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Law and Identity: Lawyers, Native Americans and Legal Practice by Linda Medcalf

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BOOK REVIEW:

LAW AND IDENTITY: Lawyers, Native Americans and Legal Practice. By Linda Medcalf. Beverly Hills, California: Sage Publications, 1978.

The attorneys who represent Native American clients have been lauded for their achievements in increasing the material wealth and power of their clients. In Law and Identity, Dr. Medcalf assails the view that these attorneys are "liberators" of Native Americans. Indeed, she questions whether instead they should be considered "oppressors".

Medcalf contends that the strategies used by many attorneys¹ to improve the financial and power bases of their Native American clients have impaired a competing goal. They have deprived Native Americans of any meaningful choice between traditional cultural life in the tribe and assimilation into the dominant American culture. Dr. Medcalf argues that the means used to benefit Native Americans have involved imposing alien cultural and political structures instead of helping to preserve and develop separate tribal traditions. In this way, according to Dr. Medcalf, the attorneys unwittingly contributed to the deterioration of Native American culture.

¹ Medcalf studied 25 attorneys in the Seattle, Washington area who represented Native American clients.

Dr. Medcalf's book begins with an examination of the attitudes shared by the attorneys involved in various Native American suits in the state of Washington. While acknowledging their good intentions, as well as the material benefits which they have helped Native Americans to acquire, the author demonstrates that the attorneys' cultural backgrounds, legal training, and socialization affected their perceptions of the problems which Native Americans faced. By extension, the means chosen by which these problems were to be overcome were similarly colored.

As the attorneys saw it, the greatest problems facing Native Americans were poverty and lack of power. The solution seemed obvious. Native Americans must move toward greater wealth and a stronger political base. The steps by which these goals would be realized also seemed clear.

First, to help them regain the power necessary for self-determination and the resources requisite for self-support, the attorneys sought to gain tribal sovereignty for their clients. Once this was achieved, presumably the Native Americans would have gained control over their land and resources as well as tribal jurisdiction, enabling them to develop economically.

The second step would be to develop the tribe's ability to protect its sovereignty against the outside world. This would entail establishing self-governing administrative procedures as well as procedures for the management of tribal wealth and resources. As a result of these efforts, the attorneys often introduced organizational mechanisms which were foreign to Native American traditions. These organizations tended to reflect the preferences of the dominant American culture. For example, natives of the Alaskan North slope were seen to have relinquished, in large part, their traditional village councils in exchange for a corporate-style governmental structure.

In the view of many attorneys, the removal of obstacles to Native American autonomy might also have meant an accretion

of power which could in turn lead to increased susceptibility to power abuse. As the attorneys saw it, one way to avoid potential abuse of power, (such as a tribe's imposition of religious restrictions on its members; or denial of due process to those who violated its laws), would be to extend the Bill of Rights and the due process guarantees of the United States Constitution to individual Native Americans.² Since it seemed unlikely that tribes would accept these measures, given that such a step was perceived as a weakening of tribal autonomy, (pp. 86-87), Congress enacted a modified version of the Bill of Rights known as the Native Bill of Rights Act of 1968.³

In retrospect, it seems that the representing attorneys were largely successful in meeting their original goals. Their Native American clients have become more powerful and enriched economically. Nevertheless, Dr. Medcalf argues that the attorneys failed with regard to the goal of ensuring a meaningful choice between preserving Native American cultural identity and assimilating into the dominant American culture.

In response to Dr. Medcalf's critique, one may question whether there were any realistic alternatives to the paths chosen by the attorneys involved in these suits. As Dr. Medcalf herself admits, "Without survival, the overarching goal of a 'meaningful choice' would of course be irrelevant" (p. 62). Given the serious plight of Native Americans it is difficult to imagine other options which would have ensured both survival and preservation of cultural identity.

The chief criticism of this book, however, should focus upon the methodology used by the author (pp. 136-138). Her research consisted of two major sources: (1) Interviews with 25 attorneys in the Seattle area whose clients were Native

² Before the passage of the Native Bill of Rights Act of 1968, constitutional protections did not apply to Native Americans with respect to their tribal governments.

³ 25 U.S.C. § 1301-1303.

Americans; and (2) analysis of legal literature and documentation surrounding the problem of Native American rights. There is no discussion of such factors as the attorneys' race or socio-economic background, for example, or whether any of the attorneys were Native Americans. In addition, one may question whether a group of 25 attorneys who represent Native Americans in a single state constitutes a fair sample of the many Native American legal claims which are planned or pending across the country. In light of the fact that all the attorneys interviewed were from the Seattle area, and were actually exposed to only a small cross-section of Native American cultural traditions, broad statements about Native American assimilation must be taken with a grain of salt.

The above limitations notwithstanding, Dr. Medcalf presents an interesting and provocative hypothesis. Attorneys, like other individuals in society, are products of their culture and, consciously or unconsciously, hold certain values which affect the way they relate to people of other cultures. Conscious awareness of cultural bias is often difficult to attain. To be sure, coming to grips with this kind of deep-rooted bias can only begin with the realization that there is something to be biased about. Cross-cultural understanding thus seems to offer the key to a difficult, but not intractable problem.

In sum, this book would be valuable reading not only for attorneys who represent Native Americans, but also for any attorney who represents clients of a different culture. Medcalf makes a good case for the importance of cultural understanding. She turns her guns on those who would impose alien institutions upon other cultures and, in so doing, unwittingly contribute to their deterioration. It is an inescapable fact that lawyers are products of their own culture. Reading this book would be a first step toward acknowledging, understanding, and preserving cultural differences.

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