

4 - This Land Is Ours

By Brandon Marie Miller

1877: a small band of Native Americans, determined to keep their homeland, bring their case to the federal courts.

On a biting cold day in February 1877, Chief Standing Bear's heart chilled with misgivings. He surveyed a land barren of trees, littered with rocks, the river dry. This land, labeled "Indian Territory," was where the United States government intended his people, the Ponca, to live. But it could never replace their home near the mouth of the Niobrara River on the High Plains, where the Ponca had farmed and hunted buffalo for almost zoo years.

Nineteen winters had passed since the Ponca had ceded thousands of acres to the government. In return, officials assured the Ponca they'd keep their lands on the Niobrara, the "swift running water," for their permanent home. But, as always, the U.S. government wanted more.

Like other tribes, the Ponca watched the years pass while Whites poured onto Native American lands, accompanied by soldiers, followed by the railroads. They destroyed the buffalo and other game the Plains people depended upon. The Whites spread new diseases that killed thousands of Native Americans. And the Indian people forced onto government reservation lands often went hungry, dependent on food rationed by government agents.

Some Plains cultures like the Sioux, Cheyenne and Comanche fought for their homelands. But the Ponca were not a warrior people; resistance to an endless wave of well-supplied soldiers seemed certain death.

Hoping to ensure their nation's survival, the Ponca welcomed a mission church and school on their reservation, in what is present-day Nebraska. They worked their fields with reapers and mowers and other farming tools used by White people. Many families abandoned earth lodges for the log houses of the settlers. By adopting White ways, and by not raising arms against U.S. soldiers or settlers, the Ponca sought leverage to hold the government to treaty promises and, more importantly, to keep their homelands.

But the government rewarded the Ponca's peaceful cooperation by disbursing only a trickle of the money and supplies promised in the 1858 treaty. Ten years later, in another treaty, the government mistakenly granted the Ponca's "permanent" homeland to the Sioux. Ponca cries for justice fell on deaf ears.

The last bitter stroke for Standing Bear's people came in January 1877, when U.S. Indian Inspector Edward Kemble arrived at the Ponca agency. The government had decided to remove the Ponca from the Niobrara to Indian Territory in what is now Oklahoma.

Stunned voices rose in protest. "This land is ours," Standing Bear objected. "We have never sold it. Here we wish to live and die. We have harmed no man. We have kept our treaty."

Kemble promised that no decision would be made until a delegation of chiefs looked over the new land. If the Ponca did not favor southern lands, they could speak to the "Great Father" - President Ulysses S. Grant - and stay along the Niobrara.

Now, as they stood on those very lands and gazed across the bleak expanse before them, the Ponca chiefs shared their impressions in hushed voices. They asked to telegraph the Great Father and tell him they were not satisfied with the Indian Territory lands. Kemble's agreeable manner changed; he refused their request. The Ponca, he informed the chiefs, would be moved.

When the chiefs said they only wanted to return north to their homeland, Kemble replied, "Walk there if you want to."

The delegation debated what to do. Chief White Eagle recalled, "We thought we should die, and [I] felt that I should cry, but I remembered that I was a man."

Kemble denied the chiefs any money or a pass they could show if stopped by Whites. The February winds howled outside, scouring the plains of Kansas and Nebraska with snow. The Ponca, each wrapped in a blanket, began the Soo-mile trek back to their home on the Niobrara. To survive, the men ate raw corn they found drying in fields. At night, they slept in haystacks to stay warm. Before long, the Ponca's moccasins wore out, and they trudged through the snow barefoot. Each step stiffened their determination to contest the government's demand that they move south.

Forty days later, starving and weak, the Ponca delegation arrived back in Nebraska, only to be met by Kemble, who had hurried there ahead of them. The government agent had already pressured about 170 Ponca into relocating. The chiefs, including Standing Bear, protested. "I will harm no White man," he said, "but this is my land, and I intend to stay here." Kemble had the outspoken chief arrested and taken to Fort Randall, in Indian Territory near the Nebraska border.

Soon another government agent, E. A. Howard, arrived. As a gesture of goodwill, he released Standing Bear and settled in to convince the Ponca they had to move. But the chiefs stood firm. Finally, after a four-hour council meeting on May 15, Howard issued a weary ultimatum: "Will you go peaceably or by force?"

The chiefs stared at Howard in stony silence. Then a boy ran up and cried, "The soldiers have come to the lodges!" The Ponca, it turned out, had never had a choice. Fighting was useless, and the chiefs sadly relented before the show of military power. "The soldiers came with their guns and bayonets," recalled Standing Bear, "... our people and our children were crying."



