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# RESTORING THE VICTIM AND THE COMMUNITY: A LOOK AT THE TRIBAL RESPONSE TO SEXUAL VIOLENCE COMMITTED BY NON-INDIANS IN INDIAN COUNTRY THROUGH NON-CRIMINAL APPROACHES

AMBER HALLDIN\*

## I. INTRODUCTION

*“If the Physical, Mental, Emotional and Spiritual Well Being  
of the Woman is intact, so too is that of the  
Family, Community and Society.”<sup>1</sup>*

Sexual or domestic violence inflicted upon women of color has always been a problem in the United States. In particular, Native American<sup>2</sup> women receive the brunt of this criminal action as the race that receives the highest rate of sexual assault in the United States compared to any other racial group.<sup>3</sup> Not only do Native American women top the charts as victims of sexual assault, but the group is also known to receive the most physical violence in sexual attacks.<sup>4</sup>

Those who live and work in Indian country such as tribal police, prosecutors, and advocates, believe that “sexual violence [is] one of the most devastating threats to contemporary indigenous culture.”<sup>5</sup> Tribal nations survive on the basic view of achieving harmony within all relationships in the tribal community.<sup>6</sup> If survivors of sexual violence do not have

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1. See Indigenous Proverb, Mending the Sacred Hoop Technical Assistance Project, <http://www.msh-ta.org/> (quoting Indigenous Proverb).

2. This article will use the terms “Indian” and “Native American” interchangeably to refer to indigenous people, since there is no consensus among scholars on the correct terminology. Sarah Deer, *Beyond Prosecution: Sexual Assault Victim’s Rights in Theory and Practice Symposium: Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law*, 38 SUFFOLK U. L. REV. 455, 455 n.2 (2005) [hereinafter Deer, *Beyond Prosecution*].

3. *Id.* at 455.

4. See *id.* at 456 (stating research findings that Native American women are more likely to experience physical violence during sexual assault than other races).

5. Sarah Deer, *Toward an Indigenous Jurisprudence of Rape*, 14 KAN. J.L. & PUB. POL’Y 121, 121 (2004) [hereinafter Deer, *Jurisprudence of Rape*].

6. Gloria Valencia-Weber & Christine P. Zuni, *Symposium: Women’s Rights as International Human Rights: Domestic Violence and Tribal Protection of Indigenous Women in the United States*, 69 ST. JOHN’S L. REV. 69, 71 (1995).

adequate resources and protections, they are unable to become whole members of the tribal community once again.<sup>7</sup>

Over the past one hundred years, tribal governments' jurisdiction to prosecute criminals "has been gradually but significantly eroded."<sup>8</sup> The federal courts and Congress eroded tribal jurisdiction through a series of laws and precedent that significantly affects the approach to lessening sexual violence against Native American women.<sup>9</sup> In light of these alarming statistics and the devastating effects that sexual violence can inflict upon a tribal society, tribal communities must adequately respond to this continual problem, considering the lack of criminal prosecution by federal and state criminal justice systems.

This article will examine how tribes respond to non-Indians that commit sexual violence against Native people in Indian country. Jurisdictional issues create particular problems for tribes to remedy the violence committed in their communities, because tribes are often forced to rely on non-criminal prosecution remedies.<sup>10</sup> Through the use of traditional tribal punishments and newly developed tactics, Indian tribes are working towards better protecting their members despite federal law barriers.<sup>11</sup>

Part II of this article will address the necessary background for understanding the history of sexual violence inflicted upon Native American women from colonialism to the present, where research indicates staggering rates of sexual assault. Sexual violence inflicted on Native American women is further complicated because the majority of sexual assault assailants are non-Indian, which thus implicates jurisdictional barriers.<sup>12</sup> Part III will discuss the jurisdictional problem that tribal courts face in prosecuting sexual violence by non-Indian assailants. Federal laws

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7. See Deer, *Beyond Prosecution*, *supra* note 2, at 463 ("A strong argument can be made that the high rates of violence are directly related to the lack of resources and the jurisdictional problems faced by tribal governments, as well as a continuation of the colonization process.").

8. Sarah Deer, *Expanding the Network of Safety: Tribal Protection Orders for Survivors of Sexual Assault*, 4 TRIBAL L.J. 3, n.8 and accompanying text (2003), available at [http://tlj.unm.edu/tribal-law-journal/articles/volume\\_4/violence%20women/index.php](http://tlj.unm.edu/tribal-law-journal/articles/volume_4/violence%20women/index.php) [hereinafter Deer, *Network of Safety*].

9. Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 557-60 (1976).

10. See generally Deer, *Network of Safety*, *supra* note 8, at Part II.B (discussing the jurisdictional limitations placed on tribal courts to prosecute sexual violence in Indian Country).

11. See Valencia-Weber & Zuni, *supra* note 6, at 134-35 (explaining the benefits of using a process of applying traditional methods along with contemporary tactics to remedy sexual violence of women).

12. See Deer, *Beyond Prosecution*, *supra* note 2, at 457 (reporting statistics regarding the rate that non-Indians sexually assault Native American women).

and a key Supreme Court case have imposed severe limitations on the ability of tribal courts to protect survivors of sexual violence.<sup>13</sup>

Part IV will analyze how tribal courts traditionally responded to those who committed sexual violence against Native American women and the impact of those remedies in a pre-jurisdictional limitations era. Finally, Part V of this article will look at the current proposals for protecting, preventing, and rectifying sexual violence against Native American women.

## II. A HISTORY OF SEXUAL VIOLENCE

The history of sexual violence against Native Americans began with the colonization of the tribes by early settlers.<sup>14</sup> Because of the matrilineal nature of Native American cultures, the settlers successfully furthered the goals of colonization and conquest when Native American women were assaulted.<sup>15</sup> Moreover, the effects of colonization and the devastating violence from colonization are present in modern day; Native American women continue to suffer from the highest rates of sexual assault and rape of any other race.<sup>16</sup>

### A. COLONIZATION AND CONQUEST

In discussing tribal sexual violence, it is important to understand the underlying feelings of Native people from the time of colonization. The victimization inflicted upon tribes from colonization and conquest has had a major impact on Native American people, considering the high rate of sexual assault against women.<sup>17</sup> Christopher Columbus's arrival marked "the destruction of indigenous cultures, but also the beginning of rape of Native American women by European men."<sup>18</sup>

Colonizers viewed Indians as inherently impure and polluted with sexual sin, and thus inherently "rapable" because rape of the impure was not of consequence.<sup>19</sup> In the mid 1800s, Native people were referred to as

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13. *See, e.g.*, 28 U.S.C. § 1360 (2001) (creating state enforcement for certain tribes in the six states that this law applies); Major Crimes Act, 18 U.S.C. § 1153 (2000) (eliminating jurisdiction of tribal courts over major crimes committed in Indian country); Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-03 (2000) (limiting the amount of imprisonment and fines that a tribal court can impose on defendants for committing felonies); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, *passim* (1978) (discussing the right of Indian tribal courts to have criminal jurisdiction over non-Indians).

