

The Evolution of Domestic Violence and Reform Efforts Across Indian Country

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Mending the Sacred Hoop STOP Violence Against Indian Women, 2002

Introduction

In order to end domestic violence in all its forms, we must understand why it exists in Indian Country today, and assess our current challenges in addressing the issue. When we examine the reasons behind the presence of domestic violence in Native communities, we must first consider its historical origins...

Domestic violence in Native society came about over the course of centuries of change. Examining the history of oppression that laid the groundwork for the rise of violence against Native women shows us that efforts to end the domestic violence faced by women across Indian Country today are still in their infancy.

“You must be able to see where you have been, before you can possibly know where you want to go.”

~ Muscogee Creek

Pre-contact societies

1. Native people occupying the land now known as the United States had complex societal structures that shaped the way they lived their lives. Some researchers estimate indigenous pre-contact populations at more than 45 million, while others approximate 20 million. The United States government estimates it at around half a million.¹
2. In spite of the numbers disagreement, one fact remains commonly understood: Native people held women as sacred. In many societies, women were universally honored and respected for their life-giving powers.² Their ability to create life likened them to Mother Earth. Their communities respected and honored them. Acts of violence, such as rape were uncommon, and when they did occur, they evoked fear and horror because Native respect for women arose from the belief that women had power over life and death.³ By many accounts, domestic violence was rare in indigenous societies prior to European contact and only becomes common after the onset of colonization.

Colonization and the early erosion of tribal societies

European contact began in large part in 1492, and led to an historic and tragic change in the lives of indigenous people, the beginning of the loss of culture and

the change in the status of Native women.

1. Through the 1600's, tales of the "New World" spread through Europe and explorers came to lay claim to territories and riches for their homelands abroad. These colonizers held the common view that it was not only their divine right, but also their responsibility to take and use the land and its resources, without regard for the rights of the indigenous people living there at the time.⁴ This threatened Native values and imposed the notion of ownership, a concept foreign to Native ways of life that brought the ideas of men's entitlement and women as property.
2. Prior to 1684, tribes were viewed as independent nations by foreign entities with the exception of Spain. Spain viewed the Native occupants as citizens and therefore subject to Spanish rule. This was the onset of the erosion of tribal sovereignty and the eventual loss of Native women's sovereignty.
3. By the 1700's, European exploration of the "New World" had spread across the eastern seaboard, western seaboard, and as far north as Alaska creating far reaching avenues that impacted the values and roles of Native women and men.

Confrontation of tribal ways of living

The traditional Cheyenne saying, "A people is not defeated until the hearts of its women are on the ground," reflects the destructive practices of the colonizers.

1. The 1700's and 1800's were times of significant suffering by indigenous people. The values of traditional Native society were being undermined by practices aimed at gaining control of the land and resources exposing and imposing a values system foreign to Native societies that relegated women to substandard citizens.
2. Native people were viewed as barbarian, savage and not human; the Native way of life was being destroyed. This labeling was a tool used to enable the widespread destruction of Native people and is commonly used today as a tactic by batterers to control and dehumanize women. There are tales of small pox infected blankets, strychnine infected biscuits, slaughters of herds of bison, massacres of hunting parties and slaughters of Native women and children.
3. In 1800, the buffalo population was estimated to be at about 40 million and less than a century later, in 1895 it was at 1,000.⁵ The slaughter of buffalo, a tactic used to starve Native people into extinction or submission, defiled Native societies with values that permitted waste and detachment to its relationship with animals that previously was virtually unknown.
4. The systematic destruction of Native cultures included a particular degradation

of Native women. In many ways, the conquest of Native nations by Anglo-Europeans was accomplished by the making war on Indian women.⁶ Native women were raped, abused and killed in order to seize land and force the assimilation of Native people.

