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# Surviving Racism and Sexual Assault: American Indian Women Left Unprotected

**Keywords**

Sovereignty, Tribal sovereignty, Criminal jurisdiction, American Indian victims of sexual assault, American Indian women

# SURVIVING RACISM AND SEXUAL ASSAULT: AMERICAN INDIAN WOMEN LEFT UNPROTECTED

By Talib Ellison\*

In 1829, President Andrew Jackson promised that American Indians would have sovereignty “as long as grass grows or water runs.”<sup>1</sup> Nearly 175 years later, President Jackson’s promise still maintains the hollow sentiments that it embodied then.<sup>2</sup> Sovereignty, in the sense of legal autonomy,<sup>3</sup> does not exist in “Indian Country.”<sup>4</sup> Rather, tribal courts and governments lack the authority to implement and enforce laws regulating criminal offenses when non-tribal members commit offenses on tribal land.<sup>5</sup> One of the most alarming displays of this problematic scheme is the incredible rate of sexual assault against American Indian females by non-Indian males.

The inconsistent governing statutes and judicial interpretations of state and federal laws concerning both tribal sovereignty and criminal jurisdiction in Indian Country are responsible for the staggering rate of sexual assaults occurring on tribal lands between non-tribal assailants and American Indian female victims.<sup>6</sup> Despite facially maintaining concurrent jurisdiction with both the state and the federal governments,<sup>7</sup> Indian Country is a ward of the United States, with the federal government shaping and limiting tribal sovereignty within the frame of Congressional and judicial discretion.<sup>8</sup> As such, the concurrent jurisdictional scheme prevents tribal governments and courts from having the complete autonomy to create and enforce their own governing laws.<sup>9</sup>

This essay evaluates how the complicated maintenance of concurrent jurisdiction, coupled with the doctrines of limited sovereignty in Indian Country and federal trust responsibility, is effectively responsible for American Indian victims of sexual assault frequently lacking a judicial remedy. Specifically, American Indian women face elaborate hurdles in their pursuit of justice when the assailant is a non-Indian and the assault occurs on tribal land. This essay first introduces the historical context of sexual assault on tribal land, tribal sovereignty doctrine, tribal court authority, and the federal trust responsibility. Second, it argues that an unclear Congressional delegation of tribal sovereignty, facilitated by the lack of adherence to the trust responsibility, creates a high level of sexual assault in Indian Country. Third, it also argues that this unconstitutional jurisdictional scheme simultaneously denies American Indian women equal protection of the law, violates the federal trust responsibility to protect the best interest of American Indians, inhibits tribal self-governance, and results in the high level of sexual assault in Indian Country. Finally, this essay suggests that a decline in sexual assault rates in Indian Country will occur if the United States adheres to the true nature of the federal trust responsibility by sincerely re-evaluating the dependent sovereignty status of Indian nations as related to concurrent jurisdiction.

## SEXUAL ASSAULT IN INDIAN COUNTRY

One out of every three American Indian women is a victim of rape at least once in her lifetime.<sup>10</sup> Approximately 7.2 out of 1,000 American Indian women fall victim to sexual assault, compared to 1.9 out of 1,000 of all other races in the United States.<sup>11</sup> Some American Indians and national researchers believe that even though statistics reflect an alarming rate of sexual violence in Indian Country, the rate of sexual assault is not truly representative of the problem due to underreporting.<sup>12</sup>

The symptoms facilitating sexual assault are similar for women of all races, such as general negative social attitudes toward women, the relative lack of power held by women in society in contrast to men, and the traditional sexual subjugation of women.<sup>13</sup> American Indian women, however, experience unique socio-economic disadvantages as they not only endure sexism by male-dominated tribal councils, but also struggle to overcome common social problems that accompanied the imposition of the white patriarchal paradigm during colonialism.<sup>14</sup> Furthermore, as victims of sexual assault, there are specific cultural impediments that obstruct their access to helpful resources.<sup>15</sup> The consequences of these barriers are often uniquely worse than those of their female counterparts of other ethnicities.<sup>16</sup> The established disenfranchisement of American Indians, and particularly the treatment of American Indian women by colonizers, is the root of this disadvantage.<sup>17</sup> This past oppression has led to severe present day repercussions for American Indians, and specifically for American Indian women.

In March 2004, responding to reports of sexual assault in Indian Country, Senators Tom Daschle and Tim Johnson called for legal reform to increase funding for tribes as part of an aggressive effort to combat the rates of sexual assault in Indian Country.<sup>18</sup> The senators criticized cuts in tribal programs funding, and challenged President Bush to re-evaluate the needs of Indian Country. The federal government, however, has yet made an effort to correct the problems that the Senators’ addressed in their letter.

## THE FEDERAL TRUST RESPONSIBILITY

In practice, the federal trust responsibility requires Congress to allocate tribal funds directly to protect tribal lands, to enhance tribal resources and self-government, to ensure the welfare of the tribes and people, and to guarantee American Indian use and enjoyment of tribal lands.<sup>19</sup> The trust principles governing private fiduciaries equally apply to the federal government’s trust duty to the tribes.<sup>20</sup> Courts maintain that a “fiduciary relationship necessarily arises when the Government assumes elaborate control over resources . . . and property belonging to Indians”

and the elements of the common-law trust exist.<sup>21</sup> Essentially, as a trustee to tribal land and money, the federal government is bound to a strict duty of undivided loyalty under the tenets of trust principles.<sup>22</sup>

Nonetheless, no single explicit statutory definition of the federal trust responsibility exists.<sup>23</sup> Rather, the central body of contemporary federal trust policy derives from a composite of the Constitution, legislative enactments, tribal treaties with the American government, and most importantly, judicial decisions.<sup>24</sup> The courts utilize all of these sources of law in determining the parameters of the federal government's duties.

### TRIBAL SOVEREIGNTY

The foundational framework for the interpretation of Indian law and tribal sovereignty is in *Johnson v McIntosh*,<sup>25</sup> the first of three opinions written by Chief Justice Marshall in the nineteenth century.<sup>26</sup> The Court in *Johnson* approved of the federal government's claim of title to American Indian land, despite the absence of agreement or consent from American Indians.<sup>27</sup> Chief Justice Marshall determined that rather than being absolute sovereign entities empowered with inherent rights such as the right to transfer title to land, tribes were "dependent, diminished sovereigns."<sup>28</sup> Marshall echoed this interpretation of tribal sovereignty in his second opinion written in *Cherokee Nation v. Georgia*.<sup>29</sup>

Finally, in *Worcester v. Georgia*, the Court slightly broke with precedent by elaborating that Indian tribes are "distinct, independent political communities, retaining their original natural rights" in matters of local self-government.<sup>30</sup> Essential to the Court's holding is the narrow construction of tribal independence as limited to "local self-government."<sup>31</sup> In the aftermath of the Marshall trilogy, Indian tribes maintain sovereignty only over affairs that occur within their tribal communities, and only over affairs among American Indians.

