale University Press. Several of us were in Washington when she was there and we had the pleasure of going out to lunch with her. She had worked full-time on the 1942 Handbook and was just delighted that the termination-era volume was going to be overturned. For us, meeting this talented woman made the original treatise even more vivid and was meaningful beyond the saying.

Rennard would often urge us to keep in mind that our treatise could not be just court cases, statutes, and citations. That was the way Cohen saw it and the way we saw it. Rennard read another passage from Felix Cohen to us near the end of our project and we put it right up front in the introduction to the 1982 Cohen Handbook:

What has made this work possible, in the final analysis, is a set of beliefs that form the intellectual equipment of a generation—a belief that our treatment of the Indian in the past is not something of which a democracy can be proud, a belief that the protection of minority rights and the substitution of reason and agreement for force and dictation represent a contribution to civilization, a belief that confusion and ignorance in fields of law are allies of despotism, a belief that it is the duty of the Government to aid oppressed groups in the understanding and appreciation of their legal rights, a belief that understanding of the law, in Indian fields as elsewhere, requires more than textual exegesis, requires appreciation of history and understanding of economic, political, social, and moral problems. These beliefs represent, I think, the American mind in our generation as it impinges upon one tiny segment of the many problems which modern democracy faces. It is fundamentally to these beliefs and to this mind that an author's acknowledgements, gratitude, and loyalty are due.²

We knew from the beginning that the original Handbook had a place in law and history that could never be recreated. We were comfortable with that. The broad objective of eliminating the dishonest and damaging 1958

2. *Introduction* to FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW, *supra* note 1, at vii, xi (quoting FELIX COHEN'S HANDBOOK OF FEDERAL INDIAN LAW xxxi, xxxii (Univ. of N.M. photo. reprint 1971) (1941)).

version and restoring Cohen's vision in a later era meant the world to us. Successor colleagues of ours, with many Native American scholars involved, have now done updates to the Handbook and they, too, have kept Cohen's vision alive and influential.

Today, Indian people have established active and effective governments to protect tribal sovereignty, land, and cultures. There is every indication that those governments will continue into the far future. If that happens, the fundamental reason will be the pride, wisdom, and tenacity of Indian people. It is also right to appreciate that another main part of that long and promising future will be due to the work and vision of Felix Cohen.