5. By the mid-19th century, the United States policy makers and military commanders were stating – openly, frequently and in plain English – that their objective was no less than the “complete extermination” of any Native people who resisted being dispossessed of their lands, subordinated to federal authority and assimilated into the colonizing culture.⁷ As Native societies were repeatedly exposed to values of the colonizers, Native men and women were being changed. The process of internalization of those values was underway. It led to the eventual belief that men have a right to certain entitlements in their relationships with women and to enforce or control a woman’s behavior.
6. The 1883 Supreme Court decision in *Ex Parte Crow Dog* allowed the United States to interfere with the structure of tribal courts and the process by which tribes develop their own laws.⁸ The Major Crimes Act led the way for complicating the jurisdictional issues found today in Indian country.

On the Sioux Reservation in Dakota Territory, Crow Dog shot to death Spotted Tail. The tribal system restored harmony to the two families; however, the United States criminal justice system did not honor the tribal system’s decision.⁹ The case went all the way to the Supreme Court where tribal sovereignty was upheld and it was affirmed that the U.S. courts lacked criminal jurisdiction over crimes committed between Native people in Indian Country. As a result, the United States Congress passed the Major Crimes Act extending federal jurisdiction over certain crimes committed in Indian Country.

The era of termination and assimilation

1. Forced relocation led to the decimation of thousands of Native people as they were rounded up and force-marched across the country in the early 1800’s to open up tribal lands in the southeastern United States to white settlement and slavery. The most well known of these instances is the relocation of 17,000 Cherokee who were compelled to walk the Trail of Tears. Over 25 percent died of malnutrition, disease, and exposure along the way.¹⁰ By 1837, most members of the five southeastern nations, Cherokee, Creek, Choctaw, Chickasaw and Seminole nations, had been relocated west from their land east of the Mississippi, opening 25 million acres. This began a process of relocation and removal that took place across the country, forcing Native people to leave their home lands either through coercion or the results of wars

waged that opened up tribal lands to settlement – “*manifest destiny.*”

2. The United States government also attempted to assimilate indigenous people into the mainstream of American life by changing customs, dress, occupations, language, religion and philosophy. Boarding schools were a federally sanctioned practice that transpired over the course of 100 years. In 1928, the Merriam Report to Congress outlined the harsh treatment of Native children in boarding schools and the outrageous behavior of school authorities toward Indian children.¹¹ Native people have been raised by institutions (the boarding schools) and subjected to inhumane treatment for multiple generations. This has led to the loss of traditional cultural values, Native identity and the internalization of oppression.
3. Iroquois women influenced the early suffragette movement by providing a model of women who lived liberated lives, with rights, freedoms, and a voice in government.¹²

“Surely these white women living under conditions of virtual slavery did not get their vision in a vacuum. Somehow they were able to see from point A where they stood corseted, ornamental, legally non-persons, to point C, the regenerated world gauge predicted in which all repressive institutions would be destroyed. They caught a glimpse of the possibility of freedom because they knew women who lived liberated lives, women who had always possessed rights beyond their wildest imaginations, Iroquois women.”¹³

4. 1924 saw the mandatory citizenship of Native people.
5. In 1934, the Indian Reorganization Act, allowed tribes to develop tribal justice codes and operate court systems enforcing tribal laws enacted by the tribes.¹⁴ Because the laws and regulations of the tribal courts had to be approved by the Bureau of Indian Affairs, the tribes were under great pressure to incorporate western types of judicial procedure into their own judicial systems.¹⁵
6. The 1950’s saw the Bureau of Indian Affairs identify more than 100 tribes to be singled out for “termination” under the federal government’s policy to end its relationship of trust with tribes¹⁶ relinquishing itself of its treaty obligations of responsibility.
7. A major step toward termination was the enactment of Public Law 280 in 1953. It transferred federal criminal jurisdiction in Indian Country to certain states. Initially placed on six states, PL 280 allowed other states an opportunity to apply for jurisdiction over tribes, without the consent of the tribal governments. 10 States were granted optional jurisdiction. Amended in 1968, partly to prohibit this situation from occurring without tribal consent, there has been almost no expansion of PL 280¹⁷ and three states have

retroceded jurisdiction or returned jurisdiction to the federal government. Public Law 280 further complicates jurisdiction and enforcement issues across Indian Country.

