

Frank Pommersheim, *Broken Landscape: Indians, Indian Tribes, and the Constitution*. New York: Oxford University Press, 2009. Pp. 424, \$35.00 (ISBN 978-0-19-537306-6).
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Written as a companion to his 1995 *Braid of Feathers*, Frank Pommersheim's *Broken Landscape: Indians, Indian Tribes, and the Constitution* charts the evolution of Native American law and tribal sovereignty in the United States from the colonial to the modern eras. Thoughtfully organized and well written, it gives a comprehensive introduction to the shaky constitutional grounds of contemporary Indian law federalism. The book's recurring themes are the subjectivity of history generally and the exclusion of Native American perspectives from American history specifically. Pommersheim's central thesis is that modern Supreme Court jurisprudence endorses an extra-Constitutional regime of unbridled Court and Congressional power over Native American affairs. The book stands out in the field of general surveys on Native American law in its analysis of the balkanization of Indian country jurisdiction—among tribes, states and the federal government—to which the title alludes.

Broken Landscape is divided into three parts. The first section on early encounters gives an overview of the wide variety of diplomatic and contractual relationships that existed between Native Americans and European settlers before colonists (and then states) gained ascendancy. Pommersheim argues that, from a legal standpoint, these early encounters resembled those between sovereign nations; a reality at odds with the era's prevailing doctrine of discovery. He finds the transmission of the sovereignty model from the 1781 Articles of Confederation to the Indian Commerce Clause (ICC) of the Constitution. Pommersheim argues that the ICC, with its description of commerce *with* Native Americans, has been ignored and little understood by judges and scholars, paving way for the modern, broken landscape in which Congress and the Court have exercised sweeping plenary power over Native American tribes.

Pommersheim traces Court support for Congress's plenary power over Native American affairs from *Kagama v. United States*, in which a federal statute governing crimes committed by Native Americans in Indian country was upheld on the grounds that the United States owed a trust duty to the Native Americans, to the case of *Lone Wolf v. Hitchcock*. Pommersheim devotes a full chapter to the 1903 *Lone Wolf* case, in which the Court backed the Dawes Severalty Act. The Dawes Act allowed the federal government to abrogate treaties, carving reservations into individual allotments for tribal members and making the "surplus" land available for United States sale to non-Indians. Pommersheim's emphasis on the case is well placed, given the Act's result: an influx of non-Indian businesses and residents on tribal lands. Pommersheim shows how this state of affairs has led to the gradual erosion of tribal sovereignty, both to adjudicate conflicts and prosecute crimes committed on reservations.

The book's second section, on individual Native Americans and the Constitution, details the extension of federal and state citizenship to Native Americans as well as religion clauses cases. Pommersheim is at his least persuasive discussing the Court's record on Native religious practices and the establishment clause. He argues that—out of respect for the fact that Native Americans were here first—the Court should not block the accommodation of Native religious practices by government entities. Although from a moral standpoint this assertion has merit, Pommersheim does not seriously engage arguments that such accommodations would amount to establishment. It is also in this section that, at times, Pommersheim makes stylistic missteps with turns of phrases such as “manifest infamy” and “deadly sword of exploitation”—flourishes that risk fatiguing readers.

In the book's third section on the modern encounter, Pommersheim moves briskly through the history and substance of federal statutes governing Indian gaming, the removal of Native American children, tribal jurisdiction over non-members, and the establishment of federal civil rights in Indian country. In the book's penultimate chapter, on international law, Pommersheim makes a comparative study of recent international cases involving indigenous peoples, contrasting the “pinched and frustrated” tone of United States Supreme Court decisions with the “tone of openness and reconciliation” struck by courts in landmark cases in Canada, New Zealand, and Australia. Given observations earlier in the book that Congress lacks interest in tidying up federal Indian law, it comes as a surprise in the final chapter that Pommersheim proposes a Constitutional amendment that would require extensive positive action on the part of Congress to effectuate. Also, as he is quick to concede, there is little support for this approach among the tribes, which generally would prefer a treaty-based regime. Still, it is a credit to Pommersheim that he gives enough information about the other proposed solutions that readers can arrive at their own informed opinions.

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Nell Irvin Painter, *The History of White People*, New York: W.W. Norton, 2010. Pp. 496, \$27.95 (ISBN 978-0393049343)
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Much writing has attended to how people made (some) Africans into a race collectively dubbed “black.” The distinguished American historian Nell Irvin Painter ambitiously assays to trace how people made (some) Europeans and

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