



THE HEALTH IMPACTS OF
VIOLENCE AGAINST AMERICAN
INDIAN AND ALASKA NATIVE
WOMEN AND GIRLS

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Introduction to Issue

American Indian and Alaska Native (AI/AN) women face and battle sexual assault, domestic violence, rape, and other forms of lateral violence at alarming high rates compared to other ethnic groups. According to a study funded by the National Institute of Justice (NIJ), “Native American and Alaska Native women are more than 2.5 times more likely to be raped or sexually assaulted than white women in the USA.” and a U.S. Department of Justice study revealed that “34.1 percent of American Indian and Alaska Native women – or more than one in three – will be raped during their lifetime.”¹ Furthermore, “at least 86 percent of reported cases of rape or sexual assault against American Indian and Alaska Native women,” survivors have reported that the perpetrators are non-Native men.²

The objective of this paper is to critically analyze current national legislation and laws that seek to protect AI/AN women’s rights and sovereignty. The author and other supporters, such as the Fort Defiance Indian Health Board (FDIHB) and Navajo tribal council leaders, will provide policy recommendations on how the Navajo Nation, and other tribes as well as the federal government, can better address sexual violence and assault against Native women in our communities, such as the Navajo Nation, and within the Indian health system.

Personal Impact Story

As a child growing up on the Navajo Nation reservation, I was told to respect my land and my elders, especially the matriarchs of our family. However, in my short time alive I have seen both my land and the matriarchs of my family be abused, violated, and disrespected. Thus, the passion to protect, advocate, and to stand up for my land and the women of my community was instilled in me as a child because I was taught that we treat our women the same way we treat our land.

My direct experiences with violence have led me to act. As a Navajo woman and a national advocate, I feel it is my obligation to help not only the women and children on my reservation, but also all those who are affected throughout Indian Country.

Background

The epidemic of sexual assault and violence perpetrated against AI/AN women has raised concerns about the protection of women on and off the reservation. It also raises concerns about the implications on tribal sovereignty and jurisdictional challenges.

With the rise of sexual assault and violence against women within Indigenous communities, tribal leaders, health advocates, and health practitioners struggle to identify solutions to battle sexual assault and sexual violence. National policies and legislation such as the Violence Against Women

¹ Amnesty International. (2007). *Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA*. New York, NY. Page 2 & 5.

² *Ibid.*

Act (2013), Major Crimes Act, the landmark case *Oliphant v. Suquamish Indian Tribe* (1978), and Public-Law 280 help tribes in many ways. However, these laws and policies also limit tribal sovereignty and self-determination. Further, these policies can limit AI/AN women's sovereignty. The constraints that national legislation puts on tribal governments does not allow for the justice Native women deserve or seek and, therefore, needs to be changed.

Analysis of Contemporary National and State Policies

- ◇ ***Major Crimes Act (MCA) of 1885.*** This act was established after the Supreme Court ruling of *Ex Parte Crow Dog* in 1883. The case went to the Supreme Court because federal authorities believed that traditional tribal law did not provide sufficient justice. The Court held that the tribe had jurisdiction and released Crow Dog from custody. The outrage of the non-Native population persuaded federal authorities and Congress to establish criminal sanctions for Native criminals and impose that Native societies must do away with their “lawless” procedures.³ The MCA was established as a result. The MCA placed 15 felony offences, including murder and rape, under federal jurisdiction.⁴ The legislation limits tribal sovereign authority.

- ◇ ***Public Law 83-280.*** PL-280 was enacted in 1953 and allows select states to intrude on tribal legal systems and procedures within the state.⁵ Currently, only six states have PL-280 authority within tribal territories: CA, MN, NE, OR, WI, and AK. PL-280 gives state and tribal authorities concurrent jurisdiction over crimes committed in Indian Country by Indian people.⁶ For example, if a Native woman was sexually assaulted or physically harmed by a Native perpetrator in Indian Country (*i.e.* a reservation), then the state and tribal government would have concurrent jurisdiction. PL-280 is often misapplied and causes confusion amongst attorneys. Consequently, criminals may receive lesser punishment or may not be prosecuted at all. Therefore, PL-280 does not always protect AI/AN women from the lateral forms of violence they face on and off the reservation. PL-280 insults tribal authority and sovereignty because tribal power is delegated to state and federal authorities rather than the inherent power of a self-governing nation.⁷ Fortunately for the Navajo Nation, PL-280 does not apply in Arizona, New Mexico, or Utah, but this does not mean that the Navajo tribal government and the states do not have conflicts.