### CONCURRENT CRIMINAL JURISDICTION SCHEME IN INDIAN COUNTRY

In general, tribal courts retain concurrent jurisdiction with both federal and state courts to enforce laws in Indian Country, with the federal courts reserving jurisdiction to enforce all federal criminal laws.<sup>32</sup> However, tribal courts traditionally have criminal jurisdiction only over offenses that Indians commit in Indian Country. In 1834, Congress enacted the General Crimes Act, extending federal criminal jurisdiction to crimes between Indians and non-Indians.<sup>33</sup> The Act generally reinforces the fundamental concept of tribal self-government by asserting that crimes between Indians fall within the exclusive jurisdiction of tribal governments. Additionally, the Act upholds the notion of tribal sovereignty by explicitly excluding federal criminal jurisdiction over Indian offenders tried and punished by the tribal courts.<sup>34</sup>

Congress further expanded its jurisdiction and enacted the Major Crimes Act, creating federal criminal jurisdiction over

more serious felonies that Indians commit in Indian Country.<sup>35</sup> The Major Crimes Act also only permits tribal courts to impose punishments of a maximum of one year imprisonment and a fine of five thousand dollars.<sup>36</sup> Perceiving a lack of proficient law enforcement in Indian Country, Congress subsequently passed Public Law 280.<sup>37</sup> This legislation requires six states to assume criminal and civil jurisdiction over all or part of Indian Country within their borders, and provides that both the General Crimes Act and the Major Crimes Act are not applicable in these six states. According to Public Law 280, these states retain authority over non-Indians in Indian country, including crimes that non-Indians commit against Indians on tribal lands. A lack of clarity in the law, however, results in an interpretation of the General Crimes Act that preempts state criminal jurisdiction over non-Indians committing crimes against Indians, thereby preserving federal criminal jurisdiction over these cases.<sup>38</sup>

### THE TRUST RESPONSIBILITY DYNAMIC IN INDIAN COUNTRY

There are two overlapping factors predominantly responsible for the lack of protection of American Indian women. First, Congress' consistent violation of its trust responsibility constricts the level of sovereignty afforded to tribal governments and courts and simultaneously increases the need for tribal dependence on the federal government.<sup>39</sup> Second, jurisdictional confusions and enforcement flaws due to the changing roles of the federal and state governments, result in the hindrance of tribal justice system development, deny American Indian women equal protection of the laws, and further exacerbate Indian Country struggles to achieve sovereignty.<sup>40</sup> Consequently, the everyday social experiences of American Indians, and specifically American Indian women, reveals a continued plight, which exists on the periphery of American consciousness.

### THE FEDERAL GOVERNMENT HABITUALLY ABANDONS ITS TRUST RESPONSIBILITIES

The President and Congress seem to regard their duties under the trust agreement as an optional, rather than as a mandatory legal obligation. The federal government must either begin fulfilling its trust duties or take specific measures to divest tribal funds by returning what belongs to American Indians. In other words, the federal government would have to make appropriate reparations for damages caused as a result of its fiduciary breach.<sup>41</sup> As the trustee and the possessor of title to Indian lands and monies, the federal government has the obligation of protecting the interests of Indian Country.<sup>42</sup> However, past governmental actions reflect an abandonment of its obligations to the trust beneficiaries, i.e., to American Indians.<sup>43</sup> In having a "dependent nation" within its borders, undoubtedly the federal government's ancillary motivation is to maintain maximum control of Indian Country.<sup>44</sup> To effectuate this goal, the federal government entered into a trust, whereby it ascertains physical control of tribal lands, then asserts its constitutionally-vested

authority to restrict tribal sovereignty and self-governance.<sup>45</sup>

Regardless of the federal government's motives and constitutionally-vested authority, the law recognizes that when a trustee fails to administer a trust pursuant to the terms of the agreement, a breach results, subjecting the trustee to liability for damages as well as other available remedies.<sup>46</sup> In *Seminole Nation v. United States*, the U.S. Supreme Court determined that the federal government disbursed tribal funds to the local tribal government, completely aware that the government was not allocating funds according to its appropriate, intended purposes.<sup>47</sup> The Court reasoned that the trust requires the federal government to strictly adhere to its obligations as Indian Country's fiduciary agent, utilizing tribal money and land to advance social development and promote tribal self-governance.<sup>48</sup> The federal government's behavior in Indian Country demonstrates its continued failure to provide trust funding necessary to raise the standard of living and social well-being of American Indians. In addition, misallocation of money, as well as insufficient or declining levels of funding, force impoverished female victims of sexual assault to struggle with limited options and resources for help.<sup>49</sup>

In a similar vein, Congress passed the Violence Against Women Act (VAWA) to provide federal protection to women as victims of violent crimes.<sup>50</sup> Although some provisions in VAWA addressed American Indian women specifically, these sections did not offer decisive solutions to the serious problem of sexual assault faced by American Indian women.<sup>51</sup> Therefore, during VAWA's reauthorization in 2000, there was an initiative to create a discretionary grant program to support non-profit tribal coalitions that provide services for victims of sexual assault and domestic violence in Indian Country.<sup>52</sup> In determining that only tribal governments could receive federal funding, the Department of Justice's (DOJ) Office on Violence Against Women informed the tribal coalitions that they were ineligible to apply for funding.<sup>53</sup> The tribal governments, however, did not receive direct funding from the DOJ. Therefore, these tribal coalitions will likely dissolve because tribal governments lack sufficient funding to allocate money to these programs.

Congress acknowledged that funding shortfalls are likely the biggest impediment to tribal self-determination.<sup>54</sup> If tribal self-determination and self-governance truly are goals that the federal government shares with Indian Country, then the government should not simply recognize that adequate funding makes independence possible, but actually allocate money to these programs.<sup>55</sup> In violation of trust responsibilities, however, the President and Congress continue to fall short of providing "resources necessary to effectively address or remedy [such] longstanding problems in Indian Country" as disproportionate rates of sexual assault.<sup>56</sup>

#### THE FEDERAL TRUST AS A JUSTIFICATION FOR CONCURRENT JURISDICTION

These cyclic arguments about how concurrent jurisdiction preserves tribal autonomy, and how the United States' policy of

recognizing tribal sovereignty and self-government demands the existence of concurrent jurisdiction, does no justice to the true nature of the situation.<sup>57</sup> The U.S. Supreme Court in *Mitchell v. United States* offered the rationalization that, by virtue of the trust agreement, tribal governments relegate some relative control to Congress in exchange for its protections and support.<sup>58</sup> The fiduciary arrangement of the federal trust agreement does not implicate a legally cognizable justification for limiting the ability of either a tribal government or a court to regulate internal affairs.<sup>59</sup>

Although the initial framing of the relationship between the government and tribes is like a guardian to its ward, the more fitting paradigm is created under the laws of trust.<sup>60</sup> Under the guardian and ward paradigm, there is an assumption that the ward is incapable of managing its own affairs, or actually has no say in those affairs.<sup>61</sup> In contrast, the purpose of the trust agreement is to empower tribes and to fortify the development of political and legal systems capable of assuming the role of managing tribal affairs.<sup>62</sup> Again, common-law trust doctrine prohibits trustees from taking actions that result in a personal advantage or gain if that action harms its beneficiary.<sup>63</sup> In implementing the concurrent jurisdiction scheme, Congress perpetuated its dominion over Indian country to the detriment of tribal self-government.