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On May 16, 1877, blue-coated soldiers surrounded the village of 700 people. The soldiers drove the Ponca "as one would drive a herd of ponies" across the Niobrara. Howard kept a diary of the march south, a journey rife with suffering as the Ponca battled constant torrential rain, camped in mud, crossed swollen rivers, even endured a tornado. People broke down in cold, hunger and illness. Many died along the way. Among the dead were children weakened by exposure. Even so, Howard noted their fortitude and wrote more than once: "The Indians during the day behaved well, and marched splendidly."

On July 9, fighting swarms of biting flies, the Ponca reached their new home in Indian territory. "The people were all nearly worn out from the fatigue of the march," Howard wrote, "and were heartily glad that the long tedious journey was at an end, that they might ... rest." They joined the first group of 170 Ponca removed earlier and now existing in a miserable camp of tents.

The government had provided no supplies, tools or food for the Ponca; their own farm tools and most of their belongings had been confiscated by the soldiers back in Nebraska. "This was all different from our own home," Standing Bear later recalled. "There [in the north] we raised all we needed. Here there was no work to do. We had nothing to work with, and there was no man to hire us. ... All my people were heart-broken. I was like a child. I could not help even myself, much less help them."

How were they to feed and selves? That first year, the adverse climate, poor nutrition and malaria left many sick and dying; some 158 people had died since they'd left the banks of the Niobrara. In July 1878, the government allowed the Ponca to trudge another 150 miles west to new lands along the Arkansas River. The land was better, but, again, with few supplies it was hard to make a go of things.

Chief White Eagle recalled, "The land was good. But in summer we were sick again. We were as grass that is trodden down, we and our stock. Then came the cold weather, and how many died we did not know."



Gen. George Crook called the prospect of sending the Ponca back from their reclaimed homeland a "very disagreeable duty."

Standing Bear had already lost two children when his oldest son died. "He begged me to take him, when he was dead, back to our old burying ground," said the chief.

In January 1879, Standing Bear and about 30 others fled the reservation and headed north. They avoided settlements and eluded soldiers, arriving in March at the Nebraska reservation of their friends, the Omaha tribe. Gen. George Crook, stationed in Omaha as commander of the army's Department of the Platte, received orders to send soldiers to the Omaha reservation and arrest Standing Bear. As soon as possible, the renegade Ponca would be shipped back to Indian Territory in Oklahoma.

Gen. George Crook, as a good soldier, followed orders. But after years of fighting Native Americans, he'd come to admire and sympathize with many of the tribes. More than once in official correspondence with the War Department, Crook voiced complaints over the government's inhumane treatment of Native Americans. This time, Crook contacted Thomas Henry Tibbles, an editor with the Omaha Herald. Was there a way to use the power of the press to aid the Ponca?

On March 31, 1879, Crook met with the imprisoned Ponca at the Fort Omaha guard-house. For their interview, Standing Bear stood before Crook dressed as a leader of his people in the full regalia of a Ponca chief. "I thought God intended us to live," he addressed the General. "But I was mistaken. God intends to give the country to the White people, and we are to die."

Standing Bear's eloquence and demeanor impressed Crook. The General promised he would try and wait until the Ponca and their horses had time to recover before taking them back to Indian Territory. "It is," said Crook, "a very disagreeable duty."

Meanwhile, Tibbles kept the telegraph wires sizzling with word of the Ponca's plight. Churches in Omaha pledged support. A young lawyer, John L. Webster, volunteered aid. He was soon joined by Andrew Poppleton, another Omaha lawyer.

The lawyers, working for free, rushed to find a way to prevent the removal of Standing Bear and his people back to Indian Territory. "The Indians have been held by the courts as 'wards of the nation,'" noted Poppleton, "but it does not follow ... [that] the guardian can imprison, starve, or practice inhumane cruelty upon the ward."

Webster and Poppleton gained the support of Judge Elmer S. Dundy, and, with Crook's compliance, the judge issued a writ of habeas corpus against Crook. A writ of habeas corpus requires that a prisoner be brought before the court to decide the legality of his imprisonment. The General had to show by what authority he held the Ponca under arrest.

Crook presented the court with his military orders. U.S. District Attorney G.M. Lambertson appeared before Judge Dundy and denied the Ponca had any right to a writ of habeas corpus on the grounds that Indians were not citizens; they were not even "persons within the meaning of the law." Therefore, Standing Bear could not bring a case against the government. The judge elected to hear arguments, and the case of *Standing Bear v. Crook* began on April 30, 1879.

