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 This past term we have learned about the high rates of police killings according to ethnic group. Most people would be surprised to learn that Native Americans have the highest rates of police killings among any other ethnic group. According to CNN, “Native Americans make up about 0.8% of the population, yet account for 1.9% of police killings (Moya-Smith, 2014).” Yet they are hardly mentioned in statistics nor do they gain media attention. One of the issues that could be attributed to these high rates of police killings is criminal and civil jurisdiction in Indian Country. Tribal courts don’t have the freedom to maintain their own criminal justice systems because of the barriers that federal Indian law imposes, and it prevents tribal courts from exercising full power. Currently, tribal governments and court systems have no jurisdiction over convicting non-natives for crimes that happen on Indian reservations. This is due to Supreme Court cases and federal statutes that severely limit tribal powers. I will focus on four of the most significant laws that impact tribal government’s ability to address crimes, why they were implemented, the impact of it, and I will propose change, and discuss the barriers that exist to change.

 The most consequential laws that impact tribal governments’ ability to address crimes are: the Major Crimes Act, Public Law 280, the Indian Civil Rights Act, and the U.S. Supreme Court decision in Oliphant v. Suquamish. The Major Crimes Act (1885) was one of the first jurisdictional blows to tribal law. It forced the federal criminal justice system on tribal communities, which means that tribal governments have to work in conjunction with the federal government. Instead of crimes being handled by tribal governments they go into the hands of the federal government (Deer, 2015). This was passed after a controversial Supreme Court case, *Ex Parte Crow Dog*. Crow Dog was a Brule leader who killed Spotted Tail, another Brule leader, on reservation land. The tribe handled the crime in a traditional way, but the Territory of Dakota found out about the crime and the Dakota court sentenced Crow Dog to hang for murder. However, “His conviction was reversed by the United States Supreme Court with a strong holding that the Brule had a sovereign right to their own law, leaving the United States courts with no jurisdiction (Harring, 1988/1999).” And Crow Dog was set free. There was a public outcry against this stating that Crow Dog got away with murder, after which Congress enacted the Major Crimes Act which placed tribes under its power and undermined their sovereignty.

The second jurisdictional barrier is Public Law 280 (1953), in which criminal matters were transferred from the federal government to the state. As a result of this law, tribal communities and victims of crimes are at the mercy of the state, who do not always act in the best interest of Native people (Deer, 2015). Public Law 280 was enacted in the 1950’s which was a period of termination for Indian tribes which meant that some of them lost their federal recognition by the federal government. It was also a period of relocation in which the federal government placed Native people in urban areas in an attempt to encourage them to leave the reservation and to assimilate into the broader society. According to an article titled, “Public Law 280: Issues and Concerns for Victims of Crimes in Indian Country,”

The Senate Report of the bill (6) indicates that alleged lawlessness on the reservations and the accompanying threat to Anglos living nearby was the foremost concern of Congress when they passed Public Law 280 in the 1953. Instead of enhancing tribal criminal justice systems, Congress chose to radically shift the balance of jurisdictional power towards the states and away from the federal government and Indian Nations (Ada Pecos Melton, 2016).

As a result in certain states, PL 280 led to a weakening of tribal justice systems, lack of response to criminal behavior, and criminal justice dysfunction (Deer, 2015).

The third law that affects tribal government’s ability to deal with crimes is the Indian Civil Rights Act (1968). The Indian Civil Rights Act restricts tribal court authority by imposing limits on the punishments tribal courts can impose (Deer, 40). Under this law, tribal courts cannot exercise authority over serious, felony level crimes and are limited to only prosecuting misdemeanors. It resulted from Congressional concern of abusive tribal court systems followed by lawmakers learning that tribal governments are not bound by the U.S. constitution (Deer, 2015). The act extends parts of the Bill of Rights to individual Indians against their tribal governments as well as including language from the First, Fourth, Fifth, Sixth, and Eighth Amendments to the U.S. Constitution (Gale Cengage Learning , 2016). The limit placed on punishments tribal courts can impose weakened tribal justice systems as well as leaving cases concerning tribal members to the federal or state systems.

The fourth law that affects tribal jurisdiction is the Supreme Court case Oliphant v. Suquamish (1978), which stripped tribal governments of their power to prosecute non-natives for crimes committed in Indian Country (Deer, 2015). This was one of the most detrimental laws to affect Indian Country because it leaves reservations extremely vulnerable to crimes, and guarantees impunity for non-native perpetrators. According to Geoffrey C. Heissey, in his article “Oliphant and Tribal Criminal Jurisdiction over Non-Indians” he explains,

The Oliphant case arose from the enforcement of the Suquamish Indian Tribe's

Law and Order Code against two non-Indian defendants, Mark David Oliphant

and Daniel B. Belgarde. Oliphant was arrested during an annual Suquamish

celebration and charged with assaulting a tribal police officer and resisting arrest.

Belgarde was arrested for a high-speed chase with tribal police that ended when

Belgarde collided with a tribal patrol car. He was charged under the Law and

Order Code with recklessly endangering another person and injuring tribal

property. The two men applied for a writ of habeas corpus under the Indian Civil

Rights Act of 1968 arguing that the tribal court did not have jurisdiction. The

District court and the U.S. Court of Appeals for the Ninth Circuit both upheld

Tribal jurisdiction, but the Supreme Court held that Indian tribal courts have no

Criminal jurisdiction over non-Indians (1998).

The result of the case makes it extremely difficult for tribes to maintain law and order, leaves them virtually powerless in prosecuting crimes committed by non-native people, as well as leaving tribal members vulnerable to crimes such as rape without holding perpetrators accountable.