#### CONCURRENT JURISDICTION DENIES AMERICAN INDIAN WOMEN EQUAL PROTECTION OF THE LAW

American Indian women have neither equivalent levels of protection nor equitable avenues of legal reprisal in Indian Country because the U.S. federal government makes the arbitrary jurisdictional distinction between tribal members and non-tribal members.<sup>64</sup> The laws as they exist in Indian Country, as well as the scope of enforcement of these laws, differ arbitrarily in contrast to the laws that govern non-tribal members.<sup>65</sup> It would be difficult for the federal government to devise a basis for permitting a lack of equity in legal protection such as what currently exists in Indian Country.<sup>66</sup> Because the federal government marks jurisdictional boundaries along the status of tribal membership, sexual violence against American Indian women persists at higher rates than for women in other parts of the country.<sup>67</sup>

Statistics estimate that 70% of the American Indian victims of rape or sexual assault reported to an offender of a different race indicates an inherent flaw in Congress' denial of tribal authority to prosecute non-Indian assailants.<sup>68</sup> The number of American Indian women who suffer from sexual assaults is dramatic to the extent that there is likely a deeper systemic catalyst than just the social and economic differences that these women face. Socio-economic distinctions between American Indian women and women of other races provide no discernable, complete explanation for the staggering disparity in incidents of sexual assault among Indian women compared to incidents involving victims of other races.<sup>69</sup>

The only evident justification for this arbitrary racial classification is the United States' interest in protecting non-Indians, because there is no substantiation of Indian protection reflected in these laws.<sup>70</sup> Rather, in advancing this interest, it seems that the measures this statute takes severely undermine the protection of the true victims in these crimes, with no inclination of a compelling governmental interest.<sup>71</sup> This is particularly true with a crime like sexual assault because there is an indefinite extent of mental injury accompanying the physical pain and torment.<sup>72</sup> It seems senseless to limit what crimes can be enforced, and then bind the scope of enforcement almost arbitrarily to the point of rendering the punishment ineffective in deterring the crime.<sup>73</sup>

### THE FEDERAL GOVERNMENT SHOULD ABANDON ITS CONCURRENT JURISDICTION POLICY AND EMPOWER TRIBES TO REGULATE ALL AFFAIRS ON TRIBAL LANDS

In *Duro v. Reina*, the Supreme Court expressly stated that the notion of non-Indian implied consent to tribal criminal jurisdiction is invalid, but there was no clear explanation for the Court's decision.<sup>74</sup> The Court simply dismissed the possibility of implied consent by stating "nonmembers who share relevant jurisdictional characteristics of non-Indians, should share the same jurisdictional status."<sup>75</sup> This vague statement seems to mean that non-members are only subjected to laws outside of the sphere of local tribal governments. Unsurprisingly, the Court did not consider the potentially negative implications resulting from its logically defunct interpretations of tribal sovereignty.<sup>76</sup>

The authority to oversee sexual assault claims when the victim is a member of the tribe is necessary to protect internal relations,<sup>77</sup> especially when considering the clashing cultural dynamics of Indian Country.<sup>78</sup> For example, American Indian women may be hesitant to report assaults because law enforcement and sexual assault specialists generally are outsiders, much like the criminals that assault them.<sup>79</sup> About 70 % of the reported crimes in Indian Country are reported to non-Indians.<sup>80</sup>

The other likely cause of underreporting is that even when acknowledged, there is no heavy pursuit of sexual assault assailants, mainly because the criminals are non-Indian and thus able to escape through the perforated holes in the confusing concurrent jurisdiction scheme.<sup>81</sup> As a result of this aspect of the judicial system, the general sentiment among American Indian women is that not only will response to reports take an unduly long time, but that no semblance of justice will result because American Indians see non-Indians as a privileged class on tribal lands.<sup>82</sup> In considering cultural implications, concurrent jurisdiction reinforces the subjugated mentality ingrained in the consciousness of American Indians for centuries, which makes it more difficult to create a bridge of trust between American Indians and non-tribal members,<sup>83</sup> and ultimately weakens community ties within tribes.<sup>84</sup>

Sexual assault directly affects internal relations in small American Indian communities where the strength and continuity of the community is dependent upon the individual's sense of connectedness.<sup>85</sup> American Indian tribes subscribe to communal

values as the guiding principles for the laws that govern an individual's conduct.<sup>86</sup> This preference does not mean that the group ignores individual interests. Rather, American Indian laws strive to protect individuals, while at the same time, preserving the cultural beliefs and practices of the collective framework.<sup>87</sup> Thus, tribes build their society based on community and relational functions.<sup>88</sup> In the context of this social structure, it is impractical to have an outside force dictating which rights and values should exist in Indian Country.<sup>89</sup> The impracticality of such a relationship is especially apparent when the imposing force is foreign to the established relationships within the community and the shared common historical experience that contextualizes the existing values and norms of that society.<sup>90</sup>

In the abstract, American jurisprudence is a reflection of socially intrinsic values, based upon our historically bound experiences and common motivations.<sup>91</sup> The commonality of values and perceptions among most American Indian tribes stands in stark contrast from those values and views historically imposed by the majority culture in the United States.<sup>92</sup> Therefore, preservation of the sanctity of the American Indian community is only possible when the laws reflect the communal values of Indian Country and not the values of a foreign society or mainstream America.<sup>93</sup> Ultimately, court interpretations of tribal sovereignty frequently limit the reach of tribal authority, opting instead to grant deference to the plenary powers of Congress, which facially remain insensitive to the true needs of tribal communities.

