

Safety for American Indian Women: An Indigenous-Focused Policy Analysis of Violence Against Women Act-Title IX

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Abstract: *American Indian/Native American (AI/NA) women are disproportionately affected by intimate partner violence (IPV). The Violence Against Women Reauthorization Act (VAWA) of 2013 included new provisions under the Title IX Safety for Indian Women. This act created funding for the implementation of modern criminal justice structures allowing tribal governments to prosecute non-Indian perpetrators. Although this piece of legislation is meant to address the high prevalence of gender-based violence perpetrated against AI/NA women, it has not been analyzed using indigenous or feminist perspectives. A policy analysis model was developed, incorporating indigenous values, feminist perspectives, tribal critical race theory, and social construction and historical contexts to examine Title IX's goals, social values, and outcomes from an indigenous perspective. The analysis reveals the intentions of Title IX to promote indigenous values of empowerment and interdependence but fails to account for the historical marginalization of AI/NA people and the tendency of AI/NA women to distrust law enforcement. Although Title IX did create cultural change and enhance acknowledgment of IPV improvements are needed to make a more indigenous-focused, feminist-based policy. These suggestions include providing access to culturally sensitive law enforcement approaches for AI/NA women, accounting for historical factors, and creating a standardized pathway for prosecution, which incorporates feedback from tribal members.*

Keywords: *Violence Against Women Act; American Indian; policy analysis; IPV*

Congress initially passed the Violence Against Women Act (VAWA) in 1994 after recognizing the prevalence of crimes related to intimate partner violence (IPV) such as stalking, harassment, and sexual assault that disproportionately affects women (Breiding et al., 2014). In 2013, Congress passed a reauthorization of VAWA, which included updated provisions that protected specific groups of women including immigrants and women who are members of federally recognized “Indian” tribes as they are named in the act (United States [US] Congress, 2013). Within these provisions, Title IX Safety for Indian Women sought to address tribal sovereignty and a criminal justice response to IPV. The new aspect of the policy allowed provisions for prosecuting crimes of IPV against American Indian/Native American (AI/NA) women by non-tribal perpetrators (US Congress, 2013). Title IX created provisions for tribal governments to opt-in to prosecute non-tribal perpetrators of IPV who are affiliated with the tribe in some way, such as working or living on the reservation or being married to or in a relationship with a tribal member (US Congress, 2013).

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Prevalence rates of IPV are much higher among AI/NA women than any other racial/ethnic group in the U.S. (Houry et al., 2017). Prosecution rates for IPV against AI/NA women prior to Title IX was disparate with attorneys refusing to prosecute (National Congress of American Indians, 2018). Over half (52%) of violent crimes that occurred happened in Indian Country (67% of which are sexual violence cases; NCAI Policy Research Center, 2013). The reasons why these cases are not prosecuted are multitudinous, such as ambiguity about jurisdiction among tribal governments and which guarantees tribal courts must extend to defendants, such as legal representation (Gross, 2016). Additionally, there is a social construction of AI/NA people as "other," in both personal and governmental framing, wherein AI/NA people are painted as incapable of upholding laws or even unable to understand the law and AI/NA women are considered meek or passive (Sangster, 2016). These biases used in mainstream media and in government forums may also contribute to prosecutors choosing to not prosecute non-tribal members of violent crimes against AI/NA women (Sangster, 2016). Continued unwillingness to formally prosecute non-tribal members of violent crimes against women perpetuates long-standing structural oppression against AI/NA women. This continuing oppression is evident as crimes against AI/NA women have historically been and are still largely ignored, including rape, sterilization, and IPV (Amnesty International, 2007) and arguably continues the legacy of historical trauma (Kirmayer, Gone, & Moses, 2014).

Five tribes participated in a pilot project which assessed the implementation of Title IX by the Department of Justice before the official implementation date of March 7, 2015 (United States Department of Justice [US DOJ], 2015b). A five-year report on passage of Title IX of VAWA 2013 was released March 20, 2018, presenting prosecution statistics, profiles of each tribe participating, implementation strategies, and outcomes (National Congress of American Indians, 2018). Although this report is a comprehensive analysis of the policy's effectiveness, it does not discuss cultural implications or the values inherent to the policy (Berney, 2015; National Congress of American Indians, 2018). In addition, reports do not contain an analytical framework that encompasses outcomes through the lens of gender or indigenous cultural values.

