Quercus: Linfield Journal of Undergraduate Research

Volume 2 Article 1

2016

The Evolution of Judicial Power: How the Supreme Court Effectively Legalized Rape on Indian Reservations

Clara Martinez
Linfield College

Follow this and additional works at: https://digitalcommons.linfield.edu/quercus

Recommended Citation

Martinez, Clara (2016) "The Evolution of Judicial Power: How the Supreme Court Effectively Legalized Rape on Indian Reservations," *Quercus: Linfield Journal of Undergraduate Research*: Vol. 2 , Article 1.
Available at: https://digitalcommons.linfield.edu/quercus/vol2/iss1/1

This Article is protected by copyright and/or related rights. It is brought to you for free via open access, courtesy of DigitalCommons@Linfield, with permission from the rights-holder(s). Your use of this Article must comply with the Terms of Use for material posted in DigitalCommons@Linfield, or with other stated terms (such as a Creative Commons license) indicated in the record and/or on the work itself. For more information, or if you have questions about permitted uses, please contact digitalcommons@linfield.edu.

Late at night, a man breaks into the home of a young woman living on a remote Indian reservation. The man without ties to the tribal community rapes her and leaves the house. The young woman's hands are shaking as she dials for help, but tribal authorities never respond. A few months later, when she tells a friend about the ordeal, the young woman learns that four other women had similar experiences. Two years later, she has made every effort to put the pieces of her life back together, just like the other four women. The man who raped her was not arrested or tried in court on the reservation. He got away with committing a heinous crime.

According to the Department of Justice, 1in 3 American Indian women have been raped or have experienced an attempted rape. The 2010 National Intimate Partner and Sexual Violence Survey reports 1 in 5 women in the United States have experienced sexual violence. For a young woman living on a remote tribal reservation, the threat of being raped or experiencing an attempted rape is over twice the national average.[1] On reservations, tribal authorities often lack the basic resources necessary to take legal action on the sexual assault crimes reported.[2]

In 1978, the U.S. Supreme Court diminished the legal capacity of tribal governments to prosecute non-Indian offenders on Indian reservations. The case known as *Oliphant v. Suquamish Indian Tribe* established the legal restriction that currently prevents tribal governments from prosecuting sexual assault crimes. There are 566-federally recognized tribal governments,[3] and not a single one has the legal authority to prosecute non-Indian offenders. When sexual assault crimes are committed by non-Indian persons, tribal governments do not have the jurisdiction to prosecute non-Indians on their lands. Instead of tribal governments taking legal action on reservations, only the state or federal government has the jurisdiction to prosecute non-Indian assailants. However, the law is unclear as to whether state or federal governments should have jurisdiction.

On behalf of state, federal, and tribal authorities, the confusion over the criminal jurisdiction of cases concerning non-Indian assailants typically leads to inaction. The survivors of sexual assault, therefore, are disempowered and legal system intended to protect their basic human rights render American Indian women invisible before the eyes of the law. Thus, rape survivors attempting to navigate their way through convoluted legal systems are denied equal status. In fact, some sociology, psychology, and anthropology studies suggest that rape and sexual assault has been rampant on Indian reservations for generations, the rates of sexual violence reach pandemic levels, and yet almost nothing is being done to stop it.

I. Description of the Problem

The elevated rates of sexual violence on tribal reservations—compared to all other races in the United States—clash with other social factors. That is, the most common assailants of rape

[1] American Indians are 2.5 times more likely to experience sexual assault crimes compared to all other races. Tjaden, P., & Thoennes, N. (2000). *Full report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* [NCJ 183781]. Washington, DC: US Department of Justice, National Institute of Justice & the US Department of Health and Human Service, Centers for Disease Control and Prevention.

[2] Centers for Disease Control and Prevention suggest that findings about American Indian women "are likely to underestimate the prevalence of sexual violence, stalking, and intimate partner violence." Black, M.C., Basile, K.C., Breiding, M.J., Smith, S.G., Walters, M.L., Merrick, M.T., Chen, J., & Stevens, M.R. (2011). *The National Intimate Partner and Sexual Violence Survey (NISVS): 2010 Summary Report*. Atlanta, GA: National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, p. 85.

[3] "Bureau of Indian Affairs (BIA)." Retrieved: < http://www.bia.gov/WhoWeAre/BIA/index.htm>.

and sexual assault are males without ties to tribal communities. According to reports from the Department of Justice, 57 percent of rape and sexual assault crimes are committed by non-Indian males.[4] While tribal reservations symbolize somewhat unchartered legal territory, empirical data implies that non-Indian males target women residing in tribal communities. A loophole in the legal system enables non-Indian males to sexually violate women with complete immunity from the rule of law and proper court proceedings. Although the federal government recognizes tribes as sovereign nations, Congress and, more importantly, the Supreme Court have severely restricted tribes' ability to protect women from violent crimes.

When a non-Indian person victimizes an American Indian on tribal land, only U.S. Attorneys can file charges. According to the US Government Accountability Office, about 65 percent of sexual assault crimes cases are not prosecuted.[5] The exact numbers of rape cases that are referred to federal prosecutors, or cases that go to trial, become difficult to ascertain. There is no system to track these cases. Given the trauma and sensitivity surrounding sexual assault crimes, tribal governments may be reluctant to collect data about these incidents. Moreover, tribal and federal authorities may not work collaboratively or share data—if any data exists. The high rates of rape and sexual violence on reservations demand a closer examination of the legal barriers which limit tribal courts' jurisdictional authority.

II. Methodology

This study merits the application of an analytic narrative due to the explanatory properties needed to fill in the legal and historical interpretations missing in the existing literature.[6] The approach aims to identify and explore the particular mechanisms that influence the relationship between strategic actors—non-Indian males—and the outcomes, numerous cases of rape that are often left unprosecuted. The method blends "rational choice theory and narration into the study of institutions and of their impact upon political and economic behavior."[7] According to rational choice theory, all human action is fundamentally "rational" in character and that "people calculate the likely costs and benefits of any action before deciding what to do."[8] The choices of individuals can reveal patterns that exist within institutions. A narrative possesses "a background or setting, a beginning, a sequence of scenes, and an ending."[9] Therefore, rational choice theory and narration are the elements that bring together an analytic narrative. An analytic narrative is formulated in three-steps. First, a story is constructed out of the elements in the particular episode that will be narrated. Second, the analyst creates a

[4] Bachman, R., Zaykowski, H., Kallmyer, R., Poteyeva, M., and Lanier, C. (2008). *Violence Against American Indian and Alaska Native women and the Criminal Justice Response: What is Known*. Unpublished grant report to the US Department of Justice.