### CONCLUSION

The disproportionate rate of sexual assault in Indian Country is a product of the federal government abandoning its trust responsibilities and implementing its arbitrary and confusing concurrent jurisdiction policies. Pursuant to its trust responsibility, the federal government and its agencies must not adopt or promulgate practices or regulations that compromise their fiduciary duties.<sup>94</sup> The trustee must always act in the interests of the beneficiaries.<sup>95</sup> Indian Country needs a firmer adherence by the federal government to the true nature of its trust responsibility. This would entail an abandonment of the current jurisdiction scheme in which tribal courts are powerless to effectuate the laws of their own land and equal protection eludes victims of sexual assault.

With the power to perpetuate and enforce the laws, tribal dependence on the federal government will diminish. Although it is apparent that this is exactly what the federal government does not want, with the demise of concurrent jurisdiction, undoubtedly a decline in the existing problems in Indian Country, such as the rampant episodes of sexual assault, will ensue. Although this phenomenon probably comes as no surprise to the victims,<sup>96</sup> it is difficult to find adequate justification for its perpetuation.

The federal government's jurisdiction prior to Public Law 280 and the states' jurisdiction following its passage are too broad and conflict with the concept of tribal self-government as

well as the historically acknowledged characterization of Indian Country as a sovereign nation.<sup>97</sup> If Indian sovereignty predates that of the United States, then it inherently follows that many actions of the United States, however justifiable within the relative historical, social, or legal context, serve as limitations on Indian sovereignty.<sup>98</sup> Consequently, any claims of preserving the inherent powers of Indian self-government<sup>99</sup> are fundamentally flawed in that the federal government only protects those powers of self-government it creates and grants.<sup>100</sup> True sovereignty, and thus true self-government, cannot exist where another entity dictates and maintains the authority to interpret and redefine its scope.<sup>101</sup> Ultimately, tribal courts and tribal law

enforcement are essential institutions of tribal self-government.<sup>102</sup> Tribal self-government falters when these institutions are not exclusively within the dominion of the tribe.<sup>103</sup>

The existence of concurrent jurisdiction through Public Law 280 also violates the federal trust agreement by exacerbating tribal rights to self-government.<sup>104</sup> Concurrent jurisdiction only preserves the interests of the federal government.<sup>105</sup> Unfortunately, as a result of repeated subjugation, a constant denial of the assertion of its rights, and the federal government's inability and reluctance to legitimize tribal self-government,<sup>106</sup> Indian Country is deficient in its ability to hold the federal government accountable.<sup>107</sup>

## ENDNOTES

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<sup>1</sup> See HOWARD ZINN, *A PEOPLE'S HISTORY OF THE UNITED STATES*, 134 (1997) (quoting President Jackson's promise to grant sovereignty to Indians if they abandon their territories).

<sup>2</sup> See *id.* at 125-148 (describing the federal government's pattern of steadily stripping away land given to American Indians by breaking treaties, employing deception, and waging war).

<sup>3</sup> See Sharon O'Brien, *Tribes and Indians: With Whom Does the United States Maintain a Relationship?*, 66 NOTRE DAME L. REV. 1461, 1462 (1991) (asserting that the plenary powers of Congress over Indian relationships and commerce are extremely broad).

<sup>4</sup> See 18 U.S.C. § 1151 (2004) (expressing that Indian Country includes all areas within a reservation, trust allotments, and dependent Indian communities).

<sup>5</sup> See, e.g., *United States v. McBratney*, 104 U.S. 621, 633 (1882) (holding that States have exclusive criminal jurisdiction over its citizens).

<sup>6</sup> See LAWRENCE A. GREENFIELD & STEVEN K. SMITH, *AMERICAN INDIANS AND CRIME*, 38 (1999) [hereinafter *BJS*] (estimating that the rate of rape and sexual assault of American Indian women is 3.5 times higher than for any other race in the U.S.), available at <http://ojp.usdoj.gov/bjs/pub/pdf/aic.pdf> (last visited Sept. 15, 2005).

<sup>7</sup> See NATIONAL SEXUAL VIOLENCE RESOURCE CENTER, *SEXUAL ASSAULT IN INDIAN COUNTRY: CONFRONTING SEXUAL VIOLENCE* (2000) [hereinafter *NSVRC*] (depicting the criminal law enforcement process in Indian country as consisting of jurisdictional battles between Tribal police, Bureau of Indian Affairs (BIA) police, city or county sheriffs, state troopers, and federal law enforcement personnel), at <http://www.ojp.usdoj.gov/bjs/pub/pdf/aic.pdf> (last visited Sept. 14, 2005).

<sup>8</sup> See, e.g., *Merrión v. Jicarilla Apache Tribe*, 455 U.S. 130, 149 (1982) (concluding that tribal sovereignty can only be changed through congressional delegation).

<sup>9</sup> See DEPARTMENT OF HEALTH AND HUMAN SERVICES, *TRIBAL SELF-GOVERNANCE STUDIES, FREQUENTLY ASKED QUESTIONS CONCERNING AMERICAN INDIANS AND ALASKAN NATIVES* (2003) (illuminating that tribes powers are subject to Congress and the Supreme Court), available at <http://aspe.hhs.gov/SelfGovernance/faqs.htm> (last visited Sept. 14, 2005).

<sup>10</sup> See PATRICIA TJADEN & NANCY THEONNES, NAT'L INST. OF JUSTICE, U.S. DEP'T OF JUSTICE, *FULL REPORT OF THE PREVALENCE, INCIDENTS, AND CONSEQUENCES OF VIOLENCE AGAINST WOMEN* (2000) (indicating that the rate of rape for American Indian women is four times greater than other women in the United States), available at <http://www.ncjrs.gov/pdffiles1/nij/183781.pdf> (last visited Sept. 14, 2005).

<sup>11</sup> See *BJS*, *supra* note 6 (detailing sexual assault rates among other U.S. women).

<sup>12</sup> See *id.* (calculating that less than 40% of American Indian victims of violent crime reported the offense to the police).

<sup>13</sup> See Christopher Shu-Bin Woo, *Familial Violence and the American Criminal Justice System*, 20 U. HAW. L. REV. 375, 380 (1998) (considering sexual assault and domestic violence as occurring in all economic, cultural, religious, geographic, educational and vocational spheres).

<sup>14</sup> See Melissa A. Tatum, *A Jurisdictional Quandary: Challenges Facing Tribal Governments in Implementing the Full Faith and Credit Provisions of the Violence Against Women Acts*, 90 KY. L.J. 123, 126-27 (2002) (distinguishing American Indian women's causes of sexual assault by expressing relevant cultural factors shaped by the history of American Indian maltreatment by non-Indians); see also *id.* at 128 (factoring in historical and cultural events which create a uniquely devastating social tapestry for American Indian women).