- ◇ ***Oliphant v. Suquamish Indian Tribe (1978).*** This landmark Supreme Court case ruled that American Indian tribes do not have inherent jurisdiction to criminally punish non-Indians in Indian country (*ie.* Reservation Territory).⁸ The non-Native petitioners of the case argued in court that the Suquamish Nation did not have criminal jurisdiction over non-Indians and, ultimately, the court agreed with them. This was a monumental case for Federal Indian Law for a multitude of reasons. Historically, tribes' inherent powers could be lost through

³ *Ex Parte Crow Dog*, 109 U.S. 556. (1883).

⁴ Major Crimes Act, 18 U.S.C § 1153. (1885).

⁵ Public Law 83-280, 18 U.S.C. § 1162. (1953).

⁶ Amnesty International. (2007). Page 19.

⁷ *Ibid.* Page 19.

⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191. (1978).

Congressional acts and treaties, but in this case, the court's rationale for divesting the Suquamish tribe from their inherent authority was different. The holding of *Oliphant* stripped away tribes' inherent sovereignty to criminally prosecute non-Natives because it is "inconsistent with their status" as domestic dependent nations.⁹ Overall, the ruling of *Oliphant* created a "lawless" dynamic in Indian Country. This case, along with the other policies in place, are complicated and do not always protect Native women. According to Amnesty International, in "at least 86 percent of reported cases of rape or sexual assault against American Indian and Alaska Native women," survivors have reported that the perpetrators are non-Native men.¹⁰ Native women who have experienced abuse, sexual assault, or have been raped by non-Native perpetrators have to rely on the federal court system to prosecute their perpetrators. By placing the power to criminally prosecute non-Native perpetrators in the federal system impinges on tribal sovereignty and does not protect Native women who seek justice through their own tribal court system.

- ◇ ***Violence Against Women Act (VAWA)***. This piece of legislation was a major federal initiative to address the issues of sexual assault and violence against women. VAWA (2005), more specifically the Tribal Title (Title IX), was authorized to address the alarmingly high rates of sexual violence and abuses against Native women throughout the United States. The reauthorization of VAWA in 2005 was great for tribes because they now practice sovereign authority and protect the Native women of their communities. However, tribal criminal jurisdiction was limited to prosecuting federally recognized tribal members.¹¹ Native women's narratives, such as my familial sources and those from Amnesty International: *Maze of Injustice*, can be credited for advocating for federal reform at the federal and tribal levels to protect Native women even further. This advocacy led to the reauthorization of VAWA in 2013. Although VAWA was established to address high rates of violence against Native women, there are components of VAWA that make it a controversial policy which this policy paper does not cover. VAWA was again reauthorized in 2019.

Research

Qualitative Data of the Indian Health Service's (IHS) Approach to the Violence Against AI/AN Women - According to Assistant Professor at the University of Arizona and Psychiatric Nurse Practitioner Michelle Kahn-John, "The IHS and the 638 programs offer a comprehensive 'western model' of healthcare delivery and it's only been in the recent 15 years or so that they have allowed the integration of Native medicine into the healthcare settings."¹²

⁹ *Ibid.*

¹⁰ Amnesty International. (2007). *Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA*. New York, NY. Page 2 & 5.

¹¹ Violence Against Women Act, (2005). Tribal Court Clearing House.

¹² Kahn-John, Michelle. (2019). Interview with Michelle Kahn-John.