[5] US Government Accountability Office. (2010). US Department of Justice Declinations of Indian Country Criminal Matters [GAO-11-167R]. Washington, DC. Retrieved: <http://www.gao.gov/new.items/d11167r.pdf>

[6] The "approach is narrative; it pays close attention to stories, accounts, and context. It is analytic in that it extracts explicit and formal lines of reasoning, which facilitate both exposition and explanation" (Bates p. 10).

[7] Bates, Robert H, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast. *Analytic Narratives*. Princeton, N.J.: Princeton University Press, 1998, p. 10.

[8] Bates, Robert H., Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast. (2000). "The Analytical Narrative Project." *American Political Science Review* 94(3):696-702.

[9] Bates, *Analytic Narratives*, p. 14.

rationalistic theory or model that fits this story. Lastly, the theoretical model is crafted to the available data.[10]

This method attempts to bridge the gulf between the methodological procedures of historians, economists, and political scientists. The approach traces the origins and evolutionary formation of institutional structures—tribal court systems—which attempts to explain the elevated rates of sexual violence on Indian reservations. The criminal behaviors of actors involved, non-Indian males, point to underlying institutional systems that influence human behavior.[11] Institutions influence choices that are regularized; human behavior "becomes stable and patterned, or alternatively institutionalized, not because it is imposed, but because it is elicited."[12] Therefore, non-Indian males are conscious of the legal loophole because federal and state institutions have failed to take action, which consequently regularized assailants' violent behavior toward tribal women.

The Pre-*Oliphant* model presented in this study offers a possible explanation and interpretation for the underlying correlation between the elevated sexual violence rates on reservations and the *Oliphant* decision. The historical analysis is supported with a path dependent argument.[13] The critical flashpoint in the model of evolution presented is the Supreme Court case, *Oliphant v. Suquamish Indian Tribe* (1978). Path dependence operates as the correlative machinery which explains that "the path of previous outcomes matters."[14] The Supreme Court case serves as "a small initial advantage" and indicates a fundamental change in the legal status of non-Indian men relative to their American Indian female counterparts.

The explanatory factors referenced in the analysis focus on critical events in history that reframe the outcomes sexual assault within a broader historical and institutional context. That is, the outcomes related to the prevalence of non-Indian male assailants and the cases of rape that are not prosecuted may be linked to the evolution of judicial power, which institutionalized the de facto legality of rape. The qualitative data used to support the analytic narrative is the textual analysis of *Oliphant v. Suquamish Indian Tribe*. The textual analytic method is employed to decipher the hidden assumptions in the *Oliphant* decision.[15] An analysis of *Oliphant* discloses a path dependency established by the Supreme Court that defined the course of history, and in effect, the current legal barriers imposed on tribal governments. Excerpts of the case are used to support the analytic narrative and path dependent argument. Overall, the Pre-*Oliphant* narrative attempts to expose the hidden structural factors that help provide answers to the research questions posed.

---

[10] Dessler, David. (2000). "Analytic Narrative: A Methodological Innovation in Social Science?" Analytic Narratives by Robert H. Bates; Avner Greif; Margaret Levi; Jean-Laurent Rosenthal; Barry R. Weingast. *International Studies Review*, Vol. 2, No. 3, pp. 176-179.

[11] Scott, J., Halcli, A., Webster, F., & Browning, G. K. (2000). "Rational Choice Theory." In *Understanding Contemporary Society: Theories of the Present*. London: Sage Publications.

[12] Bates, *Analytic Narratives*.

[13] The "concept of path dependence originated as an idea that a small initial advantage or a few minor random shocks along the way could alter the course of history." Page, Scott E. (2006). "Path Dependence," *Quarterly Journal of Political Science*, 1: pp. 87–115.

[14] Page, "Path Dependence," p. 89.

[15] Social sciences refer to textual analysis as the "method of analyzing the contents of documents that uses qualitative procedures for assessing the significance of particular ideas or meanings in the document." Scott, John. (2006). "Textual Analysis." In Victor Jupp (Ed.), *The SAGE Dictionary of Social Research Methods*. London: SAGE Publications.

III. Research Questions

The sexual assault of American Indian and Alaska Native women has received very little attention in scholarly literature. This study poses two questions: Why has rape, perpetrated by non-Indian males, become effectively legalized on reservations? What explains tribal courts' limited legal capacity to prosecute rape and sexual assault? The analytic narrative method conducts a broader and comprehensive analysis of the pandemic rates of sexual violence in tribal communities. Legal scholars have considered the importance of the *Oliphant* decision, but rarely delve into a single case analysis searching for explanations to better understand the impact of this case law on the lives of American Indian women.

Historians consult academic frameworks that trace the roots of social, political, or cultural problems. Scholars have posed the following research questions: how is rape and sexual assault used to conquer indigenous women? What relationships exist between colonialism and sexual violence? How were treaties instrumental in creating unbalanced schemes of power between the federal government and tribes? Historians present their arguments in two thematic frames: (1) the establishment of colonial power through treaties, and (2) the use of sexual violence as a tool for conquest.

On the idea of colonialism, Jones explains that "the great disparity of power between . . . [Native Americans] and the United States could not help but skew the treaty relationship into one so unequal that it can only be called colonial."[16] In other words, legally binding documents were systematically used to create an unequal relationship with the federal government and tribes—indigenous communities were disempowered. As Neferti Tadiar asserts, colonial relationships are themselves gendered and sexualized.[17] Modern day practices of female subjugation present themselves in the alarming rates of sexual violence on reservations.

Andrea Smith argues that sexual violence functions as a tool for conquest. According to Smith, "when a Native woman suffers abuse, this abuse is not just an attack on her identity as a woman, but on her identity as Native."[18] In this sense, American Indian women are targets of sexual violence because of their race, and residing on tribal reservations further complicates the issue. The legal structures enable race to become a determining factor in the end result of sexual assault cases, which created a law without justice. Therefore, "sexual violence is not simply a tool of patriarchy, but . . . also a tool of colonialism and racism."[19] While historians paint an accurate portrait of American Indian subjugation, the theories and arguments lack broader frames of analysis which identify the origins of the pandemic rates of sexual violence in tribal communities. The historical explanations provide partial insights to the modern phenomenon of sexual violence against American Indian women.