14. ANDREA SMITH, CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE 9 (2005).

15. *Id.* at 15.

16. Deer, *Beyond Prosecution*, *supra* note 2, at 456.

17. SMITH, *supra* note 14, at 9.

18. Deer, *Beyond Prosecution*, *supra* note 2, at 458.

19. SMITH, *supra* note 14, at 10.

the “dirtiest lot” of people in the world, were considered “filthy rags,” and were said to be “swarming with vermin.”<sup>20</sup> Additionally, colonizers believed that Indian people were not entitled to bodily integrity, considering the “history of mutilation of Indian bodies.”<sup>21</sup> Colonizers did not view the acts of raping Native American women as criminal because Native Americans were devalued as people.<sup>22</sup>

As a counselor for Native Americans who have experienced sexual violence, Andrea Smith was not surprised to find that “Indians who have survived sexual abuse would often say that they no longer wish to be Indian.”<sup>23</sup> The consequences of colonization and the bodily destruction that Native American survivors of sexual abuse have endured have caused Native people to “internalize self-hatred, because body image is integrally related to self-esteem.”<sup>24</sup> The experiences of Native American sexual assault victims “echo 500 years of sexual colonization in which Native peoples’ bodies have been deemed inherently impure.”<sup>25</sup>

Additionally, sexual violence was used as a “tool for racism” for colonizers against Native Americans.<sup>26</sup> In order for colonizers to be successful in their conquest of Native people, they believed that violence against women was key.<sup>27</sup> Andrea Smith puts forth the proposition that “colonizers view[ed] the subjugation of women of the Native nations as critical to the success of the economic, cultural, and political colonization.”<sup>28</sup> Conquering Native American women was central to the colonizers’

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20. *Id.*

21. *Id.* at 10.

Andrew Jackson . . . supervised the mutilation of 800 or so Creek Indian corpses—the bodies of men, women and children that he and his men massacred—cutting off their noses to count and preserve a record of the dead, slicing long strips of flesh from their bodies to tan and turn into bridle reins.

*Id.* at 11 (internal citations omitted).

22. *Id.*

23. *Id.* at 13.

Native women can indeed survive and heal after sexual violence, but the immediate and lingering after-effects of the crimes can result in significant impairments in their lives. What is important . . . is to acknowledge and document the devastation left in the wake of sexual violence, and how tribal legal systems might play a role in responding to this devastation.

Deer, *Network of Safety*, *supra* note 8, at n.35.

24. SMITH, *supra* note 14, at 12.

25. *Id.* at 13.

26. *Id.* at 15.

27. *See id.* (discussing the history of “violence and genocide” against Native women by colonizers).

28. *Id.*

success because of the important roles that Native women played in tribal communities.<sup>29</sup>

#### B. A MATRILINEAL SOCIETY

The Cheyenne have a saying: “A nation is not conquered until the hearts of the women are on the ground.”<sup>30</sup> Colonizers must have understood that axiom because they assaulted the very foundation and bedrock of the Native culture.<sup>31</sup> Before colonization, Native American women were at the forefront of their society and were often revered as the leaders of their tribe.<sup>32</sup> Men and women lived in balance; their separate roles received equal weight of importance within the tribe.<sup>33</sup> This view of balance differed greatly from European views on the lives of women, which caused the conquering of the sect of Native people to fit the dual purposes of conquering Native Americans and ending a women-dominated society.<sup>34</sup>

Within tribal communities, sexual violence against women was an uncommon occurrence and was regarded as a severe crime.<sup>35</sup> When gender violence happened within the community, although it was a rarity, punishments were harsh and created such embarrassment that would often stop repeat offenses.<sup>36</sup> In fact, unlike colonists’ treatment of Native Americans, white prisoners were rarely victims of sexual violence by Native people.<sup>37</sup> This sharp contrast between colonizers’ views of sexual violence and the Native Americans’ treatment of white prisoners only increased the devastating violence against Native American women.

29. *See id.* (stating that colonizers believed “Native women [were] bearers of a counter-imperial order and pose[d] a supreme threat to the dominant culture”).

30. *Id.* at 33.

31. *See id.* at 18 (detailing the status of Native American women within their tribes).

32. *Id.* Colonizers viewed women who expressed political opinions with disgust. *Id.* For instance, “a woman who spoke out against taxation in 1664 was condemned to having her tongue nailed to a tree near a highway, with a paper fastened to her back detailing her offense.” *Id.*

33. *Id.*

34. *Id.* Ella Shohat and Robert Stam believe that the real purpose behind colonization was not to push Indians to become Europeans, but to stop Europeans from becoming Indians. *Id.*

35. *See Deer, Beyond Prosecution, supra* note 2, at 464 (discussing tribal beliefs in the right of women to sexual choice and the severe punishments for violating this right).

36. SMITH, *supra* note 14, at 19. “George Croghan, who testified about Indians in the Middle Atlantic colonies in the late 18th century: ‘I have known more than onest thire Councils, order men to be putt [sic] to Death for Committing Rapes, wh[ich] is a Crime they Despire.’” *Deer, Jurisprudence of Rape, supra* note 5, at 130.

37. SMITH, *supra* note 14, at 18. In 1779, on his way to destroy the Iroquois nation, Brigadier General James Clinton told his soldiers: “Bad as the savages are, they never violate the chastity of any women, their prisoners.” *Deer, Jurisprudence of Rape, supra* note 5, at 129.

