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

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Methodology
This study traces the origins of judicial power, within the U.S. legal system, and explores the unresolved issues with tribal judicial systems versus federal and state criminal jurisdictional authority. Thus, the analytical narrative method is employed to investigate the evolution of judicial power over the course of time. A path dependency argument emphasizes the Supreme Court case of Oliphant v. Suquamish Indian Tribe (1978). The historical intentional evolution of the effective legalization of rape on reservations draws from textual analysis. The broader framework analysis provides new insights toward the impact of Oliphant on the lives of American Indian and Alaska Native women.

Elevated Rates of Sexual Violence
According to the Department of Justice, 1 in 3 American Indian women have been raped or have experienced an attempted rape. (Centers for Disease Control and Prevention suggests that findings about American Indian women, ‘are likely to underrepresent the prevalence of sexual violence, stalking, and intimate partner violence’). The 2010 National Intimate Partner and Sexual Violence Survey reports that 1 in 5 women in the United States has experienced sexual violence.

Indian Reservations in the United States
There are 566 federally-recognized tribes scattered throughout the country.

The Supreme Court
In earlier treaties, the jurisdictional authority of tribal courts over non-Indian criminals was never made clear. The Oliphant decision defined the scope of tribal judicial systems, and fundamentally denied the courts the ability to prosecute non-Indians. The court case marks a critical point in the evolution of judicial power. The ruling explicitly states the supervising authority of federal power over criminal acts that deal with non-Indian offenders.

Policy Prescriptions
In terms of strategic policies, there are several options. One option can ease the accessibility of pro bono services 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 survivors of sexual assault on reservations, and ensure a form of punishment, other than imprisonment, for non-Indian offenders.

Historical Evolution of Power

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<tr>
<th>Phases of Evolution</th>
<th>Timeline of Events</th>
<th>Decision Dates</th>
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<tr>
<td>Phase Two: Establishment of Tribal Court Systems</td>
<td>1898-1900</td>
<td>1978</td>
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Effective Legalization of Rape on Reservations
- The origins of this phenomenon are traced to the colonial compacts of tribal societies that ensued after the arrival of Columbus in the mid-15th century—the pre-Oliphant period.
- The criminal activity of non-Indian males exists within a broader context of court systems that do not, and cannot, punish criminal offenders on reservations because of the 1978 Supreme Court decision.
- The evolution of judicial power, in the end, leads to the inability of tribal courts, or any court system, to prosecute sexual assault crimes on tribal reservations.

Conclusions
Policymakers should urge the government to work closely with tribal governments to revitalize tribal court systems. Opportunities for justice for the survivors of sexual assault are available, and the problem must be approached with cultural sensitivity. Researchers, advocates, and lawmakers should be mindful of not reinforcing stereotypical attitudes, and must make efforts to politically acknowledge the issues impacting the lives of American Indian and Alaska Native women. An overall shift in awareness of American Indian populations needs to drive a force for change; only by recognizing the mistakes of the past can we begin at least attempt to rectify the serious problems women endure because of their race and socioeconomic statuses as American Indian and Alaska Native citizens. If human rights are a priority for our nation, then real efforts should be made to ensure that every American citizen has access to unalienable and universal human rights, and the right to a pursuit of justice through fair and appropriate judicial processes.

Advocacy Groups
For more information, please visit the following websites:
- National Indian Country Clearhouse on Sexual Assault
- http://www.niccsusa.org
- Coalition to Stop Violence Against Native American Women
- http://www.csnrc.org/resources.htm

Bibliography