Adding Insult to Indian Injury

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BY RYAN DREVESKRACHT

Rape in Indian country has recently become the subject of partisan campaign fodder and, even worse, systemic racism in Washington, D.C. It is time to set the record straight on the Violence Against Women Act (VAWA) reauthorization.

In 1978 the U.S. Supreme Court ruled in Oliphant v. Suquamish Indian Tribe that tribal governments do not have the power to prosecute non-Indians. Neither the federal government nor the states have filled this jurisdictional void. For decades, the Oliphant case, which arose out of Washington state’s Kitsap Peninsula, has allowed non-Indian criminals to enter Indian reservations and literally get away with murder—or, more commonly, rape.

Last April the Senate passed S. 1925, a version of VAWA that would again allow tribes to exercise limited criminal jurisdiction over non-Indian domestic violence defendants. This was the right move, as further confirmed in May when a U.S. Government Accountability Office study confirmed that “tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country.”

The Republican-controlled House’s companion bill, H.R. 4970, however, omitted the tribal components. Curiously, during the Judiciary Committee markup of the bill, Chairman Lamar Smith (R-Texas) refused to allow consideration of a substitute amendment offered by ranking member John Conyers Jr. (D-Michigan) that would reinstate the tribal protections. Representative Darrell Issa (R-California) attempted to offer a similar amendment, which was also disregarded by Smith.

Even more shocking was the House Report accompanying H.R. 4970. It admonished tribes for “[touting] unverifiable statistics at the rate of non-Indian violence against Indian women on Indian land, claiming that 88 percent of the perpetrators of violence against Indians are non-Indians.” According to the report “a published 2008 study by the South Dakota Attorney General (SDAG)...showed that 69 percent of Indian rape or sexual assault cases were, in fact, intra-racial.” In short, according to House Republicans, the rate of incidence of interracial rape isn’t that bad.

The data relied on in the SDAG study was limited to South Dakota policing records, and it did not include the numerous instances in which non-Indian perpetrators dodged police investigation and prosecution due to the jurisdictional void created by the Supreme Court in 1978. The study’s underpinnings and conclusions are contradicted by both the U.S. Department of Justice (DOJ) and Amnesty International.

In an op-ed on IndianCountryToday MediaNetwork.com, retired businessman Scott Seaborn questions a DOJ report for having made “no effort to verify the claim that the respondents were in fact real American Indians” or to “cross verify the crimes they reported with local law enforcement agencies.” But most sexual assaults occurring in Indian country are unreported. Indeed, why would somebody report any crime to a local law-enforcement agency that has absolutely no presence in Indian country? And asking women who come forward with accounts of rape to substantiate their race? That’s just distasteful.

Seaborn—a self-proclaimed expert on Indian law because he has “owned property between two Indian reservations for 50 years”—does, however, offer a solution. According to Seaborn, Public Law 280, a 1950s termination era act that allowed states to assume limited criminal jurisdiction over non-Indians on Indian reservations, “would eliminate the need to revise tribal court limits and would remove unreliable federal policing and prosecutions from Indian country.”

Tulalip Tribes Vice Chair Deborah Parker knows better. Parker, a domestic-violence survivor in Public Law 280-implemented Washington state, has fought for years to bring non-Indians who commit crimes against Indian women to justice on Tulalip lands. Vicci Hilty, deputy director of Domestic Violence Services of Snohomish County in Washington, has echoed the need for federal intervention in Public Law 280 states—she describes the House bill as “discarding Native American women.” Local Washington state sheriffs share similar concerns. Indeed, conclusions of a just-issued empirical study of Public Law 280 jurisdiction confirm not only that the implementation of Public Law 280 has in fact “increased the occurrence of crime” in Indian country, but, further, that “PL 280 status is robustly negatively associated with median family income.” Public Law 280 is not now, and has never been, a solution.

But more important, who cares if the percentage of non-Indian sexual predators violating Native women and going free is 88 or 31? Either number reflects a horrific national epidemic, which simply would not stand in nontribal communities. The fact that House Republicans take the position that Indian rape is tolerable up to some point between the two numbers—not to mention making rape a racial (or “intra-racial”) issue—is sickening. It’s nothing more than institutionalized racism.

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