The analysis in this article examined the policy using a framework that was developed to accurately assess policy outcomes applying indigenous values, gender issues, and social construction. This analysis addresses how shifting socially constructed norms of gender, gender-based violence, and feminism are relevant to this policy's outcomes as well as implicit and explicit objectives. The analysis also addresses culturally-related concepts such as: marginalization, wherein AI/NA people have historically been treated as a peripheral group (Dunbar-Ortiz, 2014); "otherness," which is similar to marginalization but AI/NA cultural practices are considered inferior to western-inspired approaches (Sangster, 2016); colonization, which is the continued attempt to co-opt ways of knowing and doing of indigenous people and supplant it with western-inspired ways (Tuhiwai Smith, 1999); and indigenous goals of empowerment and interdependence, which promote working together and understanding the importance of all persons to exist and thrive (Chino & Debrun, 2006). Finally, this analysis focuses on the values that define the problems addressed by this policy and how these values can be used to evaluate policy outcomes.

Definition of Terms

Defining the following terms is integral to understanding the interpretation of the policy within the subsequent analysis. Definitions, as they are used in this analysis, are provided below.

Indigenous-Focused. Using writings and voices from indigenous leaders from around the world, indigenous-focused pertains to the use of indigenous scholars' perspectives on the best ways to approach laws, research, and work with people belonging to indigenous groups (Chino & Debruyne, 2006). Indigenous-focused makes no attempt to homogenize cultural practices or values of various global indigenous groups, but rather uses values that have been recognized as shared among contemporary indigenous groups such as interdependence (the value of working together), de-colonization (the ability of indigenous people to maintain or reclaim their own processes and ways of knowing and doing), and addressing global imperialism that has oppressed indigenous people.

American Indian/Native American (AI/NA) tribal members. This policy analysis encompassed members of federally recognized AI/NA tribes or Alaska Natives. Criteria for tribal membership is established by the tribe and it may be related to blood quantum or based on relationship to ancestors on official government documents (i.e., relatives registered on the Dawes Rolls; National Archives, 2016).

Intimate partner violence. Intimate partner violence (IPV) is defined as physical violence, sexual violence, stalking and psychological aggression (including coercive acts) by a current or former intimate partner (Centers for Disease Control [CDC], 2017). IPV can also include control of sexual or reproductive health (Houry et al., 2017). Intimate partners can consist of boyfriends, girlfriends, dating partners, sexual partners, and current or former spouses (CDC, 2017). IPV can occur within same-sex couples as well as heterosexual couples, and sexual intimacy is not required for abuse to be considered IPV (Houry et al., 2017).

Indian country and federally recognized tribe. Indian country was officially defined by U.S. Congress in 1948 to include "all land within the limits of an Indian reservation under the jurisdiction of the United States government,...any dependent Indian communities within the borders of the United States [and] all Indian allotments, the Indian titles to which have not been extinguished" (Indian Country Defined, 18 U.S.C., § 1151, p. 321, 1948). The current definition of tribe within this policy is a federally recognized tribe. Federally recognized tribes have a government-to-government relationship with the U.S. with responsibilities, powers, limitations, and obligations attached to that designation. Federally recognized tribes are also eligible for funds and services from the Bureau of Indian Affairs (2018).

Restorative justice. Restorative justice is an approach to reducing crime wherein harmony and balance are sought between both perpetrator and victim as opposed to using punitive measures (Hand, Hankes, & House, 2012). Further, the focus of restorative justice is on how harmony can be restored to an affected group and acknowledges that an entire community, not just an individual, are affected by acts which disrupt unity (Hand et al., 2012). Restorative justice has been used within indigenous communities long before

European settlers arrived to the U.S. and operates in contrast to the criminal proceedings of the western world as it attempts to recognize the humanity in all people as well as the way a community can problem solve beyond mere punishment or retributive measures of an individual for a crime (Hand et al., 2012).