---

[16] Jones, D. V. (1982). *License for Empire: Colonialism by Treaty in Early America*. Chicago: University of Chicago Press, p. 186.

[17] Tadiar, N. (1998). Sexual Economies of the Asia-Pacific. In Dirlik, A. (Eds.), *What is in a Rim? Critical Perspectives on the Pacific Region Idea*. Lanham, Md: Rowman and Littlefield, p. 219.

[18] Smith, Andrea. (2003). "Not an Indian Tradition: The Sexual Colonization of Native Peoples." Hypatia, Vol. 18, No. 2, Indigenous Women in the Americas (Spring), pp. 70-85.

[19] Smith, "Not an Indian Tradition," p. 71.

IV. Literature Review

The phenomenon of rape and sexual assault on reservations remains largely unexplored in academia. Historians, anthropologists, sociologists, medical experts, and legal scholars have rarely directed their attention toward issues of sexual violence affecting American Indian women on reservations. The literature available originates from anthropological, sociological, medical, and legal perspectives. However, literature on related topics that affect American Indian women is gradually developing from anthropological, sociological, medical, and legal perspectives. In this review, scholarly perspectives are analyzed and the gaps in literature are identified.

What is more, the empirical data available provides inconclusive results insofar as determining an accurate estimate of the magnitude of sexual violence on reservations. The statistical data does not allow generalizations among American Indian populations. Tribal reservations are isolated pockets of land with unique cultural, social, economic, and legal resources. On matters of sexual violence, especially involving non-Indian offenders, the legal resources and data available become scarce.

Anthropologists and sociologists investigate cultural differences and societal apparatuses. The research within sociology and anthropology focus on outlining methods for practicing culturally sensitivity among social workers, conducting interviews with rape survivors, and developing national research programs designed to examine violence again American Indian women. The studies provide valuable and critical perspectives to the literature.

According to Roe Bubar, "few therapists are trained to work with Native American women."[20] The article "provides an overview of the sensitivity and knowledge that social workers . . . should have when working with Native American women."[21] Bubar suggests models to implement culturally competent practices and supervisory mechanisms for social workers, and acknowledges that "simply encouraging survivors to report . . . sexual assault is unrealistic and conveys a lack of cultural and historical awareness."[22] Instead, social workers should refer American Indian women to traditional alternatives for healing available in their community or in nearby communities. This study mentions that current "research indicates Native women are primarily assaulted by non-Native men" and cites the *Oliphant v. Suquamish* decision. However, the study focuses on findings for increased cultural awareness among social workers. A discussion of the underlying reasons for predominant non-Indian assailants is not considered.

According to Diane Bohn (2003), "alcohol and drugs are frequently used as a coping mechanism by abuse survivors who may imbibe in an effort to numb their psychic pain."[23] Bohn draws associations between abuse and substance abuse, mental health problems, and suicide attempts, which have rarely been examined in this population. The study "examined lifetime and current physical and sexual abuse among 30 Native American women."[24] Results reported that "nearly half had experienced physical and/or sexual abuse as children, over half were sexually abused at some time in their lives, and over three-fourths were abused by a partner."[25] A majority

[20] Bubar, Roe. (2009). "Cultural Competence, Justice, and Supervision: Sexual Assault Against Native Women," *Women & Therapy*, 33:1-2, 55-72.
[21] Bubar, Roe. "Cultural Competence," p. 55.
[22] Bubar, Roe. "Cultural Competence," p. 66.
[23] Bohn, Diane K. (2003). "Lifetime Physical and Sexual Abuse, Substance Abuse, Depression, and Suicide Attempts among Native American Women," *Issues in Mental Health Nursing,* 24: 333–352.
[24] Bohn, "Lifetime Physical and Sexual Abuse," p. 333.
[25] Ibid.

of women in this study turned to substances, such as alcohol and drugs, as a coping mechanism after years of childhood abuse or enduring traumatic events, such as intimate partner violence.

Health professionals conducted a cross-sectional study among six tribes in Oklahoma to determine "prevalence rates of alcoholism and investigate genetic and environmental vulnerability factors."[26] The results demonstrate that interpersonal violence is common among many American Indian tribes. The findings suggested that among women, 45% reported being physically assaulted and 14% were raped since being 18 years of age.[27] Therefore, the data illustrates the high rates of victimization on reservations. The study also suggests that, "women with higher tribal identity were at increased risk of being raped. However, women with more experiences living within or near tribal lands were less likely to be raped."[28] The study lacked temporal data, and as such, it is unknown whether women had stronger affiliations with their tribes before or after they were victimized. Assessing whether women identify strongly with their Native identity is important, but researchers are overlooking the need to closely examine the nature of interracial relationships in tribal communities.

Malcoe, Duran, and Montgomery (2004) conducted a study in which participants were "recruited from a tribally-operated clinic serving low-income pregnant and childbearing women in southwest Oklahoma."[29] The study included a self-administered survey which was completed by 312 Native American women (96% response rate) attending the clinic from June through August 1997. A total of "273 women had a spouse or boyfriend during the previous 12 months (although all participants were Native American, 59.0% of partners were non-Native)."[30] This study is one of the few published investigations that examine prevalence and socioeconomic correlates of Intimate Partner Violence (IPV) among a large sample of American Indian women.

As the first study to examine pregnancy status in relation to IPV, "findings indicate that low-income reproductive age Native American women in southwest Oklahoma have exceptionally high lifetime and past-year IPV rates…. IPV is strongly related associated with socioeconomic disadvantage."[31] Thus, these findings direct towards evidence that suggests gendered violence and poverty intersect. Within the context of this study, empirical evidence demonstrates that American Indian women are disproportionally at higher risk of sexual violence. However, the medical literature has overlooked the need to examine interracial relationships, and the role of non-Indian men on reservations.

Finally, legal scholarship introduces crucial perspectives towards the intricacies of jurisprudence, sovereignty, and social justice. Although the research about federal Indian laws available is limited, three ideas are brought to the forefront, (1) a jurisdictional paradox, (2) an argument to "overturn" the *Oliphant* decision, and (3) the new proposition of an indigenous approach to the jurisdiction of rape in tribal communities.

