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BOOK REVIEW

AMERICAN INDIAN LEGAL HISTORY AND THE AMERICAN INDIAN WOMAN

Richard J. Ansson, Jr.*

Changing Woman. By Karen Anderson. Oxford: Oxford University Press. 1996. Pp. 291.

Introduction

Changing Woman, by Karen Anderson, is a perspicuous book that yields a profoundly thorough, yet astoundingly thoughtful, insight into the historical aspects of federal Indian policy and the residual effect those policies have had on American Indian women.¹ Additionally, Anderson's scholarly work is one of the first to historically document the significant effect certain federal policies have had on American Indian women.² In the field of Indian law, historical documentation is important because it facilitates a coherent understanding of federal Indian policy. Indeed, the importance of historical documentation led Nathan R. Margold, a former solicitor of the Interior Department, to state that "[f]ederal Indian law is a subject that cannot be understood if the historical dimension of existing law is ignored."³ Thankfully, Anderson's work contributes

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1. The first section of Karen Anderson's book documents the historical aspects of Federal Indian Policy and the effect those policies have had on American Indian women (pp. 17-91). The second section discusses the historical aspects of Mexican immigration into the United States and the effect federal policies have had on Mexican American women (pp. 92-152). The last section deliberates the historical aspects of federal race-based African American policies and the effect those policies have had on African American women (pp. 153-219). This review examines the first section of Anderson's book which as aforementioned is devoted solely to American Indian women.

2. See also Bethany Ruth Berger, *After Pocahontas: Indian Women and the Law, 1830-1934*, 21 AM. INDIAN L. REV. 1 (1997) (detailing federal Indian policies and legal holdings that effected American Indian women between 1830 and 1934), and M̄.-ANNETTE JAIMES AND THERESA HALSEY, AMERICAN INDIAN WOMEN AT THE CENTER OF INDIGENOUS RESISTANCE IN CONTEMPORARY NORTH AMERICA, IN THE STATE OF NATIVE AMERICA 311 (M. Annette Jaimes ed., 1992) (discussing the disempowerment of American Indian women and contemporary conditions). Traditional American Indian resources, such as *Felix Cohen's Handbook of Federal Indian Law* (1942 & 1982 eds.), fail to mention American Indian women in any substantive detail and likewise fail to document how federal Indian policies have effected American Indian women.

3. FELIX S. COHEN'S HANDBOOK OF FEDERAL INDIAN LAW xvii (Univ. of N.M. photo. reprint 1971) (1942). Mastery of American Indian Law involves an extensive and expansive knowledge of historical aspects of federal Indian policies. Hence, the former solicitor's emphasis on understanding the historical dimension of Federal Indian law is a very valuable credence to remember. In whole the former solicitor wrote:

greatly to the study of American Indian law by eloquently describing the effect certain federal Indian policies have had on American Indian women.

This review examines Karen Anderson's *Changing Woman* and the unique perspective she sets forth on the plight of American Indian women. Part II of this review explores the role of American Indian women in their tribal cultures prior to European contact. Part III focuses on the federal policies that destroyed the culture of the American Indian woman. Part IV of this review discusses the federal policy of self-determination and the effect that this policy has had on American Indian women. This review concludes by suggesting that scholars and academicians should undertake additional research to further determine what effect certain federal Indian policies have had on American Indian women.

II. American Indian Women and Their Cultural Heritage

In *Changing Woman*, Karen Anderson aptly denoted the continuous societal pressures placed on American Indian women. Indeed, the role of the American Indian woman has changed vastly since the Europeans first arrived on this continent. Anderson stated that before European encroachment all tribes distinguished their members' status according to the general economic system of the tribe (p. 17). Under this system, the status of an Indian woman usually hinged on two factors. First, a tribal woman's status might rest on whether the tribe was dependent on agriculture or on hunting and gathering (p. 17). Second, her status might be effected by the various masculine or feminine meanings attached to the work-related activities she performed (p. 17). Hence, since