<sup>15</sup> See PAULA GUNN ALLEN, *THE SACRED HOOP: RECOVERING THE FEMININE IN AMERICAN INDIAN TRADITIONS* 255-60 (1995) (conveying the tribal view that confidentiality creates an overwhelming pressure on Indian women to keep sexual assault problems to themselves).

<sup>16</sup> See, e.g., Donna Coker, *Enhancing Autonomy For Battered Women: Lessons From*

*Navajo Peacemaking*, 47 UCLA L. REV. 1, 16-32 (1999) (reporting findings that demonstrate American Indian women consistently rate at the bottom of all statistical indicators of well-being).

<sup>17</sup> See Suzanne H. Jackson, *To Honor and Obey: Trafficking in "Mail Order Brides,"* 70 GEO. WASH. L. REV. 475, 483 (2001) (recounting how Spanish soldiers in California sexually assaulted American Indian women and girls in the 1700s, then white settlers raped and murdered women, enslaved daughters and forced them into prostitution or sold them off).

<sup>18</sup> See Letter from Tim Johnson & Tom Daschle, Sens., to Judd Gregg, Chairman of the Subcomm. on Commerce, Justice, State, and the Judiciary, and Ernest Hollings, the ranking member of the Comm. on Appropriations, (Mar. 24, 2004) [hereinafter *Daschle Letter*] (calling attention to the atrocities occurring in Indian Country), available at <http://www.indianz.com/News/archive/000840.asp> (last visited Sept. 14, 2005).

<sup>19</sup> See *Assiniboine and Sioux Tribes v. Bd. of Oil & Gas Conservation*, 792 F.2d 782, 794 (9th Cir. 1986) (encapsulating the essential obligation of the federal government under the trust agreement to provide services that ultimately protect and serve Indian communities).

<sup>20</sup> See *Covelo Indian Comty. v. F.E.R.C.*, 895 F.2d 581, 586 (9th Cir. 1990) (applying the principles of trust law to federal agencies because they maintain the same trust obligations as the government).

<sup>21</sup> See *U.S. v. Mitchell*, 463 U.S. 206, 225 (1981) (remarking that the elements of common law trust are a trustee (the United States), a beneficiary (the Indian allottees), and a *trust corpus* (Indian timber, lands, or funds)).

<sup>22</sup> See, e.g., *Seminole Nation v. United States*, 316 U.S. 286, 297 (1942) (declaring a breach of the federal government's fiduciary duty when it disbursed funds to known disloyal tribal representatives).

<sup>23</sup> See generally GILBERT L. HALL, *INST. FOR THE DEVELOPMENT OF INDIAN LAW, THE FEDERAL-INDIAN TRUST RELATIONSHIP: LEGAL CURRICULUM AND TRAINING PROGRAM* (1981) (conceding that no single source or text of law cleanly defines tribal sovereignty).

<sup>24</sup> See *id.* (generating a list of legal sources used to exemplify the dynamics of the federal government's trust responsibility).

<sup>25</sup> See generally 21 U.S. 543 (1 Wheat) (1823) (holding that the United States maintains absolute title to tribal lands based on the doctrine of discovery).

<sup>26</sup> See Philip P. Frickey, *Marshalling Past and Present: Colonialism, Constitutionalism, and Interpretation in Federal Indian Law*, 107 HARV. L. REV. 381, 392 (1993) (signifying the importance of the Marshall Trilogy in establishing the framework under which courts interpret Indian law in the United States).

<sup>27</sup> See 21 U.S. at 587 (addressing competing claims for tribe-acquired land and government-acquired land).

<sup>28</sup> See *id.* at 587-88 (implementing the doctrine of discovery to justify vesting absolute title of Indian lands in the federal government).

<sup>29</sup> See 30 U.S. 1, 17 (1 Pet.) (1831) (declining to offer tribes independent sovereign status and classifying them as "domestic dependent nations" and wards of the United States).

<sup>30</sup> See 31 U.S. 515, 559 (1832) (limiting a tribal court's authority to only those matters exclusively within the borders of the tribal lands and among tribal members).

<sup>31</sup> See Frickey *supra* note 26, at 381 (constructing the Supreme Court's language to limit tribal authority to internal affairs).

<sup>32</sup> See U.S. CONST. art I, § 8.

<sup>33</sup> See General Crimes at § 1152(1) (functioning as protection for non-Indians by not permitting their prosecution in tribal courts).

<sup>34</sup> See *United States v. Wheeler*, 435 U.S. 313, 325 (1978) (holding that because the Navajo Tribe and the federal government are separate entities, the double jeopardy clause does not apply for the defendant when he was already prosecuted by the federal court).

<sup>35</sup> See Major Crimes Act, 18 U.S.C. § 1153 (1885) [hereinafter *Major Crimes*]

## ENDNOTES CONTINUED

(reserving federal criminal jurisdiction in all cases involving murder, manslaughter, kidnapping, maiming, felony sexual assault, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against an individual under sixteen years old, arson, burglary, robbery, and felony theft).

<sup>36</sup> See 25 U.S.C. § 1302(7) (1968) (disallowing tribal courts the authority to levy penalties for criminal conduct that state and federal courts usually have).

<sup>37</sup> See generally Pub. L. No. 280, § 1162 (conferring to states criminal jurisdiction over crimes in Indian Country).

<sup>38</sup> Sen. Comm. On Interior and Insular Affairs, 94th Cong., Background Report on Pub. L. 280, 29-30 (Comm. Print 1975) (recognizing that tribes in Pub. L. 280 states constantly struggle to maintain their jurisdiction and concurrent authority with the states because states have not distinguished their authority under Pub. L. 280 from tribal and federal authority under the General and Major Crimes Act); see also NSVRC, *supra* note 7 (blaming general confusion about which jurisdictional laws take precedence in Indian Country for the reason why crimes in Indian Country can be subject to investigation by local law enforcement, consisting of Tribal and/or BIA police, or state troopers, and federal law enforcement personnel from the BIA or FBI).

<sup>39</sup> See generally Phillip J. Prygoski, *From Marshall To Marshall: The Supreme Court's Changing Stance on Tribal Sovereignty*, Am. Bar Assoc. (2003) (proposing that from the beginning, the Supreme Court never attempted to create a canon of authority that would outline the court's stance on tribal authority), at <http://www.abanet.org/genpractice/compleat/f95marshall.html> (last visited Sept. 14, 2005).

<sup>40</sup> See B.J. Jones, *Welcoming Tribal Courts into the Judicial Fraternity: Emerging Issues in Tribal-State and Tribal Federal Court Relations*, 24 WM. MITCHELL L. REV. 457, 472 (1998) (referencing state authority under Pub. L. 280 as an example of why tribal justice systems are vulnerable to state challenges of legitimacy); see also Goldberg-Ambrose & Champagne, *supra* note 36, at 51 (blaming imbalanced bargaining power of that permit states to challenge the authority of tribal courts for deterring tribal justice systems from attempting to exercise jurisdiction and develop more adequate justice systems).