Review of the Literature

The Problem of Intimate Partner Violence

Intimate partner violence (IPV) exists along a continuum of violent acts (Hayes, Mills, Freilich, & Chermak, 2018). Intimate partner sexual violence, physical violence, and stalking are reported by 37% of women in the U.S. in their lifetime (Houry et al., 2017). However, violence against women on tribal reservations far exceed any other group of women in the U.S. (Women of Color Network, 2006). Within their lifetime, 55% of AI/NA women report experiencing IPV (National Congress of American Indians, 2018). Those who report experiencing IPV also indicate that 90% of their perpetrators are non-tribal members. Prosecution of violence from non-tribal members is difficult due to jurisdictional complexities arising from the federal government's limitation of tribes to prosecute non-tribal members (Rosay, 2016). Until the passage of Title IX in 2013, tribes were not allowed prosecute non-tribal offenders, which led to AI/NA women becoming targets of sexual crimes (Rizzo, 2015). In an interview for Vice magazine about an author's book on the violence against Indigenous women, Casselman describes research that found that men in internet chat rooms discussed AI/NA women as targets because rapists thought they could "get away with it" (Rizzo, 2015).

IPV affects public health in the U.S. in many ways. Mental health disorders are associated with IPV among AI/IN women, as those experiencing IPV are more likely to have more days with mental health problems than those who have not (Harwell, Moore, & Spence, 2003). AI/IN women have higher rates of anxiety, PTSD, and mood disorders relative to IPV experience (Duran et al., 2009; Evans-Campbell, Lindhorst, Huang, & Walters, 2006). In addition, there are numerous health consequences of IPV victimization such as increased likelihood of gastrointestinal issues, heart disease, high blood pressure, and chronic stress (Bosch, Weaver, Arnold, & Clark, 2017; Dichter, Cerulli, & Bossarte, 2011; Halpern et al., 2015, 2017). Rosay (2016) reported that 41.3% of AI/NA women were physically injured as a result of experiencing IPV. Similarly, AI/AN women IPV victims were 2.3% more likely to need medical care than other groups (Rosay, 2016). Risky sexual behaviors are also related to emotional trauma from IPV with more AI/NA women contracting HIV due to unsafe sex (Evans-Campbell et al., 2006). The lasting health consequences of IPV for AI/NA are far-reaching and requires intervention.

The Problem of Prosecution in Tribal Communities

Tribes were sovereign before the immigration of Europeans to the U.S. At the point of European contact, indigenous tribes made clear that they had inherent authority over their governments within what later became the borders of the U.S. (Macklem, 1993). England and later, the US, engaged in treaties with AI/NA tribes, establishing government-to-government relationships. The US Constitution created provisions for tribal sovereignty

and future constitutional interpretations upheld by U.S. Supreme Court cases, including *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832) that continued to support tribal sovereignty. These Supreme Court rulings defined the US interpretation of legal sovereignty for tribes as they asserted that tribal governments retained jurisdiction over their affairs and the federal government was an overriding power in specific instances (Macklem, 1993).

Currently, states with federally recognized tribes within their borders often have little to no power over tribal affairs (Diamond, 2018). However, this varies from state to state. The specific instances in which the federal government claimed to have jurisdiction were defined by The Indian Appropriations Act of 1871 (Appropriation Bill for Indian Affairs, 1871). The Indian Appropriations Act posited that the federal government would interact with tribes through statutes rather than through previously arranged treaties, and that act also asserted that certain crimes, such as rape, murder, arson, and burglary, were under federal jurisdiction (Macklem, 1993). Even with the provisions that certain crimes were under federal oversight, tribal governments were mainly left to themselves (Macklem, 1993). The unfortunate consequence of the way tribal sovereignty has been interpreted is that tribal governments could only prosecute tribal members, which meant that for crimes outlined by the Indian Appropriations Act, tribal governments were not allowed to seek justice. In addition, tribal governments were not allowed to prosecute crimes committed by non-tribal members against tribal members on reservation land (National Congress of American Indians, 2018).

The way that tribal sovereignty has been constructed stopped prosecution of non-tribal members when crimes were not under federal jurisdiction. Such is the case with IPV. Because IPV was not included in the original federal oversight, IPV perpetrated by a non-tribal member not resulting in a homicide or rape, left tribal governments without legal jurisdiction (NCAI Policy Research Center, 2013). Therefore, victims of IPV were left to either attempt to get local governments involved, or without any criminal justice options, seek restitution or punishment through other means (Modi, Palmer, & Armstrong, 2014).