Federal Indian law is a subject that cannot be understood if the historical dimension of existing law is ignored. As I have elsewhere observed, the groups of human beings with whom Federal Indian law is immediately concerned have undergone, in the century and a half of our national existence, changes in living habits, institutions, needs and aspirations far greater than the changes that separate from our own age the ages for which Hammurabi, Moses, Lycurgus, or Justinian legislated. Telescoped into a century and a half, one may find changes in social, political, and property relations which stretch over more than 30 centuries of European civilization. The toughness of law which keeps it from changing as rapidly as social conditions change in our national life is, of course, much more serious where the rate of social change is 20 times as rapid. Thus, if the laws governing Indian affairs are viewed as lawyers generally view existing law, without reference to the varying times in which particular provisions are enacted, the body of law thus viewed is a mystifying collection of inconsistencies and anachronisms. To recognize the different dates at which various provisions were enacted is the first step towards order and sanity in this field. Not only is it important to recognize the temporal "depth" of existing legislation, it is also important to appreciate the past experience of legislation which has, technically, ceased to exist. For there is a very real sense in which it can be said that no provision of law is ever completely wiped out. This is particularly true in the field of Indian law.

Id. at xvii-xviii.

women maintained central roles in the economic livelihood of their tribe (p. 21), they were able to maintain an indirect role in political activities (pp. 23-24).

Anderson noted that many women's studies scholars have concluded that American Indian cultures were egalitarian (p. 18).⁴ However, Anderson maintained that such deductions may yield contradictory implications for women's empowerment movements because most tribal societies classified their members according to gender-based criteria (p. 21). Indeed, Anderson argued that much of the information collected by scholars have been tainted by either white male anthropologists (p. 20) or by white male historians (p. 19) or by the writings of a few tribal women who had already succumbed to white ways (p. 19). Furthermore, Anderson contended that American Indian cultures, unlike European cultures, were not based on the "mind/body split so central to Western ways of knowing and acting and so critical to women's oppression in European cultures" (p. 18). Instead, Anderson alleged that the correct way to view the social changes is to discern how certain federal policies socially changed and effected the American Indian woman (p. 24).

III. American Indian Women and the Era of Individualization

As the Europeans and their ancestors came in contact with Indian tribes, they condemned the work divisions (p. 18) and the communal aspects (p. 37) employed by the various Indian tribes. Indeed, in certain tribes men hunted (pp. 17-18) while women built homes and raised agricultural products (p. 19). Whites often thought that tribal men who hunted were lazy because white men associated hunting with leisure (pp. 17-18). This perception, according to Anderson, led many whites to conclude that Indian women were exploited drudges since the women were being forced to do a traditionally male function (p. 19).

Moreover, in an example of communal condemnation, many whites expressed suspicion over the Navajo Nation's maternal deity (p. 16). For the Navajos, a female deity known as "Changing Woman" represented a symbol of wisdom and goodness and continuity (p. 16).⁵ Indeed, the deity represented a maternal power of great benefit to family and community (p. 16). However,

4. Anderson stated that these scholars have emphasized the matrilineal kinship systems wherein male authority was divided and thus ambiguous, promoting female autonomy; in symbol systems which revered fertility and acknowledged female contributions to reproduction and production; in a family system that allowed divorce at will and gave women reproduction autonomy and domestic authority; and/or in women's central economic roles in communal land systems and their control over the products of their labor. (p. 18).

5. Anderson titled her book *Changing Woman*. Anderson hoped that this image would stimulate racial ethnic women to think about how "the meanings of 'Changing Woman' have been mobile, contested, and contradictory" for all racial ethnic women (p. 16).

according to Anderson, whites viewed the Navajo deity as sustaining "a dangerous communalism and a disorderly system of gender relations" (p. 16).

As a result of the differing work divisions and the communal nature of tribes, whites thought that Indians had to be civilized in accordance with white European traditions. The first Act that attempted to accomplish this was the Dawes Act. The Dawes Act provided for the subdivision of Indian lands, thereby facilitating the breakdown of communal values (pp. 27-18).⁶ According to Anderson, this Act represented a way to civilize the Indian through "a process of gender specific acculturation" (p. 37).