The trial lasted two days. Webster and Poppleton argued that in times of peace, no Native American could be forced from one place to another without his consent. More importantly, the lawyers asserted that Native Americans were indeed "persons" before the law. Under the Constitution, Standing Bear possessed some of the same rights and freedoms as White men. Government lawyers, however, insisted that the Ponca had to live by rules the government established just for Indian nations.



Standing Bear (4th from left) and his fellow chiefs reminded federal agents that, unlike the U.S. government, the Ponca had never broken a treaty.

Over Lambertson's objection, Judge Dundy granted Standing Bear permission to speak. All eyes were riveted on the Ponca chief as he described, through an interpreter, the ill treatment his people had received.

With hands raised to the judge, Standing Bear made his case. "That hand," he said, "is not the color of yours, but if I pierce it, I shall feel pain. If you pierce your hand, you also feel pain. The blood that will flow from mine will be of the same color as yours. The same God made us both.... If a White man had land, and someone should swindle him, that man would try to get it back, and you would not blame him.

"Look on me," cried the chief. "Take pity on me, and help me to save the lives of the women and children. My brothers, a power, which I cannot resist, crowds me down to the ground. I need help." Many people wept at Standing Bear's words; the judge and General Crook were visibly moved. Judge Dundy took several days to write his legal opinion. He then ruled that "an Indian is a person within the meaning of the laws of the United States" and could not be forcibly moved or confined to a reservation without his consent.

"The Poncas are amongst the most peaceable and friendly of all the Indians tribes ...," Judge Dundy wrote. "If they could be removed to the In[dian] Territory by force, and kept there in the same way, I can see no good reason why they might not be taken and kept by force in the penitentiary. ... I cannot think that any such arbitrary authority exists in this country."

The Judge's decision brought the courtroom spectators cheering to their feet. The 60-year-old Ponca chief had gained recognition that Native Americans had rights of human dignity

under the laws of the land. General Crook was the first to reach Standing Bear and shake his hand.

Standing Bear and his handful of Ponca followers were allowed to return to the Omaha reservation. Eventually, in another small victory, they were granted a slice of their old homelands to live upon. The rest of the Ponca living in Indian Territory were not permitted to return north. Standing Bear's hard-won return to his beloved Niobrara carried the cost of dividing his tribe.

Congress set up a commission, which included Crook, to further examine the Ponca's situation. The commission held hearings in Washington, D.C., and traveled to the Ponca reservation in Indian Territory, as well as to Standing Bear's small clan in Nebraska. Congress officially recognized that the Ponca had been moved "without authority or law" and appropriated funds as compensation.

The southern Ponca, under the leadership of Chief White Eagle, decided to avoid further turmoil and remain on the new lands. Fresh money and supplies had helped them build homes and schools and buy tools to start life anew. So the Ponca remained a divided people, with the majority living in Indian Territory and Standing Bear's small band of followers in Nebraska.

For its time, the trial of Standing Bear was a landmark court decision. The judge's ruling represented a huge symbolic victory for Native peoples. For centuries, Whites had labeled Indians "savages" and used a belief in Native inferiority to justify broken treaties, land theft, even mass murder. The notion that Indians were people entitled to protection under the law reflected a growing change in public opinion.

However, Standing Bear's victory actually raised more questions than it answered. How would Native interests be represented and protected within the U.S. political system? Many White people, including Chief Standing Bear's supporters, hoped for Indian policy reform. Yet most Whites believed the only way Indians could survive was to adopt White ways.

During the court case, Standing Bear's lawyers tried to show that the Ponca were attempting to live within the White definition of "civilized": They had built homes, sent their children to schools; many had become Christians. Therefore, the Ponca deserved the same protection as U.S. citizens. White recognition of Indian "personhood," it seemed, came with a condition: Give up your culture and become like us.

In addition, Judge Dundy did not question the authority of the United States over Native American nations. While his decision suggested that Native peoples had the same rights to personal freedom and legal protection as U.S. citizens, it did not acknowledge that Indian tribes had any rights to self-government.

In time, American Indians themselves raised these issues as they continued the struggle to preserve their lands and cultures. The Ponca's challenge of the U.S. government marked a turning point on the long path of Indian resistance. Increasingly, after *Standing Bear v. Crook*, the fight for Native rights would shift from the battlefields to the courtrooms of the growing nation.

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