VAWA Reauthorization of 2013, Title IX

Because tribal governments were prohibited from prosecuting non-tribal members for crimes committed on reservations, IPV by non-tribal members against tribal members was not prosecuted (NCAI Policy Research Center, 2013; US DOJ, 2015a). Due to the significant number of domestic and sexual violence cases, provisions specifically for AI/NA peoples were included in the VAWA 2013 Reauthorization (Berney, 2015; Modi et al., 2014). Title IX Safety for Indian Women of VAWA 2013 allowed tribes to “exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners, or violate a protection order in Indian country” (US DOJ, 2015a, para. 2). Beginning March 7, 2015, tribes could issue protection orders and start criminal prosecution of non-AI/NA abusers. However, crimes between strangers, crimes committed by people who are not living on the reservation or tied to the tribe, crimes against a child, and crimes between two non-AI/NA on the reservation were still not covered under Title IX (US DOJ, 2015a).

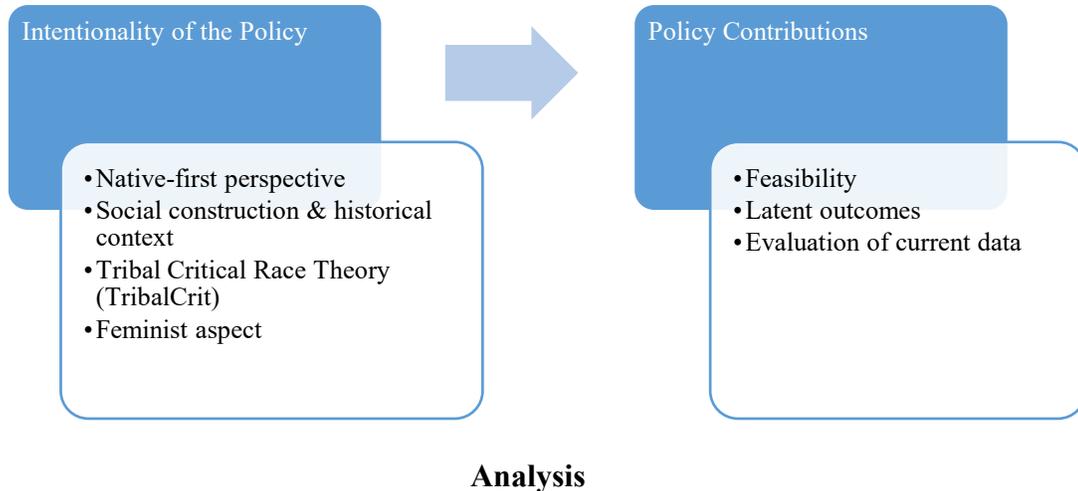
Policy Goals and Objectives

The primary goal of Title IX of VAWA 2013 was to reauthorize the VAWA. A cultural shift surrounding gender-based violence was necessary due to the alarming rate of IPV, particularly against AI/NA women. To meet this goal, tribal governments were able to prosecute non-AI/NA perpetrators as long as they had some affiliation with the tribe (i.e., living on the reservation, married or related to tribal members, or worked on the reservation). Other objectives were outlined through grant provisions which provided funds to develop prevention campaigns, increase awareness of services, and establish victim's service centers.