 These laws and acts that Indian Country have been burdened with have many downsides, and create a multitude of legal barriers for tribal justice systems in addressing crimes. These acts weaken tribal sovereignty and make it extremely difficult for tribal governments to carry out law and order. As a result, tribal people are victims of crimes, tribal sentences are capped and not able to operate to its full extent, and tribes are placed under the power of the state and federal government. In addition, tribal law enforcement are under resourced, and on many reservations, have to cover a vast area of land. The attempts of the federal government to subvert tribal nations’ ability to govern themselves have led to countless insufficiencies regarding the criminal justice system. In her book, *The Beginning and End of Rape: Confronting Sexual Violence in Native America,* Sarah Deer asserts that “In the past fifteen years, multiple federal government reports have concluded that high tribal crime rates are due in part to the impoverished condition of tribal criminal justice systems (2015).” Something needs to be done, and I propose that the federal government should relinquish its control in dealing with tribal justice systems.

 There needs to be legislative reform done at the federal level and tribes need to be recognized as sovereign entities. In the 18th and 19th centuries, Native American tribes entered into treaties with the United States government. In doing so, the U.S. government acknowledged tribes as sovereign nations who govern themselves and their affairs, one of them being their own justice systems. Without the interference of the federal government, tribal justice systems would be able to prosecute criminals the way they see fit. But to ask for federal reform is a tricky situation because the same system that oppresses tribal nations is the same system where federal reform happens. However, I think the acts that have been imposed can be altered to form a better criminal justice system in Indian country. Federal reform is possible and is underway, slightly.

 There are two major acts that may pave the way for greater federal reform, and they are The Tribal Law and Order Act of 2010 and the Violence Against Women Act and its reauthorization. President Obama signed into law the Tribal Law and Order Act and it has three purposes: the first is to make federal departments and agencies more accountable for serving Native people and lands, the second is to provide more freedom for tribes to design and implement their own justice systems, and third to enhance cooperation among tribal, federal, and state officials in areas such as law enforcement training (Deer, 2015). The Violence against Women Act was passed in 1994 and reauthorized three times. One of the most significant parts of the recent reauthorization in 2013 was that tribal governments can prosecute non-natives who commit acts of domestic violence against a Native woman on tribal land, as long as they have significant ties to the tribe. This is very limiting because it doesn’t include crimes outside of domestic violence and tribes can only prosecute a non-native if the victim has a relationship to the perpetrator (Deer, 2015), but it is a start to more reform.

 Reform can happen and it’s going to take a lot of work and cooperation on the tribal, federal, and state level, but it is possible. Perhaps the high rates of police killings among Native Americans could go down with a better justice system. Interest groups that should be involved are domestic violence and rape advocates, tribal sovereignty groups, and any groups that advocate for change in the justice system, or social change. We can all benefit from working together to create a better system that fits the needs of everybody involved. Criminal and civil jurisdiction in Indian Country needs to be improved and tribal sovereignty needs to be respected. Crimes that happen on tribal lands should be prosecuted by the tribes since it affects them the most, and not federal or state governments. Tribal governments have a long history of being able to govern and do what’s right for their people, but as a result of government interference our traditional systems are weakened and we’re not able to enforce our own laws. With a restoration of power and freedom to do as they see fit, tribal justice systems could better serve their people and respond to crimes in ways that are just and reasonable.

# Bibliography

Ada Pecos Melton, J. G. (2016, June 2). *Public Law 280: Issues and Concerns for Victims of Crime in Indian Country* . Retrieved from American Indian Development Associates, LLC : http://www.aidainc.net/Publications/pl280.htm

The authors Ada Pecos Melton and Jerry Gardner detail all aspects of Public Law 280, why it was enacted, and the impacts.

Deer, S. (2015). *The Beginning and End of Rape: Confronting Sexual Violence in Native America .* Minneapolis: University of Minnesota Press .

In her book, Sarah Deer discusses the high rates of rape and domestic violence in Indian Country and the laws and acts that put Native women at higher risk of being victims of sexual assault and rape.

Gale Cengage Learning . (2016, June 02 ). *Indian Civil Rights Act (1968)*. Retrieved from U.S. History in Context : http://ic.galegroup.com/ic/uhic/ReferenceDetailsPage/ReferenceDetailsWindow?zid=296324c27765b37aa9ae2281c272971e&action=2&catId=&documentId=GALE%7CCX3407400162&userGroupName=lnoca\_hawken&jsid=8b15bd041fbd6bf32ccbfbb506513bd1

This website discusses the Indian Civil Rights Act and the events leading to the act.

Harring, S. L. (1988/1999). Crow Dog's Case: A Chapter in the Legal History of Tribal Sovereignty . *American Indian Law Review* , 191-239.

Ex parte Crow Dog is one of the most important cases in Federal Indian Law, Harring discusses the history, the impacts, and the significance of the Supreme Court decision.

Heissey, G. C. (1998). Oliphant and Tribal Criminal Jurisdiction over Non-Indians: Asserting Congress's Plenary Power to Restore Territorial Jurisdiction . *Indiana Law Journal* , 1051-1078.

Heissey details the effects of the Oliphant case and its impact on tribal jurisdiction.

Moya-Smith, S. (2014, December 14 ). *Who's most likely to be killed by police?* Retrieved from CNN : http://www.cnn.com/2014/12/24/opinion/moya-smith-native-americans/

This article describes the high rates of police killings of Native Americans and the lack of media attention.