### C. DEVASTATING RESEARCH

The legacy of the effects of colonialism is even further “evident in the rate of violence in American Indian communities.”<sup>38</sup> Research indicates that Native American women are ranked highest as victims of sexual violence.<sup>39</sup> The Department of Justice has reported for the past several years that, per capita, Native American women suffer from higher rates of sexual assault and rape than any other race in the United States.<sup>40</sup> These statistics show that during their lives, one in every three Native American and Alaskan women will be raped.<sup>41</sup> What is even more alarming is the fact that advocates against Native American sexual violence believe that the Justice Department’s statistics are “very low estimate[s].”<sup>42</sup>

The most startling statistic is the fact that over seventy percent of sexual assault assailants are white, denoting that most rapes are intra-racial.<sup>43</sup> In 1999, the Department of Justice Bureau of Justice statistics found that nine out of ten Native American victims of sexual violence had white or black assailants.<sup>44</sup> This fact is particularly concerning given the jurisdictional problems that tribes face in prosecuting non-Indians.<sup>45</sup>

### III. A JURISDICTIONAL PROBLEM

Once a survivor of sexual violence in Indian country actually decides to report an assault to law enforcement, survivors then “face a complex maze of criminal jurisdiction issues.”<sup>46</sup> Tribes possess inherent sovereignty

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38. SMITH, *supra* note 14, at 28.

39. Deer, *Beyond Prosecution*, *supra* note 2, at 455. For an in-depth discussion of domestic violence and victimization statistics of Native Americans, see Amy Radon, Note, *Tribal Jurisdiction and Domestic Violence: The Need for Non-Indian Accountability on the Reservation*, 37 U. MICH. J.L. REFORM 1275, 1280-85 (2004).

40. Deer, *Beyond Prosecution*, *supra* note 2, at 456. See PATRICIA TJADEN & NANCY THOENNES, U.S. DEP’T OF JUSTICE, FULL REPORT OF THE PREVALENCE, INCIDENCE, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN: FINDINGS FROM THE NATIONAL VIOLENCE AGAINST WOMEN SURVEY 22 (2000) (detailing the rate of sexual violence inflicted upon Native American women).

41. Deer, *Beyond Prosecution*, *supra* note 2, at 456. See TJADEN & THOENNES, *supra* note 40, at 22 (finding alarming statistics in research concerning sexual violence against minority races).

42. Deer, *Beyond Prosecution*, *supra* note 2, at 456. Sarah Deer further states: “[m]any of the elders that I have spoken with in Indian country tell me that they do not know any women in their community who have not experienced sexual violence.” *Id.*

43. *Id.* at 457.

44. *Id.* See generally LAWRENCE A. GREENFELD & STEVEN K. SMITH, U.S. DEP’T OF JUSTICE, AMERICAN INDIANS AND CRIME *passim* (1999) (offering statistics relevant to sexual violence).

45. Deer, *Beyond Prosecution*, *supra* note 2, at 457.

46. Deer, *Network of Safety*, *supra* note 8, at nn.17-18.

that is subject only to the federal government.<sup>47</sup> However, the tribes' ability to hold sovereignty over crimes is not based solely on the boundaries of their lands, but through other factors.<sup>48</sup> A tribe's jurisdiction over a crime depends on both "the status of the actors involved and the nature of the offense committed."<sup>49</sup> A complicated jurisdictional framework is created through the development of several federal laws and one Supreme Court case.<sup>50</sup> Four major federal hurdles impact tribal communities: (1) the Major Crimes Act; (2) Public Law 280; (3) the Indian Civil Rights Act; and (4) the case of *Oliphant v. Suquamish Indian Tribe*.<sup>51</sup>

#### A. THE MAJOR CRIMES ACT

The first significant limitation on tribal jurisdiction of crimes committed in Indian country was the Major Crimes Act.<sup>52</sup> The Act was passed in 1885 as Congress's effort to respond to the case of *Ex Parte Crow Dog* (hereinafter *Crow Dog*).<sup>53</sup> In *Crow Dog*, an American Indian appealed his death sentence for the murder of another Indian while on a reservation.<sup>54</sup> The Supreme Court was forced to void the inmate's conviction, stating that the district court lacked jurisdiction over the inmate.<sup>55</sup> The Court based its decision on the fact that an applicable statute had not yet been repealed.<sup>56</sup> Thus Congress, while faced with disapproval by non-Indians over the outcome of *Crow Dog*, created the Major Crimes Act.<sup>57</sup>

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47. Kathryn A. Ritcheske, Note, *Liability of Non-Indian Batterers in Indian Country: A Jurisdictional Analysis*, 14 TEX. J. WOMEN & L. 201, 202 (2005). See Philip S. Deloria & Nell Jessup Newton, *The Criminal Jurisdiction of Tribal Courts Over Non-Member Indians: An Examination of the Basic Framework of Inherent Tribal Sovereignty Before and After Duro v. Reina*, 38 FED. BAR NEWS & J. 70, 71 (1991) (discussing a tribe's jurisdiction to prosecute crimes).

48. Ritcheske, *supra* note 47, at 202.

49. *Id.*

50. See Deer, *Beyond Prosecution*, *supra* note 2, at 460 (explaining the steady loss of jurisdiction over sexual violence crimes for the past 120 years).

51. See generally Deer, *Network of Safety*, *supra* note 8, at Part II.B (discussing federal laws and the Supreme Court case that affected tribal jurisdiction over sexual violence crimes).

52. 18 U.S.C. § 1153 (2006).

53. 109 U.S. 556 (1883).

54. *Crow Dog*, 109 U.S. at 557.

55. *Id.* at 572.

56. *Id.*

57. See generally SIDNEY L. HARRING, CROW DOG'S CASE: AMERICAN INDIAN SOVEREIGNTY, TRIBAL LAW, AND UNITED STATES LAW IN THE NINETEENTH CENTURY 129-41 (1994). "Many non-Indian people were outraged by this decision [*Crow Dog*], which some viewed as Supreme Court approval of Indian 'blood feuds.'" Deer, *Network of Safety*, *supra* note 8, at n.46.



The Major Crimes Act states:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses . . . within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.<sup>58</sup>

The Major Crimes Act had the practical affect of eliminating “exclusive tribal responsibility for prosecuting major crimes occurring in Indian country.”<sup>59</sup> Although case law has indicated that tribes still retain concurrent jurisdiction thus lessening the effect of the law, the Major Crimes Act marked the beginning of the federal government’s intrusion into the prosecution of “sex crimes in Indian country.”<sup>60</sup>

Many tribes have not developed their tribal codes since the enactment of the Major Crimes Act because the law governs many crimes such as sexual assault.<sup>61</sup> However, tribal governments still need to fully develop tribal codes to deal with sexual assault when the federal government declines prosecution.<sup>62</sup> The Department of Justice has informally reported that “[United States] attorneys decline to prosecute about [seventy-five] percent of all cases involving any crime in Indian country.”<sup>63</sup>

#### B. PUBLIC LAW 280

Tribal governments were further restricted in their prosecution of sex crimes in Indian country when the federal government enacted Public Law 280 (hereinafter P.L. 280).<sup>64</sup> P.L. 280 provides certain states with criminal jurisdiction over offenses committed either by or against Indians in Indian country.<sup>65</sup> Additionally, P.L. 280 eliminates federal jurisdiction in the states where the law applies.<sup>66</sup> Although P.L. 280 did not explicitly divest

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58. 18 U.S.C. § 1153 (2006).