Policy Analysis Framework

The purpose of this article is to analyze the passage of VAWA 2013's Title IX Safety for Indian Women Act using four existing policy analysis frameworks that focus on the rights and perspectives of AI/NA women. As such, the analysis model incorporates aspects of a feminist policy analysis framework (McPhail, 2008), a values perspective framework (Segal, 2007), a social construction policy analysis framework (Ingram, Schneider, & Deleon, 2007), tribal critical theory (TribalCrit) (Brayboy, 2005), and borrows from a policy capacity building framework that is AI/NA peoples-informed and focuses on integrating AI/NA values into policy (Chino & Debruyne, 2006). Since IPV disproportionately affects women, outcomes that favor women within this policy are desired and therefore applying a feminist policy analysis framework was fitting. Similarly, although the capacity-building framework was not initially intended for policy analysis use, values important to AI/NA people such as empowerment and interdependence were integrated. Furthermore, many scholars argue for interventions, such as policies like Title IX, to be culturally competent and informed by AI/NA values (Yuan, Belcourt-Dittloff, Schultz, Packard, & Duran, 2015). In addition, facets of the social construction framework were incorporated to apply cultural values and perspectives of AI/NA people to the policy outcomes. Tribal critical race theory addresses the ways laws may benefit the dominant culture at the expense of indigenous people, and therefore was included to add a lens evaluating how indigenous people are centered in Title IX. Finally, segments of Segal's (2007) values-perspective framework were included to address social values, belief systems, and inequities that may arise due to the policy.

The following figure outlines the framework created for this analysis. First, the intentionality of the policy was discussed according to three existing frameworks of analysis: 1) AI/NA first-perspective to determine if the policy promotes relationship-building, empowerment, interdependence, and commitment, 2) social construction and historical contexts to determine how the policy addressed the allocation of benefits and power dynamics, as well as how AI/NA women may have interpreted the policy, including its usefulness, 3) tribal critical race theory to evaluate how race/ethnicity of AI/NA people specifically relates to development of U.S. policy, and 4) feminist aspects of the policy to determine the ways the policy addressed women and their lived experiences. Finally, the contributions of the policy are analyzed using existing data and assessing feasibility and latent outcomes. See Figure 1 for a visual representation of the analysis.

Figure 1. *VAWA 2013, Title IX Policy Analysis Model*

Intentionality of Policy

The intention of the original 1994 VAWA was to increase empowerment of victims of IPV by providing legal pathways to prosecute abusers and funding for shelters, advocacy, awareness, and prevention (Modi et al., 2014; Whittier, 2016). Title IX (US DOJ, 2015a) expanded these benefits to AI/NA women who were victims of IPV which was perpetrated by AI/NA or non-IAI/NA partners. It authorized tribal governments to become involved in the prosecution of IPV offenders. The following analyzes the values and historical contexts that contributed to the formation and intention of VAWA Title IX Safety for Indian Women (2013).

Indigenous-Focused perspective. Because Title IX (US DOJ, 2015a) supported voluntary participation to exercise special IPV criminal jurisdiction. The provision empowered tribes as it enabled them to prosecute additional crimes on their reservations. Furthermore, the grant provisions included in Title IX promoted the formation of tribal coalitions within tribes to address IPV, which aligns with multiple AI/NA values such as skill-building, empowerment, relationship building, and interdependence (Chino & Debruyne, 2006). Through coalition-building, interdisciplinary input was used to create partnerships among and between tribes, tribal community services, health services, social services, and law enforcement. In this way, interdependence on one another was fostered as well as relationship-building.

Grant funding encouraged tribes to create interventions that were consistent with their communities' goals and values, which increased tribal empowerment. Several evaluative reports cited vital stakeholders within tribes and the National Congress of American Indians who stated that Title IX had prompted updates to IPV laws and empowered tribal members to report IPV to law enforcement (Fonseca, 2018; National Congress of American Indians, 2018; Schilling, 2018). Finally, Title IX showed AI/NA people a commitment by

the federal government to protect AI/NA people from gender-based violence by allocating funds and resources in addition to relinquishing prosecutorial power.

However, Robertson (2012) argued that the formation of Title IX (2013) included AI/NA voices only when their words were within the context of white supremacy and western-Eurocentric ideals of legislation and tribal existence. For example, the legal term used for AI/NA people in this and all legal documents is still *Indian*, demonstrating that the US government still perpetrates colonization. Although there were AI/NA people on the coalition who helped form Title IX, Robertson (2012) stated that when their input encouraged decolonizing methods of violence prevention, such as allowing more tribal sovereignty by expanding the act to cover perpetrators not known to the tribe, Robertson (2012) found that their input was often ignored and not included. In this way, Title IX was informed by AI/NA input, however, AI/NA voices were not always incorporated.

