

“Our Cause Will Ultimately Triumph”

Profiles in American Indian
Sovereignty

Edited by

Tim Alan Garrison



CAROLINA ACADEMIC PRESS

Durham, North Carolina

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Library of Congress Cataloging-in-Publication Data

Our cause will ultimately triumph : profiles in American Indian sovereignty /
edited by Tim Alan Garrison.

pages cm

Includes bibliographical references and index.

ISBN 978-1-59460-961-9 (alk. paper)

1. Indians of North America--Legal status, laws, etc. 2. Indians of North
America--Government relations. I. Garrison, Tim Alan, 1961- editor of com-
pilation.

KF8205.O97 2014

323.1197'073--dc23

2013044584

CAROLINA ACADEMIC PRESS
700 Kent Street
Durham, North Carolina 27701
Telephone (919) 489-7486
Fax (919) 493-5668
www.cap-press.com

Printed in the United States of America

To the memory of my mentors:

W. Woodrow Stewart, Joseph K. Telford, Gordon B. Dodds, and Michael D. Green

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Acknowledgments

The “Acknowledgments” is usually the last item an author or editor prepares for a book. I like this order of preparation, for it gives me a chance to reflect back on what has happened, personally and professionally, over the years since I developed the idea for a project. In the case of this book, and maybe it is because I am moving into the downhill slide of my life, my thoughts turn to loss. Many of my friends, colleagues, and kin have passed since I started thinking about this book many years ago. I think of Billy Wilson, one of the best athletes and one of the funniest guys I have ever known. I think of Trae Rittenberry, who roomed with me in college, became my close friend, and never complained about my eccentric nature. I miss both of these old friends. I remember Allen Broxton, whose sense of humor and caring advice made our end of the law firm an enjoyable place to work. I also think of Barney Burke and Craig Wollner, my colleagues at Portland State, who both reminded me that historians can crack jokes, go to ball games, and not get run out of the profession.

I am dedicating this book to the memory of four of the men who mentored me during several transitional points in my life. They all left an indelible mark on my character. W. Woodrow “Woody” Stewart gave me my first permanent job, and employment at his firm made working second nature for me. I will always be thankful for his high expectations. Joe K. Telford, or “Mr. Telford,” as I referred to him with respect, taught me that a lawyer ought to be both kind and a gentleman. He was a towering figure in my hometown of Gainesville, Georgia. He always responded to the question “How are you doing, Mr. Telford?” with the words, “Fine. And I hope you are.” Hearing those words always made the day seem a little better. Gordon B. Dodds, who hired me to teach at Portland State, tried his best to make me believe that a southerner could feel at home in Oregon. I miss his friendship and advice, and I miss the driest wit west of the Rosy Buttes. Michael D. Green was, along with Theda Perdue, my doctoral advisor and mentor in graduate school. For a long time I thought he

was an intimidating character who just wanted me out of his office. Over the years I learned about the size of his heart. He suffered quite a lot in his last few months and passed just as I was finishing up the editing. He never left my mind as I worked on and finally completed this book, and one of the last things he wrote is included herein.

The losses I am reflecting on also include some of the subjects in our book. Elouise Cobell and Marge Anderson passed away as I was editing. The remarkable Lorena Williams moved on to the next plane at the age of 104, just days before I wrote these words. Even though I never had a chance to talk to these women personally, I felt like I knew them and would have liked them after studying their biographies.

I want to thank my authors for telling us about these wonderful heroes. While I never could figure out a way to integrate the word “hero” into the title, I do feel that these are heroic characters. My authors make a compelling case for why we ought to hold these Native lawyers, judges, and activists in that regard. I also want to add a note of thanks to Judge Petoskey, Professor Austin, and Ada Deer, who all took the time to work with their biographers and helped us try to make sure we were accurate in our work.