59. *See generally* Deer, *Network of Safety*, *supra* note 8, at n.49 and accompanying text.

60. *Id.* at Part II.B.1.

61. SMITH, *supra* note 14, at 32.

62. *Id.*

63. *Id.*

64. P.L. 83-280, 18 U.S.C. § 1162 (2001).

65. *Id.* This law only applies in Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin but excludes some reservations within those states. *Id.* “Other states have excised the option to assume jurisdiction. Other states do not specifically fall under P.L. 280, but other federal legislation has created the same impact.” Deer, *Network of Safety*, *supra* note 8, at n.52; The Kansas Act, 18 U.S.C. § 3243 (2005).

66. 18 U.S.C. § 1162.

tribes with concurrent jurisdiction, “the practical impact for many tribes was equivalent to a divestment of that jurisdiction.”<sup>67</sup>

There have been several negative impacts on tribes when state governments have taken over the prosecution of crimes on tribal land.<sup>68</sup> The federal government began to reduce financial assistance to tribal court systems because state governments began prosecuting the crimes.<sup>69</sup> The reduction in financial assistance resulted in the inability of tribes to develop contemporary tribal justice systems and to deal with sexual violence.<sup>70</sup> Thus, Native American sexual assault survivors residing in tribes affected by P.L. 280 are “largely dependent upon the state judicial systems to provide safety and justice.”<sup>71</sup>

Additionally, state and county law enforcement officials may foster a hostile relationship with tribes, which is detrimental to the relationship between the tribe and law enforcement.<sup>72</sup> Andrea Smith offers three reasons why P.L. 280 does not alleviate sexual violence problems on tribal lands: (1) geography; (2) racism; and (3) lack of compensation.<sup>73</sup> Tribal property is “geographically isolated”; it is often located over one hundred miles from a law enforcement agency and many homes do not have phones.<sup>74</sup> Thus, state and county officials may not be able to respond to alleviate the situation.<sup>75</sup> Second, any racism that local officials may harbor against Native people may further delay responsiveness to crimes.<sup>76</sup> Finally, because tribes do not generally pay state and local taxes, “states have little vested interest in providing ‘protection’ for Indian tribes.”<sup>77</sup>

### C. INDIAN CIVIL RIGHTS ACT

The Indian Civil Rights Act (hereinafter ICRA) further impedes the effect of tribal government in adjudicating sex crimes in Indian country.<sup>78</sup> Congress enacted ICRA to ensure the protection of individual Indians’ civil

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67. Deer, *Network of Safety*, *supra* note 8, at n.54 and accompanying text.

68. *Id.* at nn.54-57.

69. *Id.* at n.55 and accompanying text.

70. *See id.* at nn.55-57 and accompanying text (discussing the impact felt by the federal government of reducing funds to tribal justice systems).

71. *Id.* at n.57 and accompanying text.

72. *See* SMITH, *supra* note 14, at 33 (analyzing how P.L. 280 creates a hostile relationship between the tribe and law enforcement).

73. *Id.*

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. Indian Civil Rights Act of 1968, 25 U.S.C. §§ 1301-03 (2000).

rights and to protect them from “arbitrary and unjust actions of tribal governments.”<sup>79</sup> The main effect of ICRA on criminal cases was its provision to limit the penalty amount that a tribal court could impose in criminal cases.<sup>80</sup> Since ICRA was revised in 1986, a tribal court has the ability to sentence a criminal defendant to a maximum sentence of one year of imprisonment, assess a \$5000 fine, or both.<sup>81</sup>

Furthermore, ICRA has often prevented tribal prosecutors from prosecuting serious crimes, because the sentences that a tribal court can impose are too nominal to be effective against felony crimes such as sexual assault.<sup>82</sup> ICRA has forced many tribal codes to classify the violent crime of sexual assault as a “misdemeanor.”<sup>83</sup> Essentially, ICRA created a system whereby tribes are unable to adequately punish criminals of sexual assault or place sexual assault in the serious category that it deserves.<sup>84</sup>

Additionally, traditional tribal punishments may violate ICRA.<sup>85</sup> The federal government is allowed to “prohibit remedies that do not follow the same penalties of the dominant system.”<sup>86</sup> Therefore, traditional tribal punishments such as banishment may not be used to sentence a criminal defendant because it would be a violation of ICRA.<sup>87</sup>

#### D. *OLIPHANT V. SUQUAMISH INDIAN TRIBE*

Not only did federal laws impact tribal jurisdiction over their own lands, but the Supreme Court also impacted this issue with its decision in *Oliphant v. Suquamish Indian Tribe*.<sup>88</sup> In *Oliphant*, two petitioners arrested by tribal authorities petitioned the Supreme Court to decide whether the

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79. See generally Donald L. Burnett, Jr., *An Historical Analysis of the 1968 Indian Civil Rights Act*, 9 HARV. J. ON LEGIS. 557, 584 (1972) (discussing the legislative history and intent behind ICRA and its provision to limit sentencing by tribal courts).

80. Deer, *Network of Safety*, *supra* note 8, at n.60 and accompanying text.

81. *Id.*

82. *Id.* at n.61 and accompanying text.

83. *Id.* at n.63 and accompanying text.

84. *Id.* Concerning ICRA, the Honorable William C. Canby, Jr. of the Ninth Circuit Court of Appeals, stated:

In some instances in the past when Indians have committed major crimes but the federal authorities are too distant or too busy to investigate or prosecute, the tribe has resorted to prosecution of the offender for some lesser misdemeanor. In that regard, the tribal court ends up doing the federal court’s business, but it cannot do it as thoroughly because its jurisdiction is limited.

*Id.* (quoting Hon. William C. Canby Jr., Statement to the Senate Committee on Indian Affairs (Aug. 2, 1995)).

85. SMITH, *supra* note 14, at 32-33.

86. *Id.* at 32.

87. *Id.* at 32-33.