The 1970s

1. Early organizing around violence against women in the mainstream society followed on the heels of women's participation in the civil rights and antiwar movements. The anti-rape movement was one of the earliest components of the movement to address violence against women.¹⁸
2. In 1978, the Indian Child Welfare Act (ICWA) was adopted by Congress in order to preserve the integrity of Indian tribes and ensure their future. Before 1978, as many as 25 to 35 percent of the Indian children in certain states were removed from their homes and placed in non-Indian homes by state courts, welfare agencies, and private adoption agencies. By enacting ICWA, which requires that Indian children, once removed, be placed in homes that reflect their unique traditional values (25 U.S.C. 1915), Congress was acknowledging that no nation or culture can flourish if its youngest members are removed.¹⁹
3. No one knows for sure today how many Native women were sterilized during the 1970's. Eugenics, which literally means well born, is a movement that promoted the elimination of *so-called inferior people from spreading their inferiority upon the stock of the nation.*²⁰ Sterilization reached its popularity in Indian Health Services during the 1970's and was the last official eugenic effort. Native women of child bearing age numbered around 100,000 and as of 1982, it was estimated that 42% of Native American women were sterilized having a significant impact on Native Nations' ability to reproduce its small population.²¹ While efforts to end violence against women were growing, state sanctioned violence continued to be practiced.
4. The White Buffalo Calf Women's Society (WBCWS) was the first battered women's shelter in the country created to serve Native women, opening on the Rosebud Sioux Reservation in South Dakota. A group of Native women providing safe space for victims of domestic violence came together to develop the shelter. The purpose of WBCWS was to create a safe place for women that honored her in her own culture, her inherent right as a woman to be respected and to be held as sacred. It continues to work to reduce domestic violence by providing services and a safe environment to enable domestic violence victims to leave their abusers.
5. Contrary to the common perception that the United States is a country founded on religious freedom, it was not until 1978 that the Indian Religion Freedom Act was passed by Congress. Central in tribal societies, many ceremonies and spiritual practices were lost as a result of forbidding Native spiritual practices. Having been outlawed up to 25 years ago, Native communities are working to

reclaim and protect the spiritual practices that remain.

6. Early organizing saw Native leadership working to bring the voices of Native women to the domestic violence movement. Tillie Blackbear, a grandmother in the movement, was one of the founding mothers of the National Coalition Against Domestic Violence (NCADV) and the South Dakota Coalition Against Domestic Violence and Sexual Assault (SDCADVSA). In 1978, NCADV formed when battered women's advocates from all parts of the nation attended the U.S. Commission on Civil Rights hearing on battered women in Washington, DC, hoping to address common problems.²² SDCADVSA formed resulting from organizing efforts, assisted by the South Dakota Commission on the Status of Women, bringing together over 75 women to the first meeting held on the Rose Bud Reservation.²³

The 1980s

Early work in Indian Country was slow to start compared to the mainstream movement to end violence against women. However, as Native leadership in the movement expanded, significant efforts were being developed that created Native specific responses that went beyond replicating mainstream programming.

1. The American Indian Women's Circle Against Abuse (AIWCA) was formed in 1982 as the first Native coalition with representation from 10 of the 11 tribes in Minnesota and all the Native advocates working in battered women's programs. The AIWCA provided a range of training to Native communities and battered women's programs. The coalition was defunded in 1993 and eventually dissolved.
2. Women of Nations (WON) in Minneapolis, Minnesota formed in May 1982 as a volunteer community advocacy program originally support by member contributions from their own pockets. In 1989, it became the first urban Indian shelter for battered women in the United States. Organizing members secured the shelter's existence by obtaining a legislative appropriation of over \$100,000 to open its shelter doors.
3. The pro-arrest code (now known as the mandatory arrest code) was passed in 1989 on the Pine Ridge Reservation, making it the first reservation to adopt a mandatory arrest policy. The code made it against the law to assault or abuse an intimate partner and included further protections such as mandatory arrest, no bond until arraignment, and mandatory sentencing.²⁴