<sup>41</sup> See generally *United States v. Mitchell*, 463 U.S. 207 (1983) (determining that money damages are available for Indian tribes for the United States's violations of trust obligations regarding management of trust property and money).

<sup>42</sup> See Lynn H. Slade, *The Federal Trust Responsibility in a Self Determination Era*, 42 ROCKY MTN. MIN. L. INST. 11, 16 (1999) (explaining that trust resources are those financial resources allocated by the federal government for the purpose of establishing programs and funds for varying Indian affairs).

<sup>43</sup> See U.S. COMM'N ON CIVIL RIGHTS, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* [hereinafter *USCCR*] (evaluating the devolved state of federally controlled tribal funds) available at <http://www.usccr.gov/pubs/na0703/na0731.pdf> (last visited Sept. 14, 2005).

<sup>44</sup> See, e.g., *U.S. v. Kagama*, 118 U.S. 375, 381 (1886) (combining the notion of tribal sovereignty with the understanding that in relation to the United States, Indian Country is still dependent).

<sup>45</sup> See Slade, *supra* note 42, at 12 (adding meaning to Marshall's phrase from *Cherokee Nation* stating that the relationship between the federal government is "unlike that of any other two people in existence," by saying that the key motivation of the federal government in its "guardian" relationship with tribes is to control tribal and individual Indian's transactions regarding tribal land).

<sup>46</sup> See *Thornbrook Int'l v. Rivercross Found.*, Case No. 03 C 1113, 2004 U.S. Dist. LEXIS 12431 (N.D. Ill. July 6, 2004) (reciting the principles of trust law, specifically that a trustee has a duty to use care and diligence in protecting and investing trust property).

<sup>47</sup> See generally *Seminole Nation v. United States*, 316 U.S. 286 (1994) (applying trust law doctrine to impose a heightened burden of fair dealing with American Indian tribes).

<sup>48</sup> See *id.* at 297 (insisting that the federal government must abide by the "most exacting fiduciary standards" when dealing with issues related to its trust responsibility).

<sup>49</sup> See Gunn Allen *supra* note 15, at 260-61 (alleging that because many women residing on reservations live in such poverty that they do not have access to telephones, transportation, or child care, and that some women do not speak English so their ability to seek help for sexual assault is severely impaired).

<sup>50</sup> See Violence Against Women Act, 18 U.S.C. § 2261 (1994) [hereinafter *VAWA*] (responding to the rising threat of violence against women through a federal statute that employs various methods to offer additional protections and resources to prevent violence and assist women victims of violent crimes).

<sup>51</sup> See generally Testimony of Patrick F. Fagan on the Violence Against Women Act Reauthorization before the Subcomm. on Crime Judiciary Committee, U.S. House of Representatives (Sept. 29, 1999) (appearing before the subcommittee to criticize the apparent lack of consideration for American Indian women victims of sexual assault and domestic violence).

<sup>52</sup> See *id.* (stating that American Indian women deserve as much protection under VAWA as other women in the United States and would benefit immensely from the inclusion of provisions in VAWA's reauthorization that address funding of sexual assault and domestic violence programs in Indian Country).

<sup>53</sup> See National Congress of American Indians, *National Policy Workgroup on Contract Support Costs, Final Report* (July 1999) [hereinafter *NCAI*] (demanding support against the General Counsel for the Office on Violence Against Women's interpreta-

tion that the VAWA reauthorization only applied to tribal governments, therefore rendering non-profit tribal coalitions ineligible to apply for new tribal grants), available at <http://www.indian.senate.gov/1999hrgs/csc9.15/allen.pdf> (last visited Sept. 14, 2005).

<sup>54</sup> See NCAI *supra* note 53 (advancing the argument that the federal government promotes a policy of advancing tribal self-governance and that the best means to this end is concerted funding for tribal programs).

<sup>55</sup> See ERIC HENSON & JONATHAN B. TAYLOR, ET AL., *NATIVE AMERICA AT THE NEW MILLENIUM 8-9* (2002) (claiming that the federal government wants to work with American Indians to fortify tribal sovereignty).

<sup>56</sup> See *id.* at 121 (inferring that President Bush's budget request for Indian programs was grossly inadequate and not a good-faith gesture towards actualizing a solution to Indian Country economic troubles).

<sup>57</sup> See, e.g., Prygoski *supra* note 39 (arguing that, "since the only jurisdiction that the United States has is concurrent with the tribe, that part of its concurrent jurisdiction is all that it could transfer to the states, and that it could not transfer more than what it had, that is, could not transfer tribal jurisdiction to the states").

<sup>58</sup> See generally *Mitchell*, 463 U.S. at 206 need full cite here (formulating the argument that because of the general trust agreements and the political relationships evolved from interactions involving implementation of the federal government's fiduciary duty, Indian Country is essentially subjugated to being a dependent of the United States).

<sup>59</sup> But see, cf. Prygoski, *supra* note 39 (accrediting the Marshall trilogy, in which the Courts established that the construction of tribal sovereignty is Congress' right, with setting the foundation for the federal trust responsibility).

<sup>60</sup> See FELIX COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* (2nd Ed. 1982) 221-24 (putting forth the suggestion that Indian Law is best understood when viewing the scope of the federal government's duty through the lens of the American trust law principles).

<sup>61</sup> See, e.g., *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903) (recognizing at the height of the plenary power theory of Indian relations, that the relationship between many tribes and the U.S. government resembled one of ward to guardian).

<sup>62</sup> See generally Slade *supra* note 42, at 16 (explaining that trust resources are those financial resources the federal government allocates for the purpose of establishing programs and funds to promulgate and develop varying Indian affairs).

<sup>63</sup> See *Nance v. EPA*, 645 F.2d 701, 711 (9th Cir. 1981) (stating the general duties of the federal government and its agencies in the federal trust responsibility).

<sup>64</sup> See AMERICAN INDIAN POLICY CENTER, *THREATS TO TRIBAL SOVEREIGNTY* [hereinafter *AIPC*] (continuing with the analysis of problems with the current legal and jurisdictional problems with sexual assault in Indian Country by asserting that jurisdiction confusion not only diminishes the ability for most agencies to create, obtain, and maintain consistent records, but it also serves to provide a justification for investigative and prosecuting officials to ignore sexual assaults), at <http://www.airpi.org/research/st98fund.html> (last visited Sept. 14, 2005).

<sup>65</sup> Cf. *AIPC supra* note 64 (justifying the Court's deference to Congress regarding its supervision in Indian Country by categorizing congressional legislation as political judgments and therefore outside the scope of judicial review).