88. 435 U.S. 191 (1978).

tribal court had jurisdiction over the petitioners' crimes.<sup>89</sup> The Court found that a non-Indian could not be tried by a tribal court even if the defendants were residents of the reservation.<sup>90</sup> The Court relied on the argument that Congress did not provide for specific jurisdiction over non-Indians and that "absent affirmative delegation of such power by Congress" tribes do not retain criminal jurisdiction over non-Indians.<sup>91</sup>

The basic effect of *Oliphant* was that tribes would be stripped of all criminal jurisdiction over non-Indians who commit crimes on the tribes' reservations.<sup>92</sup> The *Oliphant* decision strongly impacts sexual violence crimes because most Native American women are sexually assaulted by non-Indians.<sup>93</sup> Those Indians who are sexually assaulted or raped by non-Indians are thus "left with no option for criminal justice in the tribal court system."<sup>94</sup>

*Oliphant* presents many problems for non-P.L. 280 tribes.<sup>95</sup> Tribes cannot arrest non-Indians who commit offenses, and state law enforcement does not have jurisdiction on reservation lands.<sup>96</sup> Thus, scholars anticipate that "unless state law enforcement is cross-deputized with tribal law enforcement, no one can arrest non-Native perpetrators of crimes on Native lands."<sup>97</sup> However, it is important to note that *Oliphant* does not limit tribal governments from "impos[ing] civil sanctions on a non-Indian."<sup>98</sup>

#### E. THE JURISDICTIONAL GAP

The result of *Oliphant* and the combination of past federal laws has created a "perception of lawlessness" by non-Indians when in Indian country.<sup>99</sup> Scholar Sarah Deer believes that "the high rates of violence are directly related to the lack of resources and the jurisdictional problems faced by tribal governments, as well as a continuation of the colonization process."<sup>100</sup>

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89. *Id.* at 194-95.

90. *Id.* at 195.

91. *Id.* at 208.

92. Deer, *Network of Safety*, *supra* note 8, at Part II.B.4.

93. *Id.*

94. *Id.*

95. SMITH, *supra* note 14, at 33.

96. *Id.*

97. *Id.* (emphasis omitted).

98. Deer, *Network of Safety*, *supra* note 8, at n.68 and accompanying text.

99. Matthew L.M. Fletcher, *Sawnowgezewog: "The Indian Problem" and the Lost Art of Survival*, 28 AM. INDIAN L. REV. 35, 55 (2003). "To this day, tribal police officers daily encounter arrogant, abrasive, and angry non-Indian motorists with the opinion and attitude that the tribal law enforcement badge is somehow worthless and illegitimate." *Id.*

100. Deer, *Beyond Prosecution*, *supra* note 2, at 463.

Some prosecution of non-Indian sexual violence assailants exists, but sufficient prosecution requires a strong relationship between tribal communities and the federal and state governments.<sup>101</sup> Additionally, “when compared to the numbers of Native American women who are experiencing rape with the number of prosecutions, there is a significant imbalance.”<sup>102</sup> Tribal communities need to find a solution through non-criminal tactics to avoid the jurisdictional gap, but must also protect their people at the same time.

#### IV. THE HISTORICAL RESPONSE TO SEXUAL VIOLENCE

The traditional response to sexual violence against Native American women differs greatly from the response needed against sexual violence today.<sup>103</sup> This difference is based on the rate of sexual violence experienced before colonization and the rate experienced today.<sup>104</sup> The historical tribal response to sexual violence was thought of as “comparatively progressive and respectful of survivors,” while the current response of tribal governments does not revolve around tribal goals.<sup>105</sup>

Historically, tribes were able to exercise their own jurisdiction over crimes of sexual violence as sovereign nations.<sup>106</sup> Historians have indicated that the traditional response to sexual violence against women was particularly strong.<sup>107</sup> Banishment and corporal punishment were used as punishments to respond to and to deter sexual violence against the women of the tribe.<sup>108</sup>

The strong response to sexual violence against women is most likely due to the tribes’ respect of women.<sup>109</sup> Historical letters and documents have divulged the respect that tribal communities have given to women sexually and as leaders.<sup>110</sup> For example, women were allowed to have

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101. *Id.* at 462.

102. *Id.*

103. TJADEN & THOENNES, *supra* note 40, at 22 (detailing the statistics that tribal women receive an alarmingly high rate of sexual violence in the United States).

104. *Id.*

105. Deer, *Network of Safety*, *supra* note 8, at n.42 and accompanying text.

106. *Id.* at Part II.A.

107. *Id.* at n.37 and accompanying text. Compared to early European and American laws, tribal approaches were seen as “progressive and respectful of survivors.” *Id.*

108. *Id.* at n.38 and accompanying text.

109. *Id.* at n.36 and accompanying text.

110. Deer, *Beyond Prosecution*, *supra* note 2, at 464.

multiple sexual partners if they so desired.<sup>111</sup> Additionally, when a woman reported a crime of sexual violence, the tribe believed the woman.<sup>112</sup>

To explain the tribes' traditional viewpoints, the following examples describe the tribes' high reverence for women. For instance, "in Iroquois culture, it was said that a man could not achieve a leadership position if he had ever sexually assaulted a woman."<sup>113</sup> Additionally, the Muscogee (Creek) Nation's original written sexual violence law stated: "And be it farther enacted if any person or persons should undertake to force a woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay *what she say it be law*."<sup>114</sup>

Compared to the European and American thoughts, tribal views of sexual violence against women differed greatly.<sup>115</sup> Scholar Sarah Deer states: "Early American rape laws, based in large part on the common law of England, treated women as subordinate, at best, or as chattel at worst."<sup>116</sup> Because most modern tribal codes are based upon early American sexual rape laws, it is understandable that tribal communities are unable to address the sexual violence problems that are affecting their communities.

## V. RECENT DEVELOPMENTS TO ADDRESS SEXUAL VIOLENCE

Tribes are beginning to address sexual violence through the use of criminal statutes within tribal codes.<sup>117</sup> Additionally, tribes are incorporating traditional tribal practices such as the oral tradition of storytelling, and are employing harsh penalties such as banishment.<sup>118</sup> Many tribes are turning to restorative justice or are using civil protection orders.<sup>119</sup>

### A. TRIBES' CURRENT RESPONSES

Today, there are many tribal codes that contain criminal statutes that prohibit rape and sexual assault.<sup>120</sup> Regrettably, these laws usually "mirror

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111. *Id.*

112. *Id.*

113. Deer, *Network of Safety*, *supra* note 8, at n.39 and accompanying text.

114. Deer, *Beyond Prosecution*, *supra* note 2, at 464 (emphasis added).

115. Deer, *Network of Safety*, *supra* note 8, at n.43 and accompanying text.

116. *Id.*

117. *Id.* at n.69 and accompanying text.