Dean Sue Beatty and the College of Liberal Arts at Portland State University provided funding to help me complete this work, and I am truly grateful that my college continues to support research in these evermore difficult times in higher education. I also offer a note of appreciation to our librarians at Portland State. Joan Petit has been particularly helpful in my work. I also want to express my thanks to my colleagues in the history department. They have been unfailingly kind to me over the years, and my conversations with them make me a more intelligent and useful human being. My students offered advice over the years from who should be in the book to what should be on the cover, and they ensure that I stay charged up for the next day. I want to thank Jeff Brown and “Bee” Thanh Tran for answering my questions, working with me on the grant funding, and helping me deal with all the day to day issues that traumatize a professor.

I have developed a friendship with Cathy Monholland over the last few years. A devoted citizen of the Cherokee Nation and an experienced editor, Cathy worked through the manuscript and offered countless valuable suggestions. I was reassured to have an editor who not only understood the rules of writing but who also had a firm grasp of, and had actually been teaching about, some of the history described herein.

This completes my second project with the folks at Carolina Academic Press, and they have been a pure pleasure to work with over the years. They have always been supportive of the book, helpful with their advice, and patient with my questions and ideas. I first proposed this book, and my book on prelaw

scholarship, to Keith Sipe years ago (and thanks to Paul Finkelman for introducing me to Keith). I truly appreciate the faith Keith had in my ideas, and I hope he is satisfied with what we have produced. Emily Utt, Zoë Oakes, Linda Lacy, Katie Herzog, Charlsey Rutan, Christina Clark, Joellen Craft, Beth Hall, and Ryland Bowman have all helped shepherd me to the final editing stages in their own respective capacities at the press. Tim Colton provided legal and artistic advice over the course of both books. Chris Harrow provided an artful and reader friendly design and was patient even as I requested changes at the last minute. Jae Aoh understood my concerns for our cover art and created a design that exemplified the spirit of the subject.

I also want to thank Laura Dewey for her thorough work on the index, and Kaitlin Fuja, Ilka Hartmann, and Shawna Lee for providing me with photographs of our subjects.

I must give “a shout out,” as the kids say, to Dan Johnson, Walt Fosque, Bill Lang, Toeutu Faaleava, David Johnson, Derek Tretheway, Larry Wallack, and the rest of the Lang Gang. They helped me understand that bad golf, lame jokes, and good bacon are a powerful antidote to the black moods prompted by a recession, concomitant budget cuts, and overwork.

Finally, I want to, as always, thank my family. My mom and dad, Jeannine and Talmadge Garrison, continue to support my work, even though I do not see them as much as I would like. Jim and Dorothy Lamb provide a strong foundation for our family, and that grounding makes it easier for me to work on projects such as this one.

My wife, Cindy, and I have an agreement. She does not read my books and articles, and I do not read the newspaper she edits. This seems to work, for we continue to have a wonderful, loving relationship after thirty-something years. Without Cindy, I would not have a reason to work as hard on the pages she will not read. She does, by the way, study the acknowledgments.

I dedicated my first book to Cindy, and my son, Sam. At that time, Sam was a little boy clambering all over my office while I tried to work. I had no idea what the future would bring for him and for our relationship. Now, he is a senior in high school and will be setting off for college in a few months. He should know that I am very proud of the man he has become, and I am going to miss his regular company. I see several of the characteristics in him that I found in these heroes of American Indian sovereignty, and I challenge him to become a man who dedicates at least a portion of his life and energy to a cause higher than his own well-being.

Wilsonville, Oregon
February 2014

Introduction

During the formative years of the United States, a large portion of the Cherokee Nation overlapped territory claimed by the State of Georgia. In the early 1820s Georgia's political leaders began pressing the U.S. federal government to remove the Cherokees from the state. The Cherokees asserted, in response, that they constituted an independent, sovereign nation that deserved to live free from Georgia's harassment and refused to leave. In 1827 the Georgia legislature passed a law extending the state's jurisdiction over the Cherokees; soon thereafter, the state declared the Cherokee Nation's laws, and its government, null and void. When the Cherokees continued to resist the pressures to remove, Georgia ordered surveyors into the Cherokee Nation so that the state could seize the Cherokees' land and distribute it to white Georgians in a lottery.