<sup>66</sup> See *Personnel Administrator v. Feeney*, 442 U.S. 256, 272 (1979), quoted in *Washington v. Seattle School Dist.*, 458 U.S. 457, 485 (1982) (determining that despite lower standards of scrutiny for less offensive classifications, "a racial classification, regardless of purported motivation, is presumptively invalid and can be upheld only upon an extraordinary justification").

<sup>67</sup> See Daschle Letter *supra* note 27 (informing Congress that sexual assault in Indian Country has reached staggering proportions and will continue unless Congress takes action).

<sup>68</sup> See WOMEN VICTIM RIGHTS COALITION, *INDIAN COUNTRY STATISTICS* (2003) (conveying the idea that even to this day, American Indians fall victim to the literal and metaphorical rape of their culture and ways of life at the hands of non-Indians), available at <http://www.vday.org/contents/vcampaigins/indiancountry/stats> (last visited Sept. 14, 2005).

<sup>69</sup> See BJS *supra* note 6, at 40 (drawing from U.S. census Bureau population estimates of July 1, 1998, to conclude that American Indians account for just under 1% of the U.S. population).

<sup>70</sup> Cf. FRANCIS PAUL PRUCHA, *DOCUMENTS OF UNITED STATES INDIAN POLICY*, 262 (1990) (connecting the passage of the Major Crimes Act to Congress's desire to prevent a recurrence of cases like *Ex Parte Crow Dog* where a murderer was freed because the federal courts had no jurisdiction); see also *Ex Parte Crow Dog*, 109 U.S. 556 (1883) (upholding a suit for release filed by an Indian convicted of murder on the grounds that the federal courts had no jurisdiction over crimes committed in Indian country by one Indian against another); see also *id.* (explaining that by treaty, the United States had allowed the tribe to retain its sovereignty and that any new criminal jurisdiction policy on the part of the U.S. government would require a clear expression of Congress).

<sup>71</sup> See *Adarand*, 515 U.S. at 225 need full cite (requiring that justifications of federal race-based classifications must effectuate compelling governmental interests).

<sup>72</sup> See, e.g., VERNELLIA R. RANDALL, *DOMESTIC VIOLENCE, SEXUAL ASSAULT AND STALKING PREVENTION AND INTERVENTION IN RURAL AMERICAN INDIAN COMMUNITIES 1*, 107 (1998) (recounting reports of most women who experience crying spells, nausea, depression, moodiness, nightmares and flashbacks or insomnia, "startle re-



## ENDNOTES CONTINUED

sponses”, a fear of being alone, of men, of crowds of darkness); *see also id.* (expressing further that a victim may feel as if she has changed irrevocably both physically and emotionally, she may be suicidal, absent-minded or describe a general feeling of numbness, develop an obsessive/compulsive disorder as a result of shame and anguish expressed as self-hatred, or guilt and self-contempt for not having been smart or strong enough to stop the assault).

<sup>73</sup> *See Montana v. United States*, 450 U.S. 544, 566 (1981) (exemplifying the seemingly arbitrary nature of tribal jurisdiction when the court states that “a tribe may also retain inherent power to exercise civil authority over the conduct of non-Indians . . . when the conduct threatens or has some direct effect on the political integrity, the economic security, or the health of or welfare of the tribe”).

<sup>74</sup> *See Duro v. Reina*, 495 U.S. 676 (1990) (involving an Indian accused of murdering a tribal member, but denying the tribal court jurisdiction because the accused was not a member of the particular tribe seeking to assert jurisdiction).

<sup>75</sup> *See id.* at 686-92 (using the fact that the accused was not a member of the tribe to justify not permitting the tribal court to prosecute him).

<sup>76</sup> *See Feds Urge More Cops on Reservations*, SALT LAKE TRIB., Dec. 19, 1997, at A24 (noting that American Indians receive less than half the police protection provided to the other rural communities and discussing a proposal for the Department of Justice’s takeover of B.I.A. law enforcement responsibilities because the B.I.A. has failed).

<sup>77</sup> *See NSVRC supra* note 7 (critiquing the ability of tribal courts to appropriately punish criminals because most tribes lack adequate jail facilities and often must utilize non-tribal or state facilities at high costs, and can also require distant trips for law enforcement and family members).

<sup>78</sup> *See, e.g., Richard Heiz, Legal Protection for Indigenous Cultures: Sacred Sites and Communal Rights*, 79 VA. L. REV. 691, 699 (1987) (identifying the American Indian perspective of social beings born into a network of group relations, which reflect the values of the society).

<sup>79</sup> *See Joyce Gonzales, Non-Stranger Sexual Assault In Indian Country*, National Non-Stranger Sexual Assault Symposium: Proceedings Rep., Estes Park, CO (Sept. 14-17, 1999) 1, 12 (indicating that due to generations of internalized social and personal oppression, reporting a sexual assault can be difficult for American Indian women who have high levels of distrust for white agencies and helpers).

<sup>80</sup> *See BJS, supra* note 6, at 40 (concluding that this figure is a substantially higher rate of interracial violence than experienced by white or black victims).

<sup>81</sup> *See NSVRC, supra* note 7 (asserting that jurisdiction confusion provides incentive for investigative and prosecuting officials to ignore sexual assaults).

<sup>82</sup> *See Rinku Sen, Between a Rock And a Hard Place: Domestic Violence in Communities of Color*, COLORLINES MAGAZINE, Spring 1999, at 27 (chronicling the observations of activist Maggie Escovita Steel of the Chiricahua Apache tribe as she explains the mentality of most Native women considering reporting their assaults).

<sup>83</sup> *See supra* notes 6, 7 and accompanying text (observing that American Indian women have extreme mistrust of non-Indian service providers and other outsiders).

<sup>84</sup> *See generally* ROBERT ALUN JONES, EMILE DURKHEIM: AN INTRODUCTION TO FOUR MAJOR WORKS 82-114 (1986) (expounding upon Emile Durkheim’s theory regarding the process of social *anomie* (social suicide) that an individual undergoes when he no longer feels a connection to his surrounding environment, and how that feeling of disconnectedness inevitably has a rippling affect on the community).

<sup>85</sup> *See, e.g., MIDVALLEY WOMEN’S CRISIS CENTER, SEXUAL ASSAULT: HEALING FROM SEXUAL ASSAULT* (generalizing that, choosing to deal with the assault on their own, many sexual assault survivors feel that keeping the assault quiet is their only way to regain control of their lives, and therefore they develop a sense of isolation and close themselves off to the world), at <http://www.mvwc.com/recoveringrape.html> (last visited on Sept. 15, 2004); *see also, e.g., BARBARA PARRY, FROM ETHNOCIDIC TO ETHNOVIOLENCE: LAYERS OF AMERICAN INDIAN VICTIMIZATION* 231-45 (2002) (treating the process by which American Indian women isolate themselves from their community and after being sexually assaulted as a reflection of their inability to obtain adequate avenues of healing, inhibited by embarrassment).