Through my own recent research and scholarship, I also found that even with traditional values embedded into the healthcare services IHS provides, “health disparities among AI/AN populations [are] being reported at alarming high rates.”¹³ In a 2018 article titled “Identifying and Reducing Disparities in Mental Health Outcomes Among American Indians and Alaskan Natives Using Public Health, Mental Healthcare and Legal Perspectives,” Payne et al. argues “health disparities are due to inadequate funding, inadequate data collection by clinicians and researchers, and lack of culturally-appropriate treatment programs for Native peoples.”¹⁴

As an advocate for quality care for the women and children who have experienced lateral violence, these findings do not support the Indian health system’s mission to provide quality and culturally sensitive care to our women and children who are affected. In order to ensure the future of our nation, the Indian Health Service needs to reform their healthcare system in order to traditionally and culturally sustain, protect, and heal our AI/AN women and children.

Quantitative Data on Missing and Murdered Women and Girls - In 2016, there were 5,712 reports of missing American Indian and Alaska Native women and girls. However, only 116 cases were logged in the missing persons database.¹⁵ Although there are statistics readily available to demonstrate the pervasiveness of violence against Native women within Indian Country, there is still a serious lack of comprehensive data on the true number of missing, murdered, and abused/violated AI/AN women. In 2019, VAWA was reformed and reauthorized and the Studying the Missing and Murdered Indian Crisis Act was introduced. Despite the legislation that is in place to protect Native women, the issue still weighs heavy in our communities and affects our societies.

Conclusion

The current national legislation in place, such as the MCA, PL-280, and VAWA, does not protect Native women from lateral forms of violence nor does the legislation support tribal sovereignty. The current Western framework of IHS does not holistically heal Native women and their children once they have experienced abuse, assault, or rape. Furthermore, there is no comprehensive or accountable data or data system of the violence against AI/AN women and missing and murdered AI/AN women in the United States.

¹³ Yazzie, Tia. (2018). “Colonialism within the Indian Health Service: Mental and Behavioral Health Disparities in Indian Country”. Page 1.

¹⁴ Payne, H. E., Steele, M., Bingham, J. L., Sloan, C. D. (2017). “Identifying and Reducing Disparities in Mental Health Outcomes Among American Indians and Alaskan Natives Using Public Health, Mental Healthcare and Legal Perspectives.” Administration and Policy in Mental Health and Mental Health Services Research 2018. doi:10.1007/s10488-016- 0777-7. Page 3.

¹⁵ Missing and Murdered Indigenous Women and Girls: A snapshot of data 71 urban cities in the United States. (2018). Urban Indian Health Institute: A Division of the Seattle Indian Health Board. Seattle, WA. Page 2.

Policy Recommendations

- ◇ *Increase funding for VAWA and the Studying Missing and Murdered Indian Crisis Act to provide a more comprehensive collection of data that assesses how the state, tribes, and federal government can reduce and end violence against Native American women and girls across the United States.*

- ◇ *Continue to create the study committees on Missing and Murdered Indigenous Women and Girls in order to gather comprehensive data to create effective policy and policy reformation.* States, such as Arizona, have begun to do this and, recently, the Navajo Nation and its First Lady Phefelia Nez and Second Lady Dottie Lizer offered their support for the Arizona House Bill 2570 which was passed on May 14, 2019 to create the first study committee for MMIWG in the state of Arizona. Furthermore, Tribal Council Delegate Amber Crotty has been a leading advocate and leader for missing and murdered indigenous people on the Navajo Nation. In 2018, Crotty addressed the U.S. Senate Committee and gave an extensive overview of the issue of violence against Native women on the Navajo Nation.¹⁶ In her report, Crotty demonstrated her support for additional funding and access to support services, funding for tribal courts to expand prosecutorial resources, and funding to expand data sharing across jurisdictional boundaries.¹⁷ Lastly, Representative Deb Haaland (D-NM) & Representative Sharice Davids (D-KS) have been leading advocates for violence against Native American women and leading representation for all of Indian Country and have demonstrated their support for Studying the Missing and Murdered Indian Crisis Act and VAWA.

- ◇ *Reform national legislation such as PL-280, Oliphant and VAWA to better support tribal sovereignty.* The power to criminally prosecute with the tribal government systems is an inherent power as tribal nations are sovereign nations and have been since time immemorial.

