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 legal space over the course of time. A path dependence argument emphasizes the Supreme Court cases Oliver P. v. Suquamish Indian Tribe (1978). The historical intentional evolution of the effective legalization of rape on reservations draws from textual analysis. The broader frame analysis provides new insights toward the impact of Oliver P. on the lives of American Indian and Alaska Native women.

Historical Evolution of Power

Three Phases of Evolution
Phase One: Introduction of a Treaty System
Phase Two: Establishment of Tribal Court Systems
Phase Three: Supreme Court Decision

Effective Legalization of Rape on Reservations
- The origins of this phenomenon are traced to the colonial compact of tribal societies that ensured after the arrival of Columbus in the mid-15th century—pre-Supreme Court.
- The criminal activity of non-Indian males exists within a broader context of court systems that do not, and cannot, prosecute 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.

Policy Prescriptions
In terms of suggest for policy changes, there are several options. One option can ease the accessibility of due process 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 appropriate 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.

Conclusions
Policymakers should urge the government to work closely with tribal governments to revitalize tribal court systems. Opportunities to seek 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 status 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:
- Native American Indian Clearhouse on Sexual Assault: <http://www.naiica.org>
- Coalition to Stop Violence Against Native American Women: <http://www.csnaw.org/resources.htm>

Bibliography