Scholar Sarah Deer argues that the "federal government has systemically stripped power from tribal nations over the course of the last several hundred years."[32] American Indian persons

[26] Yuan, Nicole P., Mary P. Koss , Mona Polacca, and David Goldman. (2006). Risk Factors for Physical Assault and Rape among Six Native American Tribes. *Journal of Interpersonal Violence,* 21 (12): 1566-1590.
[27] Yuan, "Risk Factors for Physical Assault and Rape," p. 1566.
[28] Yuan, "Risk Factors for Physical Assault and Rape," p. 1583.
[29] Malcoe, Lorraine H., Bonnie M. Duran, and Juliann M. Montgomery. (2004). "Socioeconomic Disparities in Intimate Partner Violence Against Native American Women: A Cross-Sectional Study," *BMC Medicine, 2(1): 1-20.*
[30] Malcoe, "Socioeconomic Disparities," p. 1.
[31] Malcoe, "Socioeconomic Disparities," p. 12.
[32] Deer, Sarah. (2004). "Federal Indian Law and Violent Crime: Native Women and Children at the Mercy of the State," *Social Justice*, Vol. 31, No. 4 (98), Native Women and State Violence, pp. 17-30.

residing in "Indian country are largely dependent on federal agencies, such as the Indian Health Service, the Bureau of Indian Affairs, and the Department of Justice (including the Federal Bureau of Investigation), to provide for basic human needs such as health care, education, and protection from crime."[33] However, "if the federal or state systems choose not to prosecute, the victim is left at the mercy of the perpetrator."[34] More often than not, sexual assault crimes are not prosecuted by District Attorneys or U.S. Attorneys and consequently these crimes committed on reservations predominately by non-Indian men linger unpunished.

First, the jurisdictional paradox proves difficult to unravel because it is "an invisible legal challenge."[35] The law theoretically grants tribal governments sovereignty over the accords of their internal affairs, but legal practices contradict notions of such sovereign power. More importantly, the *Oliphant* decision overrides tribal governments' sovereignty. Although numerous federal laws are on the books, Deer's article "focuses on four: the Major Crimes Act, Public Law 280 (P.L. 280), the Indian Civil Rights Act (ICRA), and the case law of *Oliphant v. Suquamish*."[36] While an analysis of these four laws contributes to a greater understanding of Federal Indian Law, the laws distract the attention that should be given to the *Oliphant* case.

Second, the argument to "overturn" *Oliphant v. Suquamish* is straightforward. In order "to reduce crime, and sexual violence in particular, in Indian Country, Congress should "overturn" *Oliphant* and grant tribes direct criminal jurisdiction over all people—Indian or not."[37] Eliminating this legal loophole will demand not only legislative reform, but additional policy developments as well. Future implications and suggestions for policy developments are discussed in the conclusion section.

Finally, the movement towards a contemporary Indigenous jurisprudence of rape holds that "tribal justice systems can have a tremendous impact on the survivors of sexual violence, particularly Native American survivors who reside in tribal communities."[38] Deer writes the jurisprudence "will not be a singular response to sexual violence; instead, each tribal government must develop its own unique response to the crime of rape."[39] On the whole, current legal scholarship does not adequately address the issue of sexual violence on tribal reservations. Most notably, the incomplete investigation of the historical impact of evolutionary judicial power and subsequent effective legalization of rape, specifically in relation with factors that pre-date the *Oliphant* decision, points to a significant gap in the literature.

V. Analytic Narrative Analysis

The origins of rape and sexual assault on tribal reservations can be traced through a broader framework that reveals a story. A narrative possesses "a background or setting, a beginning, a sequence of scenes, and an ending."[40] The background or settings under analysis are

[33] Deer, "Federal Indian Law," p. 18.
[34] Deer, "Federal Indian Law," p. 22.
[35] Deer, Sarah. (2005). "Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law," Suffolk University Law Review, pp. 455-466.
[36] Ibid.
[37] Pisarello, Laura. (2010). "Lawless By Design: Jurisdiction, Gender and Justice in Indian Country," *Emory Law Journal*, Vol. 59, pp. 1515-1552.
[38] Deer, "Sovereignty of the Soul," p. 455.
[39] Deer, Sarah. (2004). "Toward an Indigenous Jurisprudence of Rape," *Kansas Journal of Law and Public Policy,* Faculty Scholarship, pp. 121-154.
[40] Bates, *Analytic Narratives*, p. 14.

tribal communities, and the epidemic rates of rape and sexual assault. Colonialism operates simultaneously in this setting because sexual violence was historically used to subjugate women residing on tribal reservations. The story begins with the *Origins of Conquest*, and then lead to scenes of *Pre-Oliphant Period* consisting of three phases: (1) enacting a treaty system, (2) creating tribal court systems, and (3) *Oliphant v. Suquamish Indian Tribe*. Lastly, the narration ends with the de facto legalization of rape.

The Origins of Conquest

In addition to the horrors American Indians have endured throughout history, the ways in which they have been mistreated and abused by the federal government are well-known and documented. The historical context that pre-dates the Supreme Court decision paved the road for the subsequent exploitation of inadequate tribal judicial structures. For this reason, non-Indian males knowingly abuse the legal loophole in the system. The development of tribal courts trace back to the colonization of indigenous communities. A working definition of colonialism contextualizes the phenomenon of sexual violence on tribal reservations. Michael Kohn defines colonialism as the "practice of domination, which involves the subjugation of one people to another."[41] This colonial relationship has remained static, and worsened, after generations and generations of pushing American Indians to the margins of society. The relationship between tribal governments and the federal government has been founded on a pillar of inequality.

Pre-Oliphant Period: *Three Phases of Evolution*

The de facto legalization of rape occurred through a three tier series of events in U.S. history. The scenes consist of three phases: (1) enacting a treaty system, (2) creating tribal court systems, and (3) *Oliphant v. Suquamish Indian Tribe*. The first phase of evolution introduced the treaty system to indigenous communities. The second phase established tribal court systems for self-governance among tribes. Finally, the third phase enabled the Supreme Court to restrict tribal jurisdictional authority over non-Indian crimes on reservations. Prior to the *Oliphant* decision, the historical context of colonialism created formal court systems on reservations, and as such, provided the framework for the evolutional trajectory of judicial authority.