About the Author

Tia Yazzie was born and raised in Fort Defiance, Arizona located on the Navajo reservation. She is an enrolled citizen of the Navajo Nation. She graduated from Dartmouth College in June of 2019 with a B.A. in Psychology and Native American Studies. There, she was a part of the Native Americans at Dartmouth (NAD) community, held multiple leadership positions in student organizations and clubs, and completed a Health Policy Fellowship at the National Indian Health Board in Washington, DC. Tia has additionally interned for the tribal attorney of the non-profit organization Kawerak Incorporated located in Nome, Alaska. Currently, Tia is completing her internship at the Urban Indian Center of Salt Lake City, Utah as a Youth Counselor and Youth Mentor under the Sacred Youth Program. Tia is committed to spreading awareness about Missing Murdered Indigenous Women and advocating for all those who have been affected by colonialism, heteropatriarchy, lateral violence, and drug/alcohol abuse.

¹⁶<https://www.indian.senate.gov/sites/default/files/NN%20Delegate%20Crotty%20Testimony%20Missing%20%26%20Murdered.pdf>

¹⁷ *Ibid.*

References

- Amnesty International. (2007). *Maze of Injustice: The Failure to protect Indigenous women from sexual violence in the USA*. New York, NY.
- Charleyboy, L. & Leatherdale, M. B. (2017). *#NotYourPrincess Voices of Native American Women*. Annick Press (US).
- Deer, S. (2015). *The Beginning and End of Rape: Confronting Sexual Violence in Native America*. Minneapolis: University of Minnesota Press. Retrieved from Project MUSE database.
- Deer, S. & White Eagle, M. (2008). Tribal Legal Code Resource: Sexual Assault and Stalking Laws Guide for Drafting or Revising Victim-Centered Tribal Laws Against Sexual Assault. Tribal Law and Policy Institute.
- Denetdale, J. D. (2006). *Chairmen, Presidents, and Princesses: The Navajo Nation, Gender, and the Politics of Tradition*. University of Minnesota Press, *Wicazo Sa Review*, Vol. 21, No. 1.
- Erdrich, L. (2012). *The Round House*. HarperCollins Publisher. New York, NY. Page 227-228.
- Fletcher, M., L. M. (2017). TurtleTalk: Indigneous Law and Policy Center Blog of Michigan State University College of Law. <https://turtletalk.wordpress.com/>.
- Kahn-John, Michelle. (2019). Interview with Michelle Kahn-John
- The Major Crimes Act - 18 U.S.C § 1153. (1885)**. United States Department of Justice Offices of the United States Attorneys. Accessed 10, March 2018.
- Ex Parte Crow Dog*, 109 U.S. 556. (1883). United States Supreme Court – Justia. Date accessed 10, March 2018.
- Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191. (1978). United States Supreme Court Justia. Date accessed 10, March 2018.
- Public Law 83-280, 18 U.S.C. § 1162.
- Payne, H. E., Steele, M., Bingham, J. L., Sloan, C. D. (2017). “Identifying and Reducing Disparities in Mental Health Outcomes Among American Indians and Alaskan Natives Using Public Health, Mental Healthcare and Legal Perspectives.” *Administration and Policy in Mental Health and Mental Health Services Research* 2018. doi:10.1007/s10488-016-0777-7.
- Richland, J. B., & Deer, S. (2010). *Introduction to tribal legal studies*. Lanham, Md: AltaMira Press
- Smith, A. (2003). *Not an Indian Tradition: The Sexual Colonialization of Native Peoples*. *Hypatia* vol. 18, no. 2. Retrieved from Project MUSE database.
- Suzack, C. (2010). *Indigenous women and feminism: Politics, activism, culture*. Vancouver: UBC Press.
- United States v. Kagama*, 118 U.S. 375 (1886). United States Supreme Court – Justia. Date accessed 10, March 2018.
- Violence Against Women Act Reauthorization (2013). The United States Department of Justice.
- Yazzie, Tia. (2018). *Colonialism within the Indian Health Service: Mental and Behavioral Health Disparities in Indian Country*.

