

Tulsa Law Review

Volume 29
Number 2 *Native American Symposia*

Winter 1993

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Recommended Citation

Judith V. Royster, *1993: The Year after*, 29 Tulsa L. J. 243 (2013).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol29/iss2/11>

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1993: THE YEAR AFTER

Judith V. Royster†

In Indian law, 1993 was a year of reflection: a year of looking back at the nation's legal treatment of Indian tribes, a year of looking clearly at the legal issues and concerns of Indian people today, a year of looking forward to the legal challenges for tribes in the 21st century.

In 1993, the United Nations focused world attention on the concerns of indigenous communities by declaring a "new partnership" between indigenous peoples, the nations in which they reside, and the international community. The UN's International Year for the World's Indigenous People, inaugurated in December 1992, was intended to foster public awareness of aboriginal people and their views, ensure the participation of indigenous peoples in projects and developments that affect them, and build the foundation for a continuing partnership in which the voices of indigenous peoples are not only heard, but heeded.

In this country, 1993 was the year after: the year after the Year of the Indian, the after the quincentenary of Columbus' landfall. In 1992, for virtually the first time, the nation was asked to approach the voyages of Columbus from another perspective. Columbus Day, long a celebration of European initiative and courage, now symbolized as

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well the cultural arrogance of celebrating the confiscation of a continent. In 1993, however, with the quincentenary over and the national spotlight no longer focused on Indian voices, the task is to maintain tribal viewpoints and concerns at the center of the national agenda.

The problem of the year after is well illustrated closer to home. Despite the awareness of the Indian perspectives engendered by the 1992 Year of the Indian, despite the international focus on the Year for the World's Indigenous People, in 1993 Oklahoma "celebrated" the centennial of the Cherokee Outlet land run. In 1893, the perpetual outlet to the west guaranteed to the Cherokee Nation was taken by the federal government and opened to settlement. In 1993, the State of Oklahoma embarked on a year-long commemoration of this last "great" land run. The lessons of the Year of the Indian, the cultural awareness of the international efforts on behalf of the world's indigenous peoples, were nowhere evident in 1993 in Oklahoma. Whatever growth was represented by the new perspectives of 1992 and 1993, the Cherokee Outlet celebration stands as a reminder of the monumental task still facing the Indian nations.

And so 1993 is a good year for an Indian law symposium. It is a year that reveals both how far we have come and how far we have not. It is a year that focuses our attention on the legal treatment of the Indian tribes in the last five hundred years, and a year that focuses our energies on the legal issues and concerns awaiting tribes today and in the future. As the 20th century draws to a close, as the quincentennial of Columbus' first transatlantic voyage and the centennial of the Cherokee Outlet land run bring Indian issues to the fore, the past and the future of Indian law draw together and call out for exploration.

The papers gathered for this symposium issue of the *Tulsa Law Journal* reflect the turning point of 1993 and the balance between the past and the future.

Rennard's Strickland's essay sets the stage. In *Yellow Bird's Song: The Message of America's First Native American Attorney*, he tells the story of Yellow Bird, a Cherokee born at the onset of removal, a lawyer, and a poet. In the short life of the man also known as John Rollin Ridge, Professor Strickland finds the tale of a man caught between two cultures, unsure of his role in either. From the dilemma of Yellow Bird's life, Professor Strickland draws lessons for Indian law and lawyers that are crucial in this year of 1993.

One of those lessons is starkly presented: "There is never a last treaty or a last demand." The significance of Professor Strickland's

statement is manifest in *The Response of the Cherokee Nation to the Cherokee Outlet Centennial Celebration: A Legal and Historical Analysis*. As noted earlier, Oklahoma set out in 1993 to celebrate the confiscation of the Cherokee Outlet a century before, dismissing Cherokee protests as a trivial and overly sensitive misunderstanding of the state's intentions. Cherokee Nation Justice Director Chadwick Smith and law student Faye Teague eloquently present the Cherokee view of the Outlet land run and the Nation's legal and historical rebuttal to the state's commemoration of the land run.

The loss of territory is more than the loss of property; it may signal as well the loss of sovereign authority. For decades, common wisdom has assumed that the tribes within Oklahoma have generally been divested of both their territories and much of their sovereign power: that, in short, there is little if any Indian country left in Oklahoma. In *Way Down Yonder in the Indian Nations, Rode My Pony Cross the Reservation*, Kirke Kickingbird analyzes the issue of territory for the 36 federally recognized tribes in this state. From the Royal Proclamation of 1763 to the 1993 Supreme Court decision in *Oklahoma Tax Comm'n v. Sac and Fox Nation*, Professor Kickingbird documents the history, the misconceptions, and the realities of Indian country in Oklahoma.

Where there is Indian country, there is tribal governmental authority. And one area in which Native American tribes are beginning to assert governmental authority is that of environmental regulation. In *The Effect of the EPA's Designation of Tribes as States on the Five Civilized Tribes in Oklahoma*, attorney John Williams discusses the special issues posed in eastern Oklahoma by the tribes-as-states provisions of the major federal environmental statutes. Mr. Williams discusses alternative approaches to environmental regulation for the Five Tribes, and describes the Cherokee Nation's enactment of the first comprehensive tribal environmental code.

Environmental regulation is not the only area affected by the complexity of Indian country issues in Oklahoma. In *Oklahoma Indian Titles*, attorneys Faith Orłowski and Robbie Emery Burke explore the land title issues raised in various areas of the State of Oklahoma: title derived in eastern Oklahoma from the lands of the Five Civilized Tribes, title derived in north central Oklahoma from the lands of the Osage, and title derived elsewhere in Oklahoma from lands first alienated pursuant to the effects of the General Allotment Act of 1887.

Finally, Erik Jensen calls for research and discussion of a more drastic approach to tribal territories and self-government. In *American Indian Tribes and Secession*, Professor Jensen urges advocates of tribal sovereignty to examine the value of secession theory in Indian law. The complete separatism of secession, he argues, may perhaps be the next logical development in the push toward tribal self-determination.

The papers assembled for this symposium, then, represent the gamut of Indian law concerns in 1993. They look back to the nation's treatment of Indian people, to the loss of culture and the loss of land. they examine legal issues of present significance to the tribes, exploring the concepts of Indian country and the sovereign prerogatives of tribal governments. And they look forward to potential new developments in Indian law as the 21st century beckons. In this year of reflection on Indian law, the *Tulsa Law Journal* is proud to present its symposium on Indian law.