118. See Deer, *Beyond Prosecution*, *supra* note 2, at 463-66 (discussing the use of traditional tribal values to address illegal behavior in contemporary tribal court systems).

119. See SMITH, *supra* note 14, at 139-40 (applying restorative justice to address sexual violence against Native American women); Deer, *Network of Safety*, *supra* note 8, at Part III.B (examining the use of civil protection orders to address the problem of sexual violence in Indian country).

120. Deer, *Network of Safety*, *supra* note 8, at n.69 and accompanying text.

language from state rape laws of the early to mid-twentieth century.”<sup>121</sup> Because modern tribal codes apply Anglo views, the traditional value system of Native Americans is omitted, and in its place are “American beliefs on rape from the era prior to rape law reform during the 1970s.”<sup>122</sup> These modern tribal codes necessitate change, because as they stand, the codes are not addressing the tribal governments’ sexual violence crisis.<sup>123</sup>

Tribal governments must also implement new tactics in order to solve the severe problem of sexual violence against Native American women. Furthermore, it is necessary for tribal governments to find a way to properly rectify the crimes inflicted upon Native women, considering the inability of the tribes to criminally prosecute. Fortunately, scholars and activists have begun to address these problems. Possible solutions include: (1) traditional values; (2) restorative justice; and (3) civil protection orders.<sup>124</sup>

### 1. *Traditional Belief Systems and Oral Traditions*

Scholar Sarah Deer advocates the use of traditional tribal belief systems and stories and the incorporation of these systems into the contemporary tribal court system.<sup>125</sup> European views of sexual violence and the roles of women differ greatly from the traditional tribal viewpoint on these subjects.<sup>126</sup> However, many contemporary tribal codes that address sexual violence have adopted laws that are very close to American/European ideals, while tribal customs have been used less often.<sup>127</sup> In the traditional tribal system, women were the “central focus of adjudication of sexual violence” and laws resonated from the “perspective of the victim.”<sup>128</sup> Native American traditional theories embody the values of “safety, trauma, and victims’ rights” when evaluating the criminal prosecution of offenders.<sup>129</sup> If traditional tribal values were to be placed into the forefront of

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121. *Id.* at Part II.C.

122. *Id.*

123. *Id.* at n.73 and accompanying text.

124. See Deer, *Beyond Prosecution*, *supra* note 2, at 463-66 (discussing the use of traditional tribal values to address illegal behavior in contemporary tribal court systems); SMITH, *supra* note 14, at 139-40 (applying restorative justice to address sexual violence against Native American women); Deer, *Network of Safety*, *supra* note 8, at Part III.B (examining the use of civil protection orders to address the problem of sexual violence in Indian country).

125. Deer, *Beyond Prosecution*, *supra* note 2, at 463. Deer cautions total reliance on a traditional belief system, but applying historical values and traditions to a contemporary tribal court system can better provide for survivors of sexual violence. *Id.* at 463-64.

126. *Id.* at 464.

127. *Id.*

128. *Id.* at 465.

129. *Id.* at 464.

tribal laws in order to deal with sexual violence against women, survivors may be able to begin to heal.

Applying traditional stories and beliefs to the contemporary tribal court system may have a positive effect.<sup>130</sup> Tribal oral traditions tell “interesting stories and dialogues describing the strength of women, the autonomy of women, and the right of women to sexual choice.”<sup>131</sup> For instance, “some tribal courts have requested elders to come in and testify as to traditional beliefs.”<sup>132</sup> Native American women may be able to heal through this process and at least achieve recognition of the crime.<sup>133</sup>

Advocates for traditional alternatives have encountered some problems when trying to reincorporate non-lenient traditional practices.<sup>134</sup> These non-lenient penalties include “banishment, shaming, reparations, and sometimes death.”<sup>135</sup> Advocates face problems in determining what the practices are and how to apply them in today’s tribal societies.<sup>136</sup> For instance, banishment is no longer applicable because tribal communities are no longer interdependent.<sup>137</sup> Forcing an individual to move is no longer necessarily punishment.<sup>138</sup> These traditional punishments will be most successful in “geographically isolated areas where it is more difficult for the perpetrator to simply move to another area.”<sup>139</sup>

Considering the fact that tribal communities lack criminal jurisdiction and resources, a tribe may at least ensure the redress of a survivor’s spirit and preserve the community’s strength.<sup>140</sup> Traditional approaches would likely accomplish this goal.<sup>141</sup> However, this approach alone will not solve

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130. *Id.* at 465.

131. *Id.* at 464.

132. *Id.*

133. *See id.* at 465 (emphasizing that the use of traditional beliefs can empower not only the survivor of sexual assault, but the entire community).

134. *See, e.g.,* SMITH, *supra* note 14, at 142 (explaining that not all traditional methods may work in today’s society); Deer, *Beyond Prosecution, supra* note 2, at 463-64 (cautioning the reader that history can be helpful, but only in a limited sense).

135. SMITH, *supra* note 14, at 142.

136. *Id.*

137. *See id.* (discussing that “prior to colonization, Native communities were so close-knit and interdependent that banishment” was equivalent to the death penalty, while today that close-knit community is no longer always there).

138. *Id.*

139. *Id.* at 141.

140. *See* Deer, *Beyond Prosecution, supra* note 2, at 465 (“The strength of the anti-rape sentiment in the community will ultimately illuminate the strength and resolve of the entire community to preserve and live healthy and happy lives.”).

141. *Id.* at 464-65.



the problem of lessening the rate of sexual violence experienced by Native American women.<sup>142</sup>

## 2. *Restorative Justice*

Because of the oppression that the United States criminal justice system places on Native Americans, its ideals of punishing criminals and removing them from society are not sufficient to address sexual violence against Native American women.<sup>143</sup> Instead, some tribal communities, especially Canadian communities, have applied “restorative justice” programs to address criminal behavior.<sup>144</sup> Although restorative justice systems involve aspects of traditional tribal approaches, these programs go beyond the traditional tribal approach of healing to add some form of punishment.<sup>145</sup>

The principle of restorative justice is generally to attempt “to involve all parties (perpetrators, victims, and community members) in determining the appropriate response to a crime in an effort to restore the community to wholeness.”<sup>146</sup> Although restorative justice programs may take on many forms, one basic form begins when a crime is first reported.<sup>147</sup> The perpetrator is given the option to “participate in the program and go through normal routes in the criminal justice system.”<sup>148</sup> If the program is chosen, everyone involved—including the offender, victim, and community—develops a healing contract together.<sup>149</sup> This type of program has been noted to be more difficult than imprisonment because the offender is held accountable in the community for his crimes against the victim.<sup>150</sup>

Unfortunately, tribal domestic violence advocates are “often reluctant to pursue alternatives to incarceration for addressing violence against

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142. *Id.* at 465.