The 1990s

1. In 1990, a group of Indian advocates and community members from the Fond Du Lac Reservation concerned about the level of violence against Indian women formed to begin a dialogue on domestic violence. As a result,

Mending the Sacred Hoop was created to develop an intervention model that would coordinate reservation and non-reservation agencies to work collectively on policy and procedure changes, to educate off reservation court systems and law enforcement agencies on myths and beliefs about Indian people and domestic violence, to coordinate a Council on Non Violence, which would consist of judges, prosecutors, probation officers, law enforcement, public defenders, advocates, counselors, reservation service providers and representatives of the business committee and to provide training to reservations on developing an intervention project

2. In 1994, the Violence Against Women Act (VAWA), a part of the Federal Crime Control Bill, gave federal support to develop and strengthen law enforcement and prosecution strategies to combat violence against Indian women and children and develop and strengthen victim services particularly involving violent crimes against women.²⁵
3. VAWA created the Violence Against Women Office (VAWO) – now known as the Office of Violence Against Women – within the Office of Justice Programs (OJP), Department of Justice. It was an historic acknowledgement by the federal government that the occurrence of violent crime targeted women.
4. 1998 brought direct funding to tribes by the Office of Victims of Crimes (OVC), and eliminated the state pass-through of the past decade that had proved to be less than ideal.²⁶
5. Funding was slow to reach Indian Country. Advocating for change, a vocal group of Native women campaigned for VAWA set aside funds to be designated for Tribes as to ensure that resources reached the Tribes. As a result, the STOP Violence Against Indian Women Grant Program was created to encourage tribal governments to develop and strengthen the tribal justice system's response (including law enforcement, prosecution, victim services and courts) to violence against Indian women and to improve services to victims of domestic violence, sexual assault, and stalking. In reaffirming the United States' unique relationship with Native American tribal governments, Executive and Justice Department Policy requires OJP to work on a government-to-government basis with Indian Tribes.²⁷
6. As resources to stop violence grew across Indian Country, domestic violence responses expanded. The mid to late 90's saw the growth of domestic violence programs, coordinated community responses, and changing tribal codes. Some tribal communities engaged in working to reclaim traditional values in their efforts to end violence against Indian women.
7. Two significant resources were created for work in Indian Country. Mending the Sacred Hoop STOP Violence Against Indian Women Technical Assistance Project provides technical assistance to recipients of the STOP Violence

Against Indian Women Discretionary Grants with a purpose of working to ensure the safety of victims and their families and to create accountability within the systems. Grantees are provided training and consultation. The Sacred Circle National Resource Center is one of six national resource centers in the United States addressing domestic violence and provides support primarily to 557 federally recognized American Indian/Alaskan Native Tribes across the United States.

8. According to *American Indians and Crime*, a study by the Department of Justice released in 1999, Native Americans are far more likely to be victims of violent crimes than members of any other racial group. The rate of violent crime experienced by Native women is nearly 50% higher than that experienced by black males. The Alaska Native Women Sexual Assault Committee was formed in January 1999 after the Federal Bureau of Investigation ranked Alaska number one in incidents of rape. Alaska had topped that crime category about two-thirds of the time over the previous two decades.²⁸
9. 1999 saw the onset of new advance of Native coalitions. The Oklahoma Native American Coalition was formed and brings together 12 tribes to stop domestic violence and sexual assault against Native American women and children.

Current issues

Ahead of us is an overriding challenge to undo a history that supports rape and violence against Native women, and to create one that strives toward both the physical survival and cultural survival of Native people.

“Navajo poet Luci Tapahonso read the following during the 1991 Modern Language Association’s annual convention:

*I am, I am
In wisdom I walk
In beauty may I walk...
In beauty it is restored.
The light, the dawn.
It is morning.*

As she read, my heart was lifted in recognition of our power, our magnificent life. I am Laguna, woman of the lake, daughter of the dawn, sunrise, kurena. I can see the light making the world anew. It is the nature of my blood and heritage to do this. There is surely cause to weep, to grieve; but greater than ugliness, the endurance of tribal beauty is our reason to sing, to greet the coming day and the restored life and hope it brings.”²⁹

Developing relevant responses that work at reclaiming pre-contact values that restore harmony and balance to Native communities shaken by a history of oppression is on the forefront for progressing the work to end violence against Indian women.