The Cherokees refused to be intimidated. In 1831 their government, led by their principal chief, John Ross, brought an original action before the United States Supreme Court to enjoin Georgia from trespassing on the Cherokees' territory and on their rights as a sovereign nation. The Court, however, refused to hear the case. The Cherokees brought the case under Article III of the U.S. Constitution, which provided the Court with jurisdiction to decide cases between a state and a "foreign state." The Court determined that the Cherokee Nation was not a foreign state as contemplated by Article III and refused to issue a ruling restraining Georgia's actions. Upon hearing of this defeat, Chief Ross told his people that the decision was a temporary setback. "Our cause will ultimately triumph," he predicted. In fact, months later the Cherokees achieved a monumental legal victory affirming Ross's prediction. In *Worcester v. Georgia*, the Supreme Court announced that the Cherokees represented a sovereign nation and that the United States had recognized that sovereignty in a number of treaties. The Court then issued an order enjoining Georgia from future trespasses.

While the Court's decision did not prevent the Cherokees from being removed from their homeland, John Ross's declaration of national perseverance

in 1831, and his work in pushing the U.S. Supreme Court to acknowledge the sovereignty of the Indian nations, did leave a lasting mark on Cherokee history, on American Indian law, and on our understanding of indigenous political autonomy. The *Worcester* case, in fact, became the foundation for the principle that the Indian nations possessed the power to control their destinies. Today, the United States recognizes the Cherokees, and well over five hundred other Indian polities, as sovereign nations responsible for their own futures.

This is a story I have covered many times over the course of my career; and, while the general story of the Trail of Tears is well known to many readers, over the years I have learned that I have perhaps overestimated American familiarity with the efforts of indigenous peoples to assert and defend their autonomy. I therefore do not mind repeating the Cherokee story for readers who, I hope, will find this book an informative introduction to the history of the indigenous struggle for sovereignty. Indeed, an external attack on an indigenous people and their refusal to accept a politically marginalized status is a common story in American history. The Cherokee refusal to submit is demonstrative of the efforts of dozens of American Indian nations, and thousands of their people, to assert and defend their sovereign status. According to Native activists, that status is inherent, confirmed by hundreds of treaties between the United States and the Indian polities, and acknowledged by the U.S. government in its original and recent policies towards its indigenous peoples. Over and over again, the Indian nations have had to fight—with guns, lawyers, and lobbyists—to get the United States to remember this principle and recognize their distinct status.

Indigenous lawyers, leaders, politicians, and common folk have had to sacrifice their time, their money, and their personal interests to ensure that their nations could exercise their sovereign powers. This book is an effort to provide some recognition for just a few of these heroes of American Indian sovereignty. John Ross's prediction that "our cause will ultimately triumph," is, I think, representative of the determination that these heroes possessed when they took on the fight. His comment indicated his personal optimism that his people had the ability and the character to transform their society for the better. This characteristic is common to the leaders described in this book. They all believed that with great effort, and some measure of fairness on the part of the United States, their people would eventually win out and be able to construct a better future for *themselves*.

This project had its origins in two books, one I read in my childhood and one I read a few years ago when I was in graduate school. While this sounds melodramatic, the first book, John F. Kennedy's *Profiles in Courage*, inspired in me an appreciation for how committed individuals in government could

change the course of history. From the time I read it as a boy until today, I continue to read (and now write) about the men and women who were courageous enough to join the fray and try to make things better for their people.