143. SMITH, *supra* note 14, at 139.

144. *Id.* Smith explains that Canadian tribes have applied restorative justice programs efficiently because of their sovereign status, but these principles are still relevant to United States tribal community-based responses. *Id.* at 139-40.

145. *Id.*

146. *Id.*

147. *Id.* at 140.

148. *Id.*

149. *Id.*

150. *Id.*

First one must deal with the shock and then the dismay on your neighbors' faces. One must live with the daily humiliation, and at the same time seek forgiveness not just from victims, but from the community as a whole. . . . [A prison sentence] removes the offender from the daily accountability, and may not do anything towards rehabilitation, and for many may actually be an easier disposition than staying in the community.

*Id.* (citation omitted).

women.”<sup>151</sup> In domestic violence situations, the restorative justice system can have very positive outcomes.<sup>152</sup> When a non-Indian resides on the reservation and commits domestic violence against a member of the tribal community, the act of putting the offender in jail may actually increase risk to the community.<sup>153</sup> Scholar Andrea Smith advances the proposition that, “[b]y removing perpetrators from their community, they are further disabled from developing ethical relationships within a community context.”<sup>154</sup> Smith offers evidence for her opinion through an analysis of Hollow Lake reserve in Canada; through the use of a restorative justice approach, the community found great success.<sup>155</sup> Out of forty-eight offenders, “[o]nly five chose to go to jail, and only two who entered the program have committed crimes since.”<sup>156</sup>

Although restorative justice programs are mainly effective in domestic violence situations because of community relationships, these programs still may be effective with non-Indian sexual offenders.<sup>157</sup> The humiliation that is felt in the community will still hold the offender accountable. The fear of later incarceration will prevent future offenses, and the community will begin to heal.<sup>158</sup>

### 3. *Civil Protection Orders*

The use of civil protection orders is another non-criminal approach to serve as an alternative to the criminal justice system in prosecuting offenders of sexual assault.<sup>159</sup> A civil protection order is “a court order . . . that is requested by the victim of a crime from the court to protect her against another person or persons.”<sup>160</sup> A civil protection order may include ordering the offender to “stop committing violen[t] acts, stay away from the victim and her family, stop contacting the victim, and other requirements designed to provide safety to the victim.”<sup>161</sup> Thus, civil protection orders may be able to temporarily protect victims of sexual or domestic violence

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151. *Id.* at 141.

152. *Id.*

153. *Id.* at 140.

154. *Id.*

155. *Id.* at 140-41.

156. *Id.*

157. *See id.* at 141 (explaining how this method is highly effective for victims of domestic violence, rather than sexual assault survivors).

158. *Id.* “To be effective . . . [the program] must be backed up by the threat of incarceration.” *Id.*

159. *See Deer, Beyond Prosecution, supra* note 2, at 465 (“[T]here may be ways in which to empower Native American survivors through a series of civil laws, including protection orders.”).

160. *Deer, Network of Safety, supra* note 8, at n.78 and accompanying text.

161. *Id.*

until federal or state governments are able to prosecute or keep the survivor safe if there is no prosecution.<sup>162</sup>

Unfortunately, civil protection orders are usually helpful only in domestic violence situations, but this sanction might also apply to sexual assault cases.<sup>163</sup> Through the reform of tribal codes, Native American victims of domestic violence have “increasingly been able to obtain orders of protection in tribal courts.”<sup>164</sup> Unfortunately most tribal codes that have implemented the use of civil protection orders are limited to domestic violence situations, thus leaving victims of sexual assault without protection.<sup>165</sup>

Some tribal codes do provide victims of sexual violence with civil “restraining orders” or “injunctions” that have been found to provide inadequate relief.<sup>166</sup> Restraining orders often require court costs and fees, and are difficult to obtain. Restraining orders may only provide “injunctive relief against actions such as trespassing.”<sup>167</sup> Thus, tribal justice systems must adopt broader provisions in tribal codes to encompass all sexual violence offenders, and not just intimate partners.<sup>168</sup>

Additionally, scholars have advanced the idea that “[t]ribal judges who issue no-contact orders in conjunction with pre-trial release in criminal sexual assault cases”<sup>169</sup> will provide the victim with a form of a protection order, which is also acknowledged by the federal government through the Full Faith and Credit Clause.<sup>170</sup> Another significant way that a tribal government may protect a survivor of sexual assault from her assailant is if the assailant is an employee of the tribe.<sup>171</sup> At least one tribal court terminated the employment of a sexual assault offender.<sup>172</sup> The tribal court

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162. *See id.* at n.89 and accompanying text (explaining that protection orders may possibly “offer some degree of control over the survivor’s life, particularly for those survivors who believe that their perpetrator will continue to present a danger to her”).

163. *Id.* at n.82 and accompanying text.

164. *Id.* at n.80 and accompanying text. *See, e.g.*, Eileen Luna, *Protecting Indian Women from Domestic Violence*, NAT’L INST. OF JUST. J. 28 (Jan. 2001) (discussing the ability to obtain civil protection orders for victims of domestic violence in tribal country).

165. Deer, *Network of Safety*, *supra* note 8, at n.82 and accompanying text.

166. *Id.* at n.84 and accompanying text.

167. *Id.*

168. *See id.* at Part II.C (discussing the small spectrum (relationships with intimate partners) of offenses that most tribal codes currently address).

169. *Id.* at n.86 and accompanying text.

170. *Id.* at n.85 and accompanying text.

171. *See id.* at n.86 and accompanying text (suggesting two ways a tribal government can assert authority outside of the context of the criminal justice system).