1) Enacting a Treaty System

The concept of a treaty, legal agreement, comes from Anglo-American characteristics of social contracts. With the arrival of British settlers, after the discovery of North America, indigenous populations were introduced to an unfamiliar process of negotiations and legal agreements. Over the course of two-hundred and eighty six years, Native peoples and English settlers attempted to co-exist peacefully, albeit unsuccessfully. The historically reversible contact with settlers disrupted and changed a former way of life for Native Americans, and consequently numerous wars were fought, won, and lost. After years of fighting wars, the conflict dwindled down and contracts for peace were produced in the form of treaties.

The first treaty signed by English settlers with an Indian tribe, 1778 Treaty with the Delawares, documents a peace agreement between the Delaware nation and settlers. According

[41] Kohn, M. (2012). "Colonialism," The Stanford Encyclopedia of Philosophy (Summer Edition), Edward N. Zalta (ed.). Retrieved from: <http://plato.stanford.edu/archives/sum2012/entries/colonialism/>.

to the treaty, "For the better security of the peace and friendship now entered into by the contracting parties . . . neither party shall proceed to the infliction of punishments on the citizens of the other . . . till a fair and impartial trial can be had by judges or juries of both parties."[42] The treaty outlined stipulations for equality and fairness, but tribal communities were granted neither fairness nor equality before the law.

The treaty further states, "The mode of such trials to be hereafter fixed by the wise men of the United States in Congress assembled, with the assistance of such deputies of the Delaware nation, as may be appointed to act in concert . . . to their mutual liking."[43] The introduction of the treaty system, derived from the 1778 Treaty, carries considerable weight in the assumptions that influence a crucial Supreme Court decision in the late 20th century.

2) Creating Tribal Court Systems

During the 19th century, formal court systems were established on reservations for handling criminal proceedings between tribal members. The tribal court systems, however, were not established uniformly. That is, the degree of sophistication and exercise of practical and basic legal proceedings carried out in tribal courts vary depending on the Indian reservation. The colonial dependence of reservations on the formation of tribal courts, modeled after European legal structures, influenced the lack of uniformity and coherence within court settings. The jurisdictional authority of tribal courts over non-Indian criminals was never made clear.

Tribal judicial systems were based around the Courts of Indian Offenses in the 1800s by the federal Office of Indian Affairs. In 1934, the Indian Reorganization Act allowed tribes to organize their governments, by drafting their own constitutions, adopting their own laws through tribal councils, and setting up their own court systems.[44] By that time period, however, the reversible disruptions imposed on Native societies through forced migration, the allotment system, and settlements on reservations, tribes "were not in a position to recreate historical forms of justice."[45] The courts were modeled around unfamiliar structures of common law and Anglo-American institutions.

Currently, the judicial systems on reservations vary from one tribe to another tribe—the courts are void of any real uniformity. A "few tribes, such as the New Mexico Pueblos, have "traditional courts" based in Indian custom, most modern reservation judicial systems do not trace their roots to traditional Indian fora for dispute resolution."[46] Tribal courts prescribe to the influences of Anglo-American legal institutions. Many courts lack the basic resources to provide legal aid, trial proceedings, and justice.

3) Oliphant v. Suquamish Indian Tribe

The evolution of judicial power reaches a flashpoint with the Supreme Court case that stripped tribal courts' legal authority to try and punish non-Indian criminal offenses. The Court decision has undergone some review from legal scholars, but the impact, and explanatory

[42] *Indian Affairs: Laws and Treaties. Vol. II* (Treaties) in part. Compiled and edited by Charles J. Kappler. Washington: Government Printing Office, 1904.
[43] Ibid.
[44] O'Connor, Sandra D. "Lessons from the Third Sovereign: Indian Tribal Courts," 33 *Tulsa Law Review*. J. 1 (1997).
[45] O'Connor, "Lessons from the Third Sovereign," p. 2.
[46] Ibid.

devices, of this case law and its relationship with American Indian women. The possible connection between the elevated rates of rape and sexual assault on reservations and the *Oliphant* decision remains uninvestigated in the literature.

The case originated when "Mark David Oliphant and his co-defendant were on the Port Madison Reservation during the Suquamish Tribe's annual celebration. Tribal police arrested both men in separate incidents."[47] Mark Oliphant was charged with assaulting a tribal officer and resisting arrest. The other man, Daniel B. Belgarde, was charged with reckless endangerment for crashing into a tribal police car after leading the tribal police on a high-speed chase. Both men petitioned for a writ of habeas corpus in federal district court. While the district court denied their petitions, the Ninth Circuit affirmed Oliphant's case. The Supreme Court reviewed the case.

Who has jurisdictional authority to try and punish non-Indian crimes on reservations? The answer was never made clear. Previous treaty agreements operated under the assumption that the United States had inherent criminal jurisdiction over non-Indian crimes. Justice William Rehnquist cites an "unspoken assumption" in the opinion of the case. The unspoken assumption is derived from the fact that English settlers, and by extension non-Indians, introduced the treaty system to Native peoples.

Thus, all jurisdictional authority, according to the Supreme Court, inherently belongs to the federal government. The British settlers introduced "civilization" or formal legal institutions to Indians, and this civilizing of the "illiterate savage" occurred through the transfer of treaties. The treaty system established participation on behalf of Indian reservations by order of institutional structures—court systems. The consent of their participation was vested in the treaty transactions that occurred in the 18th century.

The text of the *Oliphant* decision explicitly states the overriding authority of judicial power on criminal affairs that deal with non-Indian offenders. The assumption of judicial power in the hands of federal courts, rather than tribal courts, is brought to the forefront.

> A few tribes during the 19th century did have formal criminal systems. From the earliest treaties with these tribes, it was apparently assumed that the tribes did not have criminal jurisdiction over non-Indians absent a congressional statute or treaty provision to that effect.[48]

The decision clarifies the question surrounding which agent, federal, state, or tribal, retains jurisdictional authority over non-Indian crimes. In the following passage, the Court defines the judicial power of the U.S. legal system relative to tribal courts in a straightforward manner, "Indians do not have criminal jurisdiction over non-Indians."

> By themselves, these treaty provisions would probably not be sufficient to remove criminal jurisdiction over non-Indians if the Tribe otherwise retained such jurisdiction. But an examination of our earlier precedents satisfies us that, even ignoring treaty provisions and congressional policy, Indians do not have criminal

[47] Royster, Judith. (2003). "Oliphant and Its Discontents: An Essay Introducing the Case for Reargument before the American Indian Nations Supreme Court," *Journal of Law and Public Policy*, University of Tulsa College of Law: TU Law Digital Commons, pp. 59 -68.

