

Condensed Policy Brief: United States v. Cooley

Urban Indigenous Collective



Supreme Court Case *United States v. Cooley* and the Impact on the Missing and Murdered Indigenous Women, Girls, Trans, and 2 Spirit Folks Crisis

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Summary:

This case was concerned with the authority of tribal police to search and temporarily detain a non-Indian traveling on a federal right-of-way through Indian territory. Ultimately, the Supreme Court ruled in favor of the U.S., affirming that tribes had the right to stop and briefly search anybody within their Native territory.

Significance of *United States v. Cooley*

- With more than “95 percent of Native American and Alaska Native” survivors of sexual violence being victimized by non-Indian perpetrators, the MMIWT2S+ crisis cannot be addressed unless tribal officers are able to investigate and temporarily detain any potential offenders on reservations.
- The retained sovereignty the Court determined the Crow Tribe has is a win in the fight against MMIWT2S+, but the United States limited the revolutionary potential of this case, fighting not for “full-blown arrest authority” and restored sovereignty for tribes, but “limited detention and investigatory authority” for the purpose of enhancing non-tribal law enforcement activities at the state and federal level.

Introduction:

United States v. Cooley was primarily concerned with the “scope of tribal law enforcement officers' search-and-seizure authority,” with the decision posing existential ramifications for the safety of reservations. When Crow Tribe of Montana Officer James Saylor detained Joshua Cooley, who had pulled off to the side of the road in Indian Country on U.S. Route 212, he seized firearms and drug paraphernalia from Cooley's car. Cooley was then transferred to state law enforcement, who arrested him and indicted him with drug and weapons related felonies. Endeavoring to lessen his sentence, Cooley moved to suppress the evidence obtained by Officer Saylor during the stop, arguing that Saylor was operating beyond the limits of his jurisdiction as a tribal officer. The U.S. District Court of Montana agreed, stating that as a tribal officer, Cooley had no right to stop or search a non-Indian offender on a federal road running through the reservation. On appeal, the case was affirmed by the U.S. Court of Appeals for the 9th Circuit, which mandated a new standard in which tribal law enforcement were deprived of the “authority to briefly stop and conduct a limited investigation of a non-Indian,” on non-Indian fee lands, even when there was “reasonable suspicion they have committed a crime.” Before detaining, tribal law officers were now required to first determine the Indian status of both the suspect and the land, an excessive procedure in both complication and time. This effectively eliminated the ability to investigate potential threats to public welfare, creating the conditions of a “safe haven” for non-Indian assailants of women.

United States v. Cooley Legal Background

Before colonization Native nations had fully developed systems of law and governance, and initially, the federal government regarded tribes as completely sovereign entities. This quickly devolved with the *Cherokee Nation v. Georgia* in 1831 wherein it was first determined that Indian nations were nothing more than “domestic dependents.” Here the Supreme Court ruled that tribes lost full sovereignty during colonization, laying the groundwork for a modern era of legal decisions furthering the colonial project.

In 1885 Congress passed the Major Crimes Act (MCA), which expanded the federal government's control over Indian territory by granting the federal government concurrent jurisdiction over specific enumerated crimes committed by a Native person and on tribal land. This was followed by Public Law 280 in 1953, which allowed the federal government to delegate criminal jurisdiction over Indian territory to some states. Enacted without the consent of tribes and without additional funding to help states manage the new burden placed on law enforcement, state and local police were often unwilling or unable to fulfill their new responsibilities in Indian country. In states without Public Law 280, especially ones lacking tribal police capabilities, federal law enforcement remained responsible for responding to crimes of domestic violence perpetrated by non-Indians. However, federal agencies most often do not prioritize gender-based violence. This is evidenced by the fact that the U.S. Attorney's Office declined to prosecute "46 percent of assault matters and 67 percent of sexual abuse and related matters" in fiscal years 2005 through 2009. When federal police do respond, an Assistant U.S. Attorney in Michigan explained, "crime must be severe to... confer federal jurisdiction under the Major Crimes Act" which, "requires stitches, almost a dead body" for prosecution. Similarly, for tribes covered under Public Law 280 and without tribal law enforcement, if state and local law enforcement agencies choose not to respond in adequate capacity, given the lack of federal jurisdiction, there is no means of legally protecting Natives from the ongoing MMIWGT2S+ crisis either. Given that both state and federal police fail to fulfill even the most basic of their responsibilities to protect Native nations it is critical for the tribal police that exist to retain their rights to arrest any and all perpetrators on the reservation. For many Native communities, the limited tribal policing available is their only hope in protection, documentation, investigation, and legal justice.

Conclusion:

In *United States v. Cooley*, the United States argued that a decision in favor of *Cooley* would considerably "chill tribes' ability even to enforce their own laws against their own members, and endangers everyone on Indian reservations." Notably, despite the connection between women's safety and tribal sovereignty, the United States argued that they were not urging "that tribes have full-blown arrest authority" but rather "limited detention and investigatory authority...for the purpose of allowing state or federal authorities at some point to take over and conduct an arrest." This limited the revolutionary potential of the case, as the U.S. was not making a legal argument against the hundreds of years of implicit divestiture that stripped tribes of their ability to protect themselves, but merely an argument in favor of giving tribes the ability to act as extensions of U.S. law enforcement when the conditions were favorable. While the Court maintained that a tribe could not exercise criminal jurisdiction over non-Indians, the Court ceded that "to deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime would make it difficult for tribes to protect themselves against ongoing threats," thus finding that Officer Saylor possessed the authority at issue. The retained sovereignty the Court determined the Crow Tribe has is a definitive win for public safety, especially with the majority of crimes against Native women being committed by non-Indians in areas containing vast geographies of both non-Indian people and fee lands. However, centuries of colonial death and destruction will not be remedied by allowing tribes to exercise bare-minimum criminal jurisdiction over non-Indians. Truly addressing the MMIWGT2S+ crisis will require structural and material change, compensated consultation of survivors and relatives of those who have gone missing or been murdered each step of the way, tribal ability to investigate and arrest all offenders on Native land, re-examining what true justice is to individual tribal communities and for each survivor and/or family affected, and an ever expansive return to the sovereignty with which Native nations inherently possess.

References:

Nagle, Mary Kathryn, and Sweeden, Andie. "Scotus Update: Spotlight on *United States v. Cooley* in the U.S. Supreme Court." National Indigenous Women's Resource Center.

"*United States v. Cooley*." Ballotpedia.

BRIEF OF AMICI CURIAE NATIONAL INDIGENOUS WOMEN'S RESOURCE CENTER, et al. *United States v. Cooley*, No. 19-1414.

Phippin, Jo J. (2021) "PREVIEW—*United States v. Cooley*: What Will Happen to the Thinnest Blue Line?," *Public Land & Resources Law Review*: Vol. 0 , Article 5.

Mendoza, Emily. "Jurisdictional Transparency and Native American Women." *California Law Review*, May 2020

U.S. Government Accountability Office. "U.S. Department of Justice Declinations of Indian Country Criminal Matters." U.S. GAO, 13 Dec. 2010.

Hart, Rebecca A., and M. Alexander Lowther. "Honoring Sovereignty: Aiding Tribal Efforts to Protect Native Women from Domestic Violence" *California Law Review*, vol. 96, no. 1.

Opinion of the Court. *UNITED STATES v. COOLEY*. "ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT." Oct. 2020.