I read the other book, Peter Irons's *The Courage of their Convictions*, several years ago as I was beginning to think about how to teach courses on the constitutional history of the United States. Rather than focusing on famous "men of action," as Kennedy had done in *Profiles*, Irons wrote the stories of the humble and ordinary people who had carried their fights to the U.S. Supreme Court and achieved victories that had elevated or protected the civil rights and civil liberties of Americans. As a student of American Indian legal history who had been aiming his scholarship at law professors and legal historians, I determined that I wanted to follow the mold of Kennedy and Irons and produce a book that told lay readers about some of the individuals who had changed the course of their nation, and, in some cases, of all indigenous people, by enhancing, defining, or fighting for the sovereignty of their nation.

I quickly realized that I did not want to produce the entire text myself; I wanted the folks who were most familiar with the subject to write the kind of stories I had in mind. Hence, most of the essays in this collection are written by either members of the subject's nation or by historians or legal scholars who have spent a considerable amount of time examining the history of a particular people. In choosing authors, I also took the opportunity to pay forward a debt that I owed to those historians who first gave me a chance to publish. I asked some emerging scholars, including one of my own students, to produce an essay on an indigenous leader they admired.

In deciding whom to include or exclude (a terribly difficult chore), I tried to offer stories of champions of sovereignty from a variety of Native cultures and across the course of American history. While I included a few characters who were very well known to those interested in American Indian history, my perception was that even men such as John Ross or women such as Ada Deer were likely unfamiliar to the general public. I wanted to expose their stories to our readers. I also wanted readers to learn about men and women who are heroes among their people but not particularly well known beyond their communities.

The stories are arranged, as nearly as they can be, in chronological order. In our first essay, Michael D. Green explores how Alexander McGillivray, a visionary leader with roots in the Creek and British civilizations, played off the imperial powers of Europe to protect the sovereignty of his people. Seeing the United States as an emerging threat to Creek autonomy in the late 1780s, he set out on an effort to centralize the various Muskogee polities into one formidable Creek Nation. Unfortunately for Creek nationalists, McGillivray's untimely death foiled those dreams at a time when they could have used his genius.

In the late 1820s, Andrew Jackson and the United States government offered John Ross, principal chief of the Cherokee Nation, essentially three choices: relocate his people from their homeland to an assigned territory west of the Mississippi River, take his nation to war to avoid this expulsion, or allow his nation to surrender its sovereignty and fall under the jurisdiction of the racist Georgia government. Ross adopted a strategy that John Marshall, chief justice of the U.S. Supreme Court, often embraced: when faced with seemingly clear and unsatisfactory alternatives, he forged a clever new solution. Rather than embracing removal, war, or subjugation, Ross determined to fight for the Cherokees' sovereignty before the Supreme Court. My piece in this collection describes Ross's victory before the Court, explains why this achievement did not prevent the removal of the Cherokees, and shows how, in light of this disappointment, the chief remained undaunted in his efforts to protect the sovereignty of his nation.

When Ross pushed Marshall to the point of declaring that the Cherokees constituted a sovereign nation, the chief justice needed an intellectual and legal foundation to make that pronouncement. Nancy Morgan recounts how Jeremiah Evarts, a lawyer and a leading force in the American Board of Commissioners for Foreign Missions, became the ideological theorist behind the Cherokee removal opposition. Morgan reveals that Marshall adopted Evarts's arguments in a strikingly consistent way. She suggests that Ross, and Indian nations in general, would not have been able to force the United States to recognize the sovereignty of their nations if it had not been for Evarts's moral and intellectual firepower. Evarts, I should add, is the only subject in the book who is not of Native ancestry. He is a reminder that American Indians who fought for the principle of tribal sovereignty sometimes had non-Native allies at their side.

The fact that the history of the Cherokee Nation looms so large in the first quarter of this book is demonstrative of the impact that its leaders had on the American Indian sovereignty movement of the nineteenth century. Andrew Denson provides readers with an insightful portrait of William Penn Adair, another Cherokee, who, as a skilled politician, helped form a governing coalition among factions that had bitterly opposed one another in the past. As an energetic and astute lobbyist, Adair successfully opposed those in the United States government who, at the behest of their railroad and boomer masters, threatened to overawe the tribal nations in the Indian Territory. Adair's death was a terrible loss for the Cherokees; after his passing the United States incorporated the Cherokees into the new state of Oklahoma.