Anderson argued that this policy greatly effected American Indian women. Indeed, as Anderson noted, the Dawes Act required Indian women to abandon their traditional economic role in their tribal community (p. 37).⁷ This caused Indian women to lose authority over their children and to become economically dependent on their husbands (p. 37).⁸ Likewise, as Indian women lost their economic vitality, so too did they lose their influence in political matters (p. 22 and p. 42). Moreover, these same policies encouraged Indian men to assume more control over their children and their women (p. 37). Hence, Anderson contended that the American Indian women's traditional powers had been curtailed as a result of the Dawes legislation (pp. 37-38).

Next, Anderson maintained that the government sought to control the behavior of young American Indian children. Indeed, arguing that boarding schools were essential to acculturation, government officials began placing Indian children in such schools (p. 46). Young women, when the government was able to wrestle them away from their parents, were taught homemaking skills and the values of white society in boarding schools (p. 46). Accordingly, Anderson asserted that these educational policies disrupted traditional maternal authority within American Indian tribes and eroded Indian parental authority (p. 46 and 51).

Moreover, Anderson stated that officials also forced Indians to adhere to state marriage and divorce laws (p. 44).⁹ However, this, according to Anderson,

6. Anderson stated that this Act was written to force American Indians to embrace family farming (p. 27). Under the provisions of the Act, each head of household was to receive 160 acres of allotted land, each single adult 80 acres, and each child 40 acres (p. 28). For more on the Dawes Act, see, e.g., FREDERICK HOXIE, *A FINAL PROMISE: THE CAMPAIGN TO ASSIMILATE THE INDIANS, 1880-1920* (1984), or Judith V. Royster, *Article: The Legacy of Allotment*, 27 *ARIZ. ST. L.J.* 1165 (1995).

7. Anderson recognized that the Dawes Act did not force all Indian women to abandon their traditional roles. Indeed, Anderson stated that the lack of land forced some Indian women to do planting, hunting, and fishing (p. 63). Moreover, according to Anderson, most American Indian men were economically unable to support a family (pp. 40-41).

8. Anderson also mentioned that under the allotment policies women lost their land holdings faster than men (p. 57).

9. In 1926, the Secretary of Interior, Huert Work, sent a bill to Congress seeking to abolish customary Indian marriage and divorce decrees (p. 55). This bill was passed by Congress and enacted into law in 1926 (p. 55). The bill further provided that all marriage agreements entered

brought many problems (pp. 54-56). Prior to federal involvement different tribes had customarily regulated relations between women and men (pp. 22-23). For example, a divorce would be granted if a couple were involved in a particularly unhappy marriage (p. 22) or if spousal abuse occurred (p. 23). Nevertheless, white officials forced American Indians to follow state law in order to maintain morality (p. 55).

IV. American Indian Women and the Era of Self-Determination

In 1934 the federal government sought to end the allotment era policies. In its place the federal government attempted to help American Indians establish their own tribal governments, promote economic development, and regain autonomy in some of their traditionally cultural areas (p. 68). However, during this period, American Indian women lost even more control over tribal institutions (p. 68). Indeed, Anderson argued that the Indian men's control over tribal functions began to instill a feeling of customary male dominance (p. 68). Hence, since Indian men primarily had power, they could exercise their immense power in deciding tribal interests and in constructing gender policies (p. 70).

According to Anderson, this caused many women to forgo their political and civil rights to obtain benefits, secure landholdings, or acquire legal sovereignty from tribal entities (p. 68).¹⁰ For example, in *Santa Clara Pueblo v. Martinez*,¹¹ the Supreme Court held that the Santa Clara Pueblo could discriminate against women in defining tribal membership (p. 84).¹² This decision upheld a Santa Clara Pueblo constitutional provision that discriminated against women who married outside the tribe by denying them and their children a chance to participate in matters concerning tribal property and tribal affairs (pp. 70-71).¹³ The Court based its decision on respect for tribal sovereignty¹⁴ and on the challenged law's failure to specify a specific form of

into before the 1926 Act were valid (p. 55).