[48] *Oliphant* v. *Suquamish Indian Tribe,* 435 U. S. 191 (1978).

> jurisdiction over non-Indians absent affirmative delegation of such power by Congress.[49]

The earlier precedents that satisfy the rational of the decision are rooted in the first phase of evolutionary judicial power, the introduction of the treaty system to tribal communities. The "unspoken assumption" derives from the British settlers agreements with Native people through the use of treaties. In other words, the British settlers are credited with providing the treaty system which led to the establishment of tribal courts on reservations. Moreover, efforts from Indian tribal courts to try and punish non-Indians were acknowledged, but readily discredited. The Court believed that "few Indian tribes maintained any semblance of a formal court system."

> Finally, we are not unaware of the prevalence of non-Indian crime on today's reservations which the tribes forcefully argue requires the ability to try non-Indians. But these are considerations for Congress to weigh in deciding whether Indian tribes should finally be authorized to try non-Indians. They have little relevance to the principles which lead us to conclude that Indian tribes do not have inherent jurisdiction to try and to punish non-Indians.[50]

Given the assumed lack of uniformity among tribal court systems, the Court ruled that "Indian tribes do not have inherent jurisdiction to try and to punish non-Indians." The ruling is derived from the foundational elements provided by the first and second phases of evolution, which creates the institutional underpinning that influences the criminal behavior of non-Indian males committing crimes of sexual assault on reservations.

The role of non-Indian assailants and their involvement in crimes committed against American Indian women has remained largely unexplored. Turning to the overall composition of the population on reservations is vital. Recent US Census Bureau (2010) data indicates that about 3.5 million (76%) of the 4.6 million people living on reservations were non-Indian.[51] In 2010, 59% of American Indian women were in relationships with non-Native men. Official data reports that approximately half of the American Indian women living on reservations are married to non-Indian men.[52] The Census data highlights interracial relationships and gives insights about the problems of sexual violence on reservations. However, the incidents of rape and attempted rape women experience in their lifetime's stem from the institutional factors that may reveal patterns of criminal behavior among non-Indian males.

The non-Indian males committing sexual assault crimes against women, who are not members of tribal communities, engage in criminal behavior because institutions have normalized criminal behavior. Institutions "induce choices that are regularized because they are made in equilibrium."[53] In this case, the disequilibrium induces criminal behavior because of the evolutionary consequences of judicial power. The balance of judicial power, branching from the possibility of tribal jurisdiction over non-Indian criminals, was unevenly tipped when the

---

[49] *Oliphant* v. *Suquamish Indian Tribe,* 435 U. S. 191 (1978).
[50] Ibid.
[51] Perry, S. W. Bureau of Justice Statistics. (2012). *Tribal Crime Data Collection Activities, 2012*. United States, p. 4.
[52] 2010 Census Summary File 1— Technical Documentation. Prepared by the U.S. Census Bureau, Revised 2012. Retrieved from: <http://www.census.gov/prod/cen2010/doc/sf1.pdf>.
[53] Bates, Robert H, Avner Greif, Margaret Levi, Jean-Laurent Rosenthal, and Barry R. Weingast. *Analytic Narratives*. Princeton, N.J.: Princeton University Press, 1998.

Supreme Court asserted that "Indian tribes do not have inherent jurisdiction to try and to punish non-Indians." According to rational choice theory, human behavior "becomes stable and patterned, or alternatively institutionalized, not because it is imposed, but because it is elicited."[54] The increased rates of sexual violence on reservations suggest that behavioral patterns emerge among non-Indian males.

Entering a tribal community and raping young women poses a low risk for non-Indian males because legal constraints imposed by the *Oliphant* decision made it difficult, if not impossible, to prosecute rape on reservations. The responsibility of prosecuting rape on reservations falls on the shoulders of the District Attorney. However, in 2010, District Attorney Offices failed to prosecute 65 percent of rape cases reported on reservations.[55] The criminal behavior of non-Indian males can be explained through the historical evolution of judicial power, which has effective legalized rape on reservations. The lack of sexual assault cases prosecuted on reservations has institutionally legalized the enterprise of rape. As a result, *Oliphant* plays a critical role in the de facto legalization of rape in tribal communities. The non-Indian assailants are not lawfully held accountable for their crimes in either federal, state, or tribal courts.

The *Oliphant* decision informs the behavioral outcomes of non-Indian males on reservations who commit crimes of sexual violence. The Supreme Court instigated the jurisdictional constraints of tribal courts' authority to prosecute non-Indian offenders of rape crimes on reservations. The behaviors of sexual violence toward American Indian women on the part of non-Indian males are explained by the lack of accountability and criminal prosecution that occurs in court systems. The judicial power of tribal court systems was diminished with the *Oliphant* case ruling. Instead of balancing the scales of judicial powers between tribal and federal courts, the Supreme Court officially spelled out, defined, and reaffirmed the hidden assumptions that date back to the 15th century, and the reasoning behind the decision seems dependent on institutional and structural factors that pre-date the Court's opinion.

Effectively Legalized Rape

The de facto legalization of rape on tribal reservations is arguably the primary result of broader historical, evolutionary, and institutional mechanisms, which normalize non-Indian criminal behavior. The diminished legal capacity of tribal courts unavoidably grants non-Indian males immunity from the legal consequences of their criminal actions. While the legal constraints imposed on tribal courts become expressly clear in the *Oliphant* decision, the ruling cites earlier treaties with Indian tribes. The first treaties with tribes and Anglo-American judicial interpretations of those provisions created a path dependence on the unequal relationship between the federal government and tribal communities. The underpinnings of colonialism, therefore, guided the enactment of treaties, and established the legal assumptions necessary for the Supreme Court to deny tribal courts the authority to prosecute non-Indian crimes.

The criminal activity of non-Indian males exists within a broader context of tribal court systems that do not, and cannot, punish non-Indian offenders. American Indian women residing on reservations are denied any form of meaningful protection under the law, and non-Indian male assailants know their criminal behavior produce no real consequences and take advantage of the system. The inaction from federal, state, and tribal authorities in effect legalize rape on

[54] Bates, *Analytic Narrative*, p. 8.