1. Developing Native specific programs that intervene in men's use of violence must adapt an educational approach that centers the belief that violence is learned behavior evolving from a history of oppression and can be un-learned. Much of the work in men's groups working with Native men need to emphasize the relationships within family and community by incorporating teachings of respect, acknowledging and honoring the roles of men and women and restoring natural ways of living.³⁰
2. Sexual Assault in Indian communities is an issue that is barely addressed while Native women who are victims of sexual assault reporting that it is rampant in their communities. Work in this area has been slow, but Native women are beginning to organize. Sexual Assault Programs and Sexual Assault Tribal Coalitions are becoming resources for trainings and support for many advocates and victims.³¹
3. Good work is addressing stalking in Indian country, but there is still much left to do.³² With seventeen percent of Native American and Alaskan Native women who have been stalked,³³ it is of the utmost importance that we keep the issue of stalking in the front of our minds. Developing and implementing tribal anti-stalking codes is barely into its infancy and must continue while infusing sovereignty and tribal values into the laws and procedures of tribes.³⁴
4. With well over 500 federally recognized Tribes, there are barely 26 Native specific shelters in existence today with a few more in development. Efforts must support the development and ongoing operation of shelters across Indian Country.
5. In the work to end violence against Indian women, many Native nations are finding that shelter options alone do not provide the time or the stability for women to create a solid base for change in their lives. Longer-term housing and affordable permanent housing that goes beyond the physical structure needs to create opportunities for battered women leaving abusive relationships to live in a community that extends safety, support and a place to work toward reclaiming their connections with themselves and each other.
6. There are many jurisdictional complexities and limitations in Indian Country. The confusing division of authority among tribal, federal and state governments which results in a jurisdictional maze is complicated by the lack of tribal courts' criminal jurisdiction over non-Indians, the practical impact of Public Law 280 and other limitations on tribal criminal jurisdiction. The difficulty of determining jurisdiction, and provisions for concurrent jurisdiction of certain cases, can cause conflict and confusion for law

enforcement, prosecution, courts, service providers, and crime victims in Indian Country.³⁵

7. State Coalitions have not been effective in bringing voice to Native issues. As a result, Native Coalitions are being developed across Indian Country. Efforts to continue forming and expanding the reaches of Native coalitions across the country will support the efforts to strengthen domestic violence responses, training and leadership.
8. Struggles around the effectiveness of criminal justice responses, its historical legacy that has a disproportionate number of Native Americans confined in the United States and a search for alternative *justice* solutions pose significant challenges for future work. A restorative justice movement is growing in both mainstream and indigenous communities and it brings significant concerns that must be weighted heavily in deciding if and how this work ties to domestic violence efforts. There are grave concerns about how restorative justice or community justice efforts place greater power with the community. A culturally appropriate justice system cannot simply be achieved by ensuring more community members be involved.³⁶ While restoring community responsibility affirms traditional Native values, many communities lack the social structure to support shifts of power into the hands of their community. In addition, the power imbalance in relationships where domestic violence is taking place precludes an ability to involve victims of domestic violence in processes where they have equal footing with their abuser. There are a significant number of issues to be examined; exploring restorative justice alternatives must consider heavily these issues before deciding if it is an appropriate alternative.

Notes

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²⁷ President's Memorandum on Relations with Tribal Governments, April 29, 1994, 59 Fed. Reg. 22951 (1995), Consultation and Coordination with Indian Tribal Governments, Exec. Order No. 13175, 65 Fed. Reg. 67,249 (2000), and Department of Justice Policy on Indian Sovereignty and Government-to-Government Relations, 61 Fed. Reg. 29424 (June 10, 1996).

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³³ Compared with 8.1 percent of women in the general population, and two percent of men.

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