While the American Indian tribal sovereignty movement remained alive in spirit for the next few decades, maintained by Native intellectuals and activists, only in the latter half of the twentieth century did the United States once again

recognize the indigenous peoples as full-fledged sovereign nations. This reemergence of full sovereignty was a product of the work of many famous Native leaders and militants. It was also a consequence of the work of folks who did not really seek to become part of what evolved into a national, and later, worldwide, indigenous sovereignty movement. Paul and Lorena Williams are examples of individuals who had heroism thrust upon them. Bethany R. Berger explains how the Williams's disagreement over a simple consumer debt, a minor skirmish between a family and the local owner of a general store, evolved into a momentous fight over the rights of Indian nations and their courts. The Williamses pushed their claim all the way to the U.S. Supreme Court, which issued a decision that reinvigorated the principle, acknowledged in *Worcester v. Georgia*, that Indian tribes were, in fact, sovereign nations. U.S. Supreme Court Justice Hugo Black emerges as an interesting character in the story, for he wrote the Court's unanimous opinion at a time when the trend in American law, and U.S. Indian policy, was away from "separate but equal" and toward full assimilation of all peoples into the majority society. Black appreciated that there was a clear distinction between equal rights and opportunity for African Americans and tribal sovereignty for American Indians, and the Williams's fight was thus one that reinvigorated the idea that the indigenous nations within the United States retained the power to maintain their own separate legal and political institutions.

Some Native leaders used both their political acumen and their legal skills to fend off attacks on their people's sovereignty. Laurie Arnold and Paul G. Wapato examine Paschal Sherman's diligent efforts to defeat the attempt of the United States to terminate the Colville Confederated Tribes. Sherman, an attorney for the U.S. Veterans Administration, spent much of his off-time working with the National Congress of American Indians (for which he served as treasurer) to protect and lobby for the interests of the Colville tribes and of all Native people. As Arnold and Wapato demonstrate, advancing the interests of indigenous peoples at home and in Washington, D.C., requires a combination of patience, willpower, and political aptitude.

While our book includes stories about leaders who, like Sherman, garnered respect among the American political elite, it also acknowledges that individuals who were never really respected by those in the halls of power helped promote the principle of indigenous autonomy. Unfortunately, many Native activists have had to die or go to jail to make a statement about their people's rights. David Sohappay was only exercising what he believed was his inherent right to fish in the Columbia River as his ancestors had done for generations when he was arrested in the "Salmonscam" sting operation. In recounting Sohappay's struggle, Andrew H. Fisher reminds us that defining and promoting

sovereign rights has sometimes resulted in complicated conflicts among indigenous neighbors. Fisher reveals that the Columbia River Peoples faced not only state resistance when they exercised their fishing rights; they also came into conflict with the established tribal governments of the region.

Ada Deer is a monumental figure in the recent history of indigenous leadership; the fact that she is a woman makes her life story, and her work in restoring the sovereignty of the Menominee Nation, that much more intriguing. A legend who was so influential that she rose to the position of Assistant Secretary of the Department of the Interior for Indian Affairs, Deer has had a distinguished career in tribal leadership, federal administration, social work, and academia. Roberta Ulrich's extensive conversations with Deer provide the core of the biography of this fascinating and charismatic leader.

In a bit of a departure from our other narrative essays, we have included an interview that Luke Eric Lassiter, a prominent anthropologist, conducted with Kiowa chief Billy Evans Horse. Lassiter's interview with Chief Horse reveals how indigenous ideas and values can provide a foundation for the successful management of a modern tribal nation. Horse calls on young Indians to consider how they might take the best of knowledge from the indigenous and Western worlds to construct a future where peoples of all backgrounds live and prosper in harmony; young people can do that, he says, and still retain their distinct tribal identity.