[55] US Government Accountability Office. (2010). US Department of Justice Declinations of Indian Country Criminal Matters [GAO-11-167R]. Washington, DC. Retrieved: <http://www.gao.gov/new.items/d11167r.pdf>

reservations. Thus, males who are not members of tribal communities—living within close proximity of, or on, a tribal reservation—can easily target women and sexually assault them without any form of punishment or response.[56] Many rape survivors on tribal reservations have lost hope and stopped reporting the sexual violence altogether, preferring to suffer in silence instead of confronting an attacker who is afforded more representation and protection because of his race.

VI. Conclusion

The analytic narrative offers insights toward a broader conceptual approach in order to consider the possible explanations for alarming rates of sexual violence on reservations. While this social problem is surrounded by other complicated factors, the analytic narrative reframes the problem into a coherent sequence of events—historical, institutional, and evolutionary properties are examined. The pandemic of sexual violence on reservations begins with the colonization of indigenous communities' after the arrival of English settlers during the late 15th century, followed by a three phase evolution of judicial power, and ends with the effective legalization of rape. The problem seems to suggest patterns of institutionalized racism are paired with the historical institutional evolutionary trajectory of judicial power.

What policy prescriptions can attempt to alleviate the problem? The Obama Administration has taken steps in the right direction. In March 2013, President Obama signed the Violence Against Women Act (VAWA) 2013, a landmark addition that empowers American Indian tribal authorities to prosecute non-Indians for sexual abuses committed on tribal lands. While the reauthorized version of the VAWA is stronger than previous versions, the provisions expanding tribal jurisdiction are still narrow. In fact, tribal governments continue to have limited sentencing authority—up to three years, which could mean that some cases still are sent to federal or state authorities for prosecution.

The new provisions are also geared towards targeting domestic or dating violence, which would only apply in crimes where the perpetrator is an "established intimate partner" of an American Indian woman (S. 47).[57] The reauthorized act seeks to address part of the crisis by extending tribal jurisdiction over non-Indians who commit crimes of domestic violence or sexual assault against an American Indian spouse or partner. Therefore, even with the provisions in VAWA, non-Indians without ties to a tribal reservation, who are strangers, can enter the community and rape American Indian women with impunity. The provision does not extend to native women in Alaska. Thus, the vicious cycle of sexual violence will continue its course on reservations. Clearly, more comprehensive, just, and culturally appropriate policy prescriptions are needed to address this dilemma.

In terms of policy prescriptions, there are several options. One option can ease the accessibility of pro bono on reservations through nonprofit and advocacy organizations. Another approach could be reforming the legal system and granting jurisdictional authority to tribal courts over non-Indian sexual assault crimes. In addition, implementing tort reform enables an injured party to sue the wrongdoer for damages. A lawsuit can provide a form of retribution to

[56] US Census Bureau (2010) data indicates that about 3.5 million (76%) of the 4.6 million people living on reservations were non-Indian.

[57] S. 47--113th Congress: Violence Against Women Reauthorization Act of 2013. (2013). In www.GovTrack.us. Retrieved May 21, 2013, from: <http://www.govtrack.us/congress/bills/113/s47>.

survivors of sexual assault on reservations, and ensure a form of punishment, other than imprisonment, for non-Indian offenders.

Moreover, policy prescriptions can also provide basic resources that reservations need to acquire access to basic human rights. Policymakers should urge the government to work closely with tribal governments to revitalize tribal court systems. A history "plagued first by conquest, then by trickery, and now by paternalism, returning the power to punish would go a long way in building partnership and trust."[58] The revitalized cultivation of tribal courts is desperately needed. Tribal governments could take judicial action on their own terms. On a federal or state level, this means investing adequate resources into health related and legal sources for survivors of sexual violence and rape on reservations. For "tribal governments, defining and adjudicating crimes such as sexual assault can be the purest exercise of sovereignty. What crime, other than murder, strikes at the hearts of its citizens more deeply than rape?"[59]

Furthermore, the federal government needs to take proactive steps to ensure basic human rights are available to tribal communities, such as equal access to economic and education opportunities and judicial processes. Government action needs to be supported by a strong foundation of data and research, which currently has limitations and deficiencies. However, the collection of data is necessary to set priorities, guide the development of potential forms of collaborative intervention, programs and policies, and monitor progress. More research is necessary to identify new trends in violence as well as strategies for prevention and assistance.

In the process of acquiring more data on American Indian and Alaska Native populations, however, cultural sensitivity and awareness must be exercised. Researchers, advocates, and policy makers should be mindful of not reinforcing stereotypical attitudes, and must make efforts to publically acknowledge the issues impacting the lives of American Indian and Alaska Native women. An overall shift in awareness and attitudes toward American Indian populations needs to drive a force for change; only by recognizing the mistakes of the past can we begin or at least attempt to rectify the serious problems women endure because of their identities and socioeconomic statuses as American Indian and Alaska Native citizens.

VII. Conclusions and Implications

While this analysis focuses on a single case study, broader societal symptoms can be drawn from other similar phenomenon. For example, a problem with rape and sexual harassment among undocumented women working in America's farms, fields, and factories has begun to receive national attention. [60] Both American Indian women and undocumented female workers are vulnerable populations, and they are subjected to unfair treatment and status of inequality in legal systems. To date, there has not been a single sexual assault case from an undocumented farm worker that has been prosecuted, and yet there are hundreds of reports from undocumented female workers around the country. The same is true of American Indian women residing on reservations; no evidence seems to indicate that non-Indian males have been prosecuted for sexual assault crimes when reports are made on reservations.

---

[58] Owens, Jasmine. (2012). ""Historic" in a Bad Way: How the Tribal Law and Order Act Continues the American Tradition of Providing Inadequate Protection to American Indian and Alaska Native Rape Victims," *Journal of Criminal Law and Criminology*, Vol. 102, pp. 497-524.

[59] Deer, "Sovereignty of Soul," p. 465.

[60] Bergman, L. (2013, June 25). Rape in the Fields | FRONTLINE | PBS [Video file]. Retrieved from: <http://www.pbs.org/wgbh/pages/frontline/rape-in-the-fields>.