<sup>86</sup> *See Heiz, supra* note 78, at 698 (elaborating upon the general communal values embodied in American Indian culture).

<sup>87</sup> *See James W. Zion, Harmony Among The People: Torts and Indian Courts*, 45 MONT. L. REV. 265, 413 (1984) (deconstructing the process by which Navajo cultural values serve a fundamental role in Navajo peacemaker courts and highlighting how the legal systems of Indian peoples were based upon the idea of maintaining harmony in the family, the camp, and the community).

<sup>88</sup> *See MARTHA MINOW, MAKING ALL THE DIFFERENCE* 149-52, 311, 382-83 (1990) (contextualizing how relational structures guide the proper treatment of individuals in American Indian cultures).

<sup>89</sup> *See, e.g., JOHN LOCKE, SECOND TREATISE OF GOVERNMENT* 58 (1690) (hinging a nation’s survival and power of self-governance upon its ability to maintain law and order and ensure “comfortable, safe and peaceable living” among its citizens).

<sup>90</sup> *See Gunn Allen supra* note 15, at 192 (cycling through the reasons why rates of violence against American Indians are so high and indicating various sociological

factors such as oppression, racism, hopelessness, emasculation of men, industrialization, etc.).

<sup>91</sup> *Cf. Felix S. Cohen, The Erosion of Indian Rights*, 62 YALE L. J. 378-379 (1953) (posing the argument that the Indian Reorganization Act’s construction of a tribal government is a model of government based on democratic and corporate structures that is antithetical to the original forms of organization among indigenous nations).

<sup>92</sup> *See Prygoski supra* note 39 (analyzing the cultural incongruities between American Indians and mainstream America).

<sup>93</sup> *Cf. Wheeler*, 435 U.S. at 322-23 (affirming the idea that criminal jurisdiction is a major component of inherent tribal powers of self-government, but recognizing that Congress supplants these inherent powers with its plenary power to legislate on behalf of federally recognized tribes).

<sup>94</sup> *See Nance*, 645 F.2d at 711 need full cite (stipulating that “any federal government action is subject to the U.S.’s fiduciary responsibility toward the Indian tribes); *see also Covelo*, 895 F.2d at 581 (ruling that all government agencies have fiduciary responsibilities to tribes).

<sup>95</sup> *See Covelo*, 895 F.2d at 586 need full cite (deciding that the Environmental Protection Agency fulfilled its fiduciary duties to petitioner tribe by ensuring that business dealings with a neighboring tribe would not adversely affect the petitioner).

<sup>96</sup> *See Dario F. Robertson, Time To Abolish The Bureau? Part 2* (indicating that much of Indian Country’s apathy is a result of an internalized sense that they deserve their condition) available at <http://www.cherokeobserver.org/Issues/abolishbiapart2.html> (last visited Sept. 14, 2005).

<sup>97</sup> *See generally* Brief for the United States as Amicus Curiae in Support of Petitioner, *Kiowa Tribe v. Manufacturing Techs.*, 118 S. Ct. 333 (1997) (No. 96-1037) (construing Indian tribes as self-governing political communities whose original sovereignty predates that of the United States, and therefore federal law did not create tribal sovereignty).

<sup>98</sup> *See id.* (identifying the importance of tribal self-government for the promotion of policies reflexive of tribal needs).

<sup>99</sup> *See, e.g., Kagama*, 118 U.S. at 381-82 (attempting to preserve the powers of Indian self-government by claiming that Indian tribes still possess the ability to regulate internal issues based on its original natural rights as a sovereign entity).

<sup>100</sup> *See Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 56 (year) (protecting federal government authority in Indian Country).

<sup>101</sup> *See id.* at 56-57 (ruling that Congress had plenary authority to limit, modify, or eliminate the powers of local self-government which the tribes otherwise possess); *see also Winton v. Amos*, 255 U.S. 373, 391 (1921) (asserting that Congress has plenary power to legislate issues of tribal property because of the dependent relationship the Indians have with the U.S. government); *see also Talton v. Mayes*, 163 U.S. 376, 384 (1896) (subjecting tribal sovereignty to the supreme legislative authority of the United States).

<sup>102</sup> *See* Daschle Letter *supra* note 27 (declaring that tribal courts are crucial for tribal self-dependence and that the President should allocate funds appropriately to promote the further development of tribal judicial systems).

<sup>103</sup> *See Phillip Brasher, Reservation Crime Booming: U.S. Attorneys to Meet with Leaders of Indian Country to Seek Solutions*, ANCHORAGE DAILY NEWS, Aug. 29, 1997, at A3 (confronting the idea that uneven political, legal, and financial support impedes the ability of many tribal justice systems to function in full parity with state and federal systems).

<sup>104</sup> *See generally* CAROLE GOLDBERG-AMBROSE, PLANTING TAIL FEATHERS: TRIBAL SURVIVAL AND PUBLIC LAW 280 (1997) (deeming that P.L. 280 is an impetus in the continued breakdown in the administration of justice to such a degree that Indians are being denied due process and equal protection of the law).

<sup>105</sup> *See Carol Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 537-38 (1975) (noting that with the enactment of Pub. L. 280, legislators withdrew a significant aspect of the federal government’s responsibility for law enforcement in Indian Country and took their financial support as well); *see id.* at 538 (ridiculing Congress for not ensuring that the mandatory states could adequately fund their new responsibilities under P.L. 280); *see also Bryan v. Itasca County*, 426 U.S. 373, 381-82 (observing the lack of any congressional intent to grant states any financial assistance for P.L. 280 responsibilities).

<sup>106</sup> *See, e.g., Lewis Lamb, Bush’s Comment On Tribal Sovereignty Creates A Buzz*, SEATTLE POST INTELLIGENCER, at C3 (Aug. 13, 2004) (reporting upon President George W. Bush’s inability to articulate the federal government’s position on tribal sovereignty when prompted, and quoting the president as stating simply, “Tribal sovereignty means just that; it’s sovereign. You’re a – you’ve been given sovereignty, and you’re viewed as a sovereign entity”).

<sup>107</sup> *See Reid Peyton Chambers, Judicial Enforcement of the Federal Trust Responsibility*, 27 STAN L. REV. 1213, 1215 (1975) (highlighting tribes’ repeated failure in invoking the trust responsibility as a judicially cognizable barrier to congressional or other federal actions that would appear to breach the trust responsibility).