

CONNECTING THE NEED FOR NATIVE SELF-DETERMINATION TO ADDRESSING SEX TRAFFICKING IN INDIAN COUNTRY

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Commercial sex trafficking of Native women and children is a place where political status, ethnicity and, at times gender, collide with U.S. law and the end result appears to specifically target Native peoples for less safety and protection. Further, particular historical and legal circumstances may encourage broad exploitation of Native women and youth.

The laws around sex trafficking are relatively new but the practice of sex trafficking is not. Targeted U.S. domestic sex trafficking of Native peoples<sup>i</sup> has been documented since the time of Custer<sup>ii</sup> and according to a few geographically specific studies this practice continues today.<sup>iii</sup> The Trafficking Victims Protection Act of 2000 (TVPA), its subsequent reauthorizations and The Violence Against Women Act (VAWA) 2013 reauthorization have encouraged activists in Indian Country, defined broadly, to believe that change is possible within the system. But what if that strategy—seeking change from within federal legislation alone—is flawed? As with sexual violence policy generally, a criminal jurisdictional maze complicates interventions in Indian Country. Currently, only two Native nations not subject to state law (via PL-280)<sup>iv</sup> have anti-sex trafficking codes. Effectively, in non-PL-280 Native nations without corresponding tribal code, which encompasses the vast majority of Native communities—trafficking is technically legal. Additionally, U.S. anti-trafficking law's international focus is myopic at best in its effective exclusion of Indian Country. Despite increasing awareness, it is clear that the United States policy environment has not yet experienced any significant change since the 2000 introduction of anti-trafficking law—especially for Native America.

Using a tribal, feminist, critical race perspective alongside Native Nation (re)Building theory and a grounded, interdisciplinary focus, *By Force Or By Choice: Exploring Contemporary Targeted Trafficking Of Native Peoples* (Petillo 2015), explored prominent public policy perceptions about how widespread the targeted domestic sex trafficking of Native peoples is in the US. The first of its kind,<sup>v</sup> <sup>vi</sup> this study reached across broad geography and perspectives to locate synergies and ruptures that could provide opportunities for Native self-determination in creating effective Indian Country solutions while focusing on policy perspectives specifically. It also offered US public policy suggestions helpful in addressing anti-trafficking legislative inefficiencies beyond Indian Country generally.

Generally, the study found that the broad perception of the policy environment which influences Indian Country is that contemporary targeted sex trafficking of Native peoples, specifically, exists in communities where they live and work as well as across Native America broadly. Further, the overall perception seems to be both that the problem of targeted contemporary sex trafficking is widespread enough that it should be addressed with some expediency—but that the phenomenon is not widespread enough to create general urgency about solution-making. However, perceptions of prevalence may be seriously impacted by a lack of data on the issue. It also appears that the perception is that this phenomenon is becoming more prevalent.

Other study findings were no less troubling. Most importantly, the Indian Country reality of sex trafficking does not fit neatly into one or even a few scenarios that tie in well with the legal (TVPA) definition of sex trafficking. Existing anti-trafficking laws are nebulous, at best, in their Indian Country applicability. Further, invoking the Assimilative Crimes Act for federal prosecutorial use of tribal law to address sex trafficking in Indian Country is compromised by the fact that the few tribal codes that do exist mimic the federal language, both excluding Indian Country realities and specific reference to Indian Country application. All of these details complicate the ability to effectively use current anti-trafficking law to ensure prevention, protection or punishment of these crimes in Indian Country.<sup>vii</sup>

Based on these findings, the time to act is now. The required action is effectively changing the conversation. The work is to expand the narrative such that we are focused on internal/domestic violations as well as international, and expand the analysis from the individual to the systematic, structural, interdependent relationships that create and influence such violations.

The current lack of urgency about proposed solutions has also meant a lack of interest in collecting data about what would both help and speak to Native self-determination around the issue. In addition to documenting the real stories and language around this atrocity, Native determined solutions need to be translated into changes that make sense both within the current system and beyond it. [We need to] highlight stories of Native communities as they develop ways to deal with eminent threats while remaining observant of the opportunities for innovation...

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<sup>i</sup> Recruitment and coercion into commercialized sexual exploitation (CSE) and/or contemporary sex trafficking is not gendered. That said, the majority of data and literature deals specifically with the experiences of women as well as minors of any gender. The sex trafficking of Native peoples is discussed here with this understanding.

<sup>ii</sup> Deer 2010, Smith 2005, Smith 2003

<sup>iii</sup> Juran, et al 2014, Minnesota Indian Women's Sexual Assault Coalition 2011, Pierce and Minnesota Indian Women's Resource Center 2009

<sup>iv</sup> Public Law 83-280, 18 U.S.C. § 1162, 28 U.S.C. § 1360 and 25 U.S.C. §§ 1321–1326 or Public Law 280 (PL-280) transferred federal jurisdiction over criminal offenses in Indian Country so that they were broadly concurrent with the state, for both six mandatory locations and nine states that voluntarily adopted the law.

<sup>v</sup> What exists are illuminating studies specific to Minnesota, Alaska and Oregon, of which the first two locations have seen considerable investigative and intervention efforts around sex trafficking of Native peoples in particular. See generally Alexandra Pierce and the Minnesota Indian Women's Resource Center. 2009. *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*. Minneapolis, MN: Minnesota Indian Women's Resource Center; Melissa Farley, Nicole Matthews, Sarah Deer, Guadalupe Lopez, Christine Stark, Eileen Hudson, the Minnesota Indian Women's Sexual Assault Coalition and Prostitution Research & Education. 2011. *Garden of Truth: The Prostitution and Trafficking of Native Women in Minnesota*. St. Paul, MN: MIWSAC; Task Force On The Crimes Of Human Trafficking, Promoting Prostitution, and Sex Trafficking. 2013. "2013 State of Alaska Task Force on the Crimes of Human Trafficking, Promoting Prostitution and Sex Trafficking." Anchorage, AK: State of Alaska Office of Boards and Commissions and Jason Juran, Joseph Scovel & Hayley Weedn. 2014. "Human Trafficking & Native Peoples in Oregon: A Human Rights Report" *American Indian Law Journal*. Vol. 3, iss. 1 Fall 2014, pg. 40-158. Accessed January 13, 2015.

[http://www.law.seattleu.edu/Documents/ailj/Fall%202014/AIJ%20Volume%20III%20Issue%20I\(0\).pdf](http://www.law.seattleu.edu/Documents/ailj/Fall%202014/AIJ%20Volume%20III%20Issue%20I(0).pdf)

<sup>vi</sup> Prominent scholars in this area have described what research that exists as generally small and local reports mainly produced by service organizations, reliant on law enforcement impressions and not disseminated via

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scholarly sources. See Alexandra Pierce and Suzanne Koeplinger. 2011. "New Language, Old Problem." Violence Against Women Net.org, [http://vawnet.org/summary.php?doc\\_id=2971&find\\_type=web\\_desc\\_AR](http://vawnet.org/summary.php?doc_id=2971&find_type=web_desc_AR) (accessed August 27th, 2012).

<sup>vii</sup> This is a reference to the international obligations around anti-sex trafficking set out in the international treaty "Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children" ("the Protocol"). The Protocol is one of two main international documents/covenants. The second is the International Covenant on Civil and Political Rights (ICCPR), ratified in 1992. It does not address trafficking specifically, but is understood to prohibit activities such as trafficking thus addressing it indirectly.