

Voices

## Tribal Court Stature and the Protection of Indian Women

By Stacy L. Leeds

In June 1898, the U.S. Congress passed legislation abolishing the Cherokee judiciary. The purported rationale? American Indians would be “better off” if they would assimilate into the dominant society.

The Cherokee judiciary was the most visible manifestation of Cherokee sovereignty, and full acculturation of the Cherokee people would be possible only if the courts were disempowered.

Much of the federal assimilation process, which had been ongoing for decades prior to the abolition of Cherokee courts, was already accomplished. The Cherokee government began mirroring its state and federal counterparts, and in doing so, the rights of Cherokee women increasingly were diminished.

Prior to assimilation, Cherokee women had enjoyed legal rights in balance with rights of Cherokee men. When American women were voiceless, Cherokee women were heard. Cherokee law recognized women’s ownership rights in property during a time when American women were considered property.

When Cherokee government became more assimilated, the rights of Cherokee women were impacted but not abolished. The memory of balance between women and men remained in the collective conscience of Cherokee people and, although damage had been done, the memories were not lost. In 1905, prior to Oklahoma statehood, the Cherokee, Choctaw, Chickasaw, Muscogee Creek, and Seminole tribes sought admission of the State of Sequoyah into the federal union. The Cherokees insisted, in the Sequoyah Constitutional Convention, that female citizens of that state would have the right to vote, several years before female citizens of the United States secured that right. The restoration of Cherokee women’s rights as citizens was underway. The revitalization of Cherokee women as leaders took much longer and is still a work in progress.

Through changes in federal policy reestablishing the Cherokee judiciary, and through the resilience of the Cherokee people, the Cherokee government is regaining strength. Many female leaders have contributed to this revival. Wilma Mankiller served as principal chief for a decade, and numerous women have served as Cherokee Council leaders and Cherokee District Court judges.

When I was confirmed as the first female justice on the Cherokee Nation’s highest court, the Judicial Appeals Tribunal (JAT), the event was newsworthy when one thinks in terms of women’s participation in this particular venue. My role as a decision maker does not, however, represent a novelty within the traditional Cherokee power structure.

Notably, there is much more to the Cherokee revitalization than a restoration of gender balance. The Cherokee people are regaining strength of community and governance. As a result, the standard of living for Cherokee people is improving in terms of economics, educational opportunities, and cultural stability. The Cherokee courts represent only one of many institutions facilitating this growth.

Like other tribal courts, however, Cherokee courts continue to face threats similar to those encountered in the 1890s. Rather than being statutorily terminated by Congress, tribal courts face federal encroachment upon their jurisdiction, which in practical effect significantly impacts the vulnerability of Indian women.

Tribes are denied the right to exercise appropriate authority to regulate the criminal conduct of non-Indians. For example, when a non-Indian man commits domestic violence against an Indian woman, the tribe is powerless to prosecute him, even when the crime was committed on tribal land. States lack jurisdiction over conduct on tribal land, so the only hope for prosecution of this crime rests with the federal government. Unless the violence escalates to the level of a major crime, it most often remains unprosecuted.

Indian women are victims of violent crime at a rate higher than that of any other ethnic group, and the overwhelming majority of these crimes are committed by non-Indian men.

Tribes are rendered helpless to protect their mothers and daughters because their courts are disempowered by the federal judiciary, so the violence continues unabated.

Internally, the Cherokee Nation is restoring gender balance in leadership, but diminished tribal court jurisdiction places Indian women in an unparalleled position of vulnerability. At the very heart of sovereignty is the power to provide a safe environment for all citizens and to restore harmony when breakdowns occur. Sadly, tribal judiciaries continue to be an unknown entity to most of the American legal system. An overall lack of education about and respect for tribal institutions leads to the continued divestiture of tribal sovereignty, and once again, to the disempowerment of women.

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