The Dann Sisters, as Mary and Carrie are often called, have acquired a worldwide reputation as activists for indigenous rights. In her essay, Cynthia L. Landrum describes their efforts to protect their Western Shoshone homeland from territorial encroachment, expropriation, and environmental degradation. They rightly feared that Shoshone sacred sites and territorial rights were threatened by mineral and military interests; rather than standing by and letting it happen, they spent their energy, time, resources, and, in effect, their lives, fighting to defend those places and principles.

Raymond D. Austin served as a founding member of the Navajo Supreme Court. As he worked, he did not simply rule on cases and write legal opinions. During his time on the Court, Austin worked diligently to integrate the customary law of the Diné people into his nation's political and judicial institutions and then wrote a significant book that provides a path for other indigenous nations to do the same. Rebecca L. Hartley predicts in her survey of Austin's life and work that the former Navajo justice will one day be considered one of the major influences in the movement to restore and reinvigorate indigenous law-ways.

Sheryl R. Lightfoot tells the life story of Marge Anderson, the chief executive officer of the Mille Lacs Band of Ojibwe, who guided the Band's efforts to secure its hunting, fishing, and gathering rights through the federal court sys-

tem. Lightfoot's essay reveals that Anderson's quiet and tenacious personal style was exactly the kind of leadership that the Mille Lacs Band needed in its quest to reaffirm its treaty rights. What was particularly impressive about Anderson is how she tended to deflect credit to others. In her own story she offered high praise to her predecessor in office, Art Gahbow, a man who probably deserves his own essay in this book. Sadly, Ms. Anderson passed away as we were completing the book.

James E. Billie, the outspoken leader of the Florida Seminoles, carried a distinctly different kind of personality into the fight for sovereignty. He never shied away from a controversy and was not afraid to use publicity to advance the interests of his people; he was a leader who, to borrow a trite phrase, often "thought outside the box." One might surmise that his former occupations of soldier and alligator wrestler prepared him well for the challenges of tribal politics, economic development, and dealing with the Florida and federal governments. Andrew K. Frank's complex portrait of Billie demonstrates that there is neither a uniform personality nor a standard set of strategies for tribal leaders who want to transform the lives and destinies of their people.

Adrea Korthase, who has considerable experience researching and working with Native judicial systems, conducted a series of thoughtful conversations with Judge Michael Petoskey (Grand Traverse Band of Ottawa and Chippewa Indians), who has served for years as chief judge of the Pokagon Band of Potawatomi and other Anishinaabe tribal courts in Michigan. Korthase captures Petoskey's humility, his sense of commitment to collaboration and building bridges, and his desire to elevate the status and reputation of tribal courts. Korthase's conversations with Judge Petoskey also reveal how important tribal judges are in the efforts to defend and enhance the autonomy of a tribal nation. The conscientious work of tribal judges and their staffs serve as real-world demonstrations to the non-Indian people that encounter them that tribal governments are, indeed, capable and functioning sovereign polities.

Bethany R. Berger closes our book with a portrait of Elouise Cobell, the Blackfoot woman who, almost single-handedly, forced the U.S. government to account for its misappropriation of American Indian trust funds. An astute business leader, it took someone of Cobell's intelligence and experience to recognize how the United States had ripped off Native people, and it took someone of her courage and tenacity to force the federal government to compensate them for its malfeasance. Cobell passed away as we were all working on this book, and we regret that she will not be here, at least on this realm, to read Berger's kind tribute.

Finally, a note about the way this book looks and reads: in an effort to make the work as accessible to readers as we could, I asked our authors to omit foot-

notes, to write in a style that would be pleasing to all levels of readers, and to tell the stories in a lively way that revealed the heroic and the human in their subject. I think our authors have achieved the goals I set out for the book, and I hope you enjoy reading their stories. These personal histories remind us once again that any man or woman, from even the most humble of origins, can make their community, their *nation*, and their world a better place.