10. Paradoxically, self-determination policies required tribes to allow women to vote (p. 70). Nevertheless, Anderson asserted that women basically had very little power in tribal governments (p. 70). Indeed, Anderson noted that only a few women have ever held elected positions within tribal governments (p. 70).

11. 436 U.S. 49, 72 (1978).

12. Several articles have discussed the effect the Martinez decision had on American Indian women, including CATHERINE MACKINNON, A CASE NOTE ON SANTA CLARA PUEBLO V. MARTINEZ, IN *FEMINISM UNMODIFIED* 63-69 (1987); Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 *STAN. L. REV.* 581 (1990); Judith Resnick, *Dependent Sovereigns: Indian Tribes, Indian States, and The Federal Courts*, 56 *U. CHI. L. REV.* 671 (1989); and Carla Christofferson, *Tribal Courts' Failure to Protect Native American Women: A Reevaluation of the Indian Civil Rights Act*, 101 *YALE L.J.* 169 (1991).

13. Anderson stated that the tribe was matrilineal before Spanish conquest and only decided to legalize patrilineal descent under its 1939 Constitution (pp. 70-71).

14. Anderson noted that this respect for tribal sovereignty led Catherine MacKinnon to state that "the control of Indian women matters less to the United States than does the control over the

relief¹⁵ (p. 84). Hence, Anderson contended that the "Martinez case revealed the ways in which Indian men could selectively appropriate and resist the politics of the dominant society, without having their legitimacy as Indians brought into question while Indian women's right to assert their values and interests as Indians and as women remained suspect" (pp. 84-85).

Anderson also noted that the federal economic developmental programs enacted pursuant to the 1934 Indian Reorganization Act discriminated against Indian women (p. 71).¹⁶ According to Anderson, these programs were enacted to ensure that Indian men gained self-sufficiency (p. 71). Moreover, Anderson argued that the Indian women who received preparation in federal education programs were only trained to enter female dominated professions (p. 71).¹⁷ Anderson also maintained that those Indian women who achieved an education usually had to leave the reservation to find work (p. 76). Finally, Anderson stated that those Indian women who stayed on the reservation suffered many hardships due to their impoverishment (pp. 86-89).¹⁸

V. Conclusion

Karen Anderson's *Changing Woman* is one of the first books to examine the effect American Indian legal policies have had on American Indian women. This book is an eloquent and impassioned work of scholarship. It makes an important contribution to a growing body of literature that is exclusively devoted to the study of American Indian women. Hopefully, this body of literature will continue to grow in scope and breadth, thereby further facilitating a coherent understanding of federal Indian policy and the residual effect those policies have had on American Indian women.

land, fish, minerals, and foreign relations, as to which the tribes are not as sovereign" (p. 85).

15. Mrs. Martinez claimed that the constitutional provision violated the Equal Protection Clause of the Indian Civil Rights Act of 1968 (p. 83). This law provided American Indians most of the protections accorded under the Bill of Rights as well as a few additional protections (p. 83). For more on the Indian Civil Rights Act of 1968, see, e.g., JOHN R. WUNDER, "RETAINED BY THE PEOPLE": A HISTORY OF THE AMERICAN INDIANS AND THE BILL OF RIGHTS 125-28, 132-56 (1994).

16. The Indian Reorganization Act of 1934 attempted to help American Indians establish their own tribal governments, promote economic development and regain autonomy in some of their traditionally cultural areas (p. 68).

17. Anderson stated that these professions included teaching, nursing, and secretarial work (p. 71).

18. Anderson noted that many Indian men were forced into allowing others to care for their children (p. 86). This yielded mixed results and resulted in the passage of the Indian Child Welfare Act of 1978 (p. 86). In 1978, the federal government also enacted policies that prevented the government from sterilizing Indian women without their informed consent (p. 86).

Furthermore, Anderson stated that poor Indian women faced high levels of sexual abuse and domestic violence (p. 88). Anderson noted that impoverished Indian women were highly prone to becoming alcoholics (p. 87). Indeed, Anderson asserted that this problem could be directly seen in the rising rates of fetal alcohol syndrome (p. 87).