172. *Id.* *See, e.g.*, *Trokov v. Off. of the Dir. of Reg.*, No. GDTC-AA-99-107, 2000 NAMG 0000001 (Mohegan Gaming Disputes Trial Ct. of Appeals (May 8, 2000)), <http://www.tribalresourcecenter.org/opinions/opfolder/2000.NAMG.0000001.htm> (holding that a casino employee’s employment could be terminated if he was a sex offender).

based its decision on the “tribal government’s authority to terminate employees who present safety and security concerns.”<sup>173</sup>

Furthermore, civil protection orders will help to advance four goals that need to be addressed in order to fully protect Native American sexual violence survivors.<sup>174</sup> First, orders of protection provide victims with a sense of security and safety because the offender is required to “stay away from the survivor’s person, place of residence, school, employment, or other location.”<sup>175</sup> Second, civil protection orders provide a level of accountability by tribal courts where further punishments may be implemented if the order is violated.<sup>176</sup> Thirdly, protection orders serve to prevent future cases of sexual violence by sending “a strong message to the offender that sexual violence is not appropriate.”<sup>177</sup> Finally, orders of protection provide the victim of sexual violence with acknowledgment from the tribal government that the crime occurred, which may allow the victim to heal.<sup>178</sup>

As with all tactics, civil protection orders have possible negative effects for victims.<sup>179</sup> First, civil protection orders will not be useful for “cases of stranger rape” because of the lack of certain filing information necessary to prosecute the offender.<sup>180</sup> Second, if law enforcement in the area is inadequate to enforce the orders, the orders will be, for practical purposes, worthless.<sup>181</sup> Additionally, a protection order can be a difficult process for a traumatized victim.<sup>182</sup> Evidence will need to be put forth to prove that the order of protection is necessary, and victims may be exposed to “public questioning and scrutiny.”<sup>183</sup>

Beyond these negative effects, civil protection orders will provide a step towards improvement of a system that is currently unavailable to

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173. Deer, *Network of Safety*, *supra* note 8, at n.86 and accompanying text. See *Trokov*, 2000 NAMG 0000001 (holding that a tribal gaming authority has the authority to fire an employee who has been arrested for sexual violence).

174. See generally Deer, *Network of Safety*, *supra* note 8, at Part III.A (discussing the components that a protection order statute should contain in order to help survivors of sexual assault).

175. Deer, *Network of Safety*, *supra* note 8, at n.89 and accompanying text.

176. *Id.* at n.90 and accompanying text.

177. *Id.* at n.92 and accompanying text.

178. *Id.* at n.97 and accompanying text.

179. See generally Deer, *Network of Safety*, *supra* note 8, at Part III.C (discussing the limitation of civil protection orders for sexual assault).

180. Deer, *Network of Safety*, *supra* note 8, at n.98 and accompanying text.

181. *Id.* at n.99 and accompanying text.

182. *Id.* at Part III.C.

183. *Id.* “The open forum of a tribal courtroom is not necessarily a comforting locale for someone who has been raped.” *Id.*

victims.<sup>184</sup> If a tribal justice system chooses to adopt civil protection orders, survivors of sexual assault by non-Indian acquaintances will receive more protection, prevention, accountability, and healing than they have been able to receive since the erosion of the criminal jurisdiction over these types of crimes.<sup>185</sup> Not only will survivors feel the positive effects, but this approach will also set an “example for state and local governments.”<sup>186</sup>

#### B. THE IMPACT OF THE LATEST RESPONSE BY ADVOCATES AND SCHOLARS

By implementing all three of these approaches, non-criminal prosecution of non-Indians may be able to help survivors heal, be protected, and once again become full members of the tribal community.<sup>187</sup> Traditional tribal methods will bring the original victim-centered tribal viewpoints to the forefront of discussion.<sup>188</sup> Furthermore, these methods will detract the criminal prosecution tactics of the Anglo system that are not useful to the tribes because of a lack of jurisdiction.<sup>189</sup>

Additionally, restorative justice programs take a step further in the process of healing survivors of sexual violence while providing a punitive role against the offender.<sup>190</sup> This punitive role has been proven to be effective by Canadian Native communities in preventing offenders of repeating damaging behavior.<sup>191</sup> Finally, with the use of civil protection orders and other non-criminal mandates, the goals of preventing further crimes, holding offenders accountable, protecting the victim, and healing the tribal community are fulfilled.<sup>192</sup> Although civil protection orders, no-contact orders, and employment terminations may only apply to non-

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184. *Id.* “[E]xpanding tribal protection order statutes to include survivors of sexual assault as eligible applicants is only one minor step in addressing a problem that warrants much more attention.” *Id.*

185. Deer, *Network of Safety*, *supra* note 8, at Part III.A.

186. *Id.* at Part IV.

187. *See, e.g.*, Deer, *Beyond Prosecution*, *supra* note 2, at 464-65 (offering traditional tribal methods); SMITH, *supra* note 14, at 140-41 (setting forth restorative justice systems); Deer, *Network of Safety*, *supra* note 8, at Part III (offering civil protection orders).

188. *See* Deer, *Beyond Prosecution*, *supra* note 2, at 464-65 (explaining the traditional tribal viewpoint of women and sexual violence against them).

189. *Id.*

190. *See* SMITH, *supra* note 14, at 140 (discussing the process and effect of restorative justice programs on sexual violence offenders).

191. *Id.* at 140-41.

192. *See* Deer, *Network of Safety*, *supra* note 8, at Part III.A (discussing the use of civil protection orders to address sexual violence).

Indians who are acquaintances, such devices begin to redress Native survivors of sexual violence.<sup>193</sup>

## VI. CONCLUSION

Between balancing complicated jurisdictional issues and fighting an extreme problem, tribal governments have their work cut out for them in attempting to address sexual violence inflicted upon women in their communities.<sup>194</sup> It is clear that federal and state governments are either not putting forth an effort, or such efforts are not effective in decreasing a problem that is devastating Native people as a whole.<sup>195</sup> Unfortunately, until the federal government chooses to allow tribal governments to retain sovereign status over criminal matters, non-criminal methods to punish non-Indians who use sexual violence against Native American women require development and implementation.<sup>196</sup>

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193. *See generally* Deer, *Network of Safety*, *supra* note 8, at Part III (exploring possible judicial responses to address limitations available to tribal courts).

194. *See id.* at Part IV (discussing the significant barriers that tribal nations must encounter and emphasizing the nation's obligation to find the "best way to provide safety to women").

195. *See* Deer, *Network of Safety*, *supra* note 8, at Part IV (expressing that tribal governments should rethink their current responses to sexual violence).

196. *See generally* Radon, *supra* note 36, at 1301-11 (supporting the view that the federal government should reinstate tribal jurisdiction over non-Indian criminal offenders to better address domestic violence).