The U.S. prides itself on being a champion of human rights, and yet egregious human rights violations occur within its own borders. The pandemic rates of sexual violence on reservations are outrageous. The U.S. legal system does not guarantee protection to every citizen before the law, and not all laws are designed to protect basic human rights and deliver justice. The *Oliphant* decision is an example of our legal system's shortcomings. If the opposite were true, then hundreds upon hundreds of women on reservations would not be marginalized and ignored. The sexual harassment problem among undocumented farm works also highlights the inexcusable flaws in the U.S. legal system. If human rights are a priority for our nation, then real efforts should be made to ensure that every citizen has access to unalienable and universal human rights, and the right to pursue justice.

Bibliography

Allen, P. G. (1986). *The sacred hoop: Recovering the feminine in American Indian traditions*. Boston: Beacon Press.

Axtell, J. (1988). *After Columbus: Essays in the Ethnohistory of Colonial North America*. New York: Oxford University Press.

Bachman, R., Zaykowski, H., Kallmyer, R., Poteyeva, M., and Lanier, C. (2008). *Violence Against American Indian and Alaska Native women and the Criminal Justice Response: What is Known.* Unpublished grant report to the US Department of Justice.

Bachman, R., Zaykowski, H., Lanier, C., Poteyeva, M., & Kallmyer, R. (2010). Estimating the Magnitude of Rape and Sexual Assault Against American Indian and Alaska Native (AIAN) Women. *Australian & New Zealand Journal of Criminology (Australian Academic Press), 43,* 2.

Basile, K., & Smith, S. (2011). Sexual Violence Victimization of Women: Prevalence, Characteristics, and the Role of Public Health and Prevention. *American Journal of Lifestyle Medicine, 5,* 5, 407-417.

Bass, E., and Davis, L. (1988). *Courage to Heal*. Harper & Row: New York.

Bohn, D. K. (2003). Lifetime physical and sexual abuse, substance abuse, depression, and suicide attempts among Native American women. *Issues in Mental Health Nursing, 24,* 3.

Calloway, Colin G. *First Peoples: A Documentary Survey of American Indian History*. Boston: Bedford/St. Martin's, 2012.

Chekuru, Kavitha. "Violence Against Women Act Includes New Protections For Native American Women." *The Huffington Post*, March 1, 2013. Retrieved from: <http://www.huffingtonpost.com/2013/03/10/violence-against-women-act-native-americans_n_2849931.html>.

Coroian, G. (2009). *Oliphant v. Suquamish Indian Tribe*. In H. Greene, & S. Gabbidon (Eds.), *Encyclopedia of Race and crime.* (pp. 602-603). Thousand Oaks, CA: SAGE Publications, Inc.

Hacker, J. (2002). *The Divided Welfare State: The Battle over Public and Private Social Benefits in the United States.* Cambridge: Cambridge University Press.

Horwitz, Sari. "New law offers protection to abused Native American women." *The Washington Post*, February 8, 2014. Retrieved from: <http://www.washingtonpost.com/world/national-security/new-law-offers-a-sliver-of-protection-to-abused-native-american-women.html>.

Institute for the Development of Indian Law. (1980). *Treaty rights workshop: Point Elliott Treaty, 1855*. S.l.: Institute for the Development of Indian Law.

Jones, D. V. (1982). *License for Empire: Colonialism by Treaty in Early America*. Chicago: University of Chicago Press.

Kohn, M. (2012). "Colonialism," *The Stanford Encyclopedia of Philosophy* (Summer Edition), Edward N. Zalta (ed.). Retrieved from: <http://plato.stanford.edu/archives/sum2012/entries/colonialism/>.

Malcoe, L. H., Duran, B. M., & Montgomery, J. M. (2004). Socioeconomic disparities in intimate partner violence against Native American women: a cross-sectional study. *Bmc Medicine, 2.* 21

Metcalf, A. (1997). Old Woes, Old Ways, New Dawn: Native American Women's Health Issues. In Ruzek, S. B., Olesen, V. L., & Clarke, A. *Women's Health: Complexities and Differences*. Columbus: Ohio State University Press.

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

Perry, S. W. (2004). *American Indians and crime: A BJS Statistical Profile*, 1992-2002 [NCJ 203097]. Washington, DC: US Department of Justice, Bureau of Justice Statistics.

Perry, S. W. Bureau of Justice Statistics. (2012). *Tribal Crime Data Collection Activities, 2012*. United States.

Pierson, P. (2004). *Politics in Time: History, Institutions, and Social Analysis*. Princeton: Princeton University Press.

S. 47--113th Congress: Violence Against Women Reauthorization Act of 2013. (2013). In www.GovTrack.us. Retrieved May 21, 2013, from: <http://www.govtrack.us/congress/bills/113/s47>.

Smith, A. (2005). *Conquest: Sexual violence and American Indian genocide*. Cambridge, MA: South End Press.

Smith, A. (2011). Sexual Violence as a Tool of Genocide. In Cannon, M. J., & Sunseri, L. (Eds.), *Racism, Colonialism, and Indigeneity in Canada: A Reader* (252-260). Toronto, ON: Oxford University Press.

Stannard, D. E. (1992). *American holocaust: Columbus and the Conquest of the New World*. New York: Oxford University Press.

Tadiar, N. (1998). Sexual Economies of the Asia-Pacific. In Dirlik, A. (Eds.), *What is in a rim? Critical perspectives on the Pacific Region idea*. Lanham, Md: Rowman and Littlefield.

Tjaden, P., & Thoennes, N. (2000). *Full report of the prevalence, incidence, and consequences of violence against women: Findings from the National Violence Against Women Survey* [NCJ 183781]. Washington, DC: US Department of Justice, National Institute of Justice & the US Department of Health and Human Service, Centers for Disease Control and Prevention.

US Government Accountability Office. (2010). *US Department of Justice Declinations of Indian Country Criminal Matters* [GAO-11-167R]. Washington, DC. Retrieved from: <http://www.gao.gov/new.items/d11167r.pdf>.

Vinzant, John H. *The Supreme Court's Role in American Indian Policy*. El Paso: LFB Scholarly Publishing, 2009.

Wildenthal, B. H. (2003). *Native American Sovereignty on Trial: A Handbook with Cases, Laws, and Documents*. Santa Barbara, Calif: ABC-CLIO

Yuan, N. P., Koss, M. P., Polacca, M., & Goldman, D. (2006). Risk Factors for Physical Assault and Rape among Six Native American Tribes. *Journal of Interpersonal Violence, 21,* 12, 1566-1590.