Social construction and historical contexts. Social constructionism espouses the theory that knowledge is constructed through shared experiences, meaning making, and how a population shares an understanding of reality (Ingram et al., 2007). Within policy analysis, social constructionism particularly evaluates how realities are formed through policies and politics that become a reality in the wake of policy implementation (Ingram et al., 2007). The social construction of a population often contributes to the development of policies regarding such a population (Ingram et al., 2007). Because the media significantly impacts worldview, it is crucial to evaluate the media's influence on the social construction of perceptions about people and policies. In a study on the impact of media on perceptions of Title IX, Sangster (2016) found that some media outlets argued that the added provision of Title IX into the passage of VAWA 2013 created special privileges for AI/NA people because the existing act already encompassed all people. This framing of the issue as an "extra" provision allocated for AI/NA people was a partisan issue drawn between Democrats and Republicans, signifying the social constructions surrounding oppression, intersectionality, and who is entitled to protection under the law. Furthermore, *otherness* is often projected onto AI/NA people in the U.S. through media portrayal, marginalization, and historical contexts which have shaped the discourse about Title IX (Meek, 2006).

The U.S. has a history of genocide against AI/NA people (Madley, 2008); therefore, the power distribution of tribal sovereignty has not been balanced for AI/NA people. Crimes against AI/NA people have been an issue throughout the history of the U.S. (Anderson, 2016). Despite attempts to present a softer narrative, historical relations between AI/NA peoples and the U.S. government have been tenuous including mythical tales of Pocahontas (Hansford, 2000), relations between the US government and AI/NA peoples regarding treaties broken by the US government (Akers, 2014), implementation of the Indian Child Welfare Act (Raia, 2017), and limitations on sovereignty as seen with the protests at Standing Rock (Celeste, 2017).

In addition, policing on reservations has reinforced western-imposed laws that did not always reflect the cultural values of the people on which the laws were being imposed by a governmental agent (Redner-Vera & Galeste, 2015). As a result, AI/NA people have long been distrustful of the colonizer-imposed government (Redner-Vera & Galeste, 2015). Even though acceptance towards policing on reservations may have improved in some

locations, AI/NA people retaining control of policing is still essential for both sovereignty and cultural maintenance (Redner-Vera & Galeste, 2015).

Viewing Title IX (2013) through a lens of historical maltreatment, the provision attempts to balance that distrust with more autonomy. By acknowledging the right of tribal governments to prosecute non-AI/NA people for IPV crimes, the US government acknowledged that tribal governments are sovereign and supported their need to protect their citizens. Furthermore, the voluntary nature of Title IX allows tribes to opt in. Also, Title IX enables tribes to design culturally-relevant support systems and prevention efforts, acknowledging tribes' freedom to interpret the provision and retain power over themselves. From a social construction perspective, Title IX succeeds in integrating historical contexts and current marginalization to produce a policy that works for AI/NA people. As mentioned above, however, the process of prosecution for IPV through Title IX still fails to integrate decolonizing approaches which are informed by AI/NA people who believe that is important. For example, prosecution does not incorporate a restorative justice approach.

Tribal critical race theory (TribalCrit). Critical race theory (CRT) is an approach to examining society which “exposes contradictions in law and illustrates the ways that laws create and maintain a hierarchical society” (Brayboy, 2005, p. 428). In addition, CRT insists that race is a critical piece of how our culture is developed, since race is tied to power hierarchy and treatment of groups of people (Chandler, 2010). From CRT, Tribal critical race theory (TribalCrit) was developed to more adequately address colonization, tribal sovereignty, and tribal philosophies, customs, and beliefs as they relate to power imbalances in modern society and governments (Brayboy, 2005). When applying TribalCrit to Title IX, it is easy to see that although provisions in Title IX allowing tribal governments to begin prosecuting non-tribal members for crimes perpetuated against tribal members aims to be empowering towards tribal sovereignty, it simultaneously imposes larger federal constitutional laws on the tribes (such as necessity of a jury of white peers), which forces additional assimilation. In addition, another tenant of TribalCrit is that tribal members exist in a liminal space, which is a space of transition wherein the tribal members cannot exist in their past identities as AI/NA people, but also are not wanting to abandon traditional values and ways of life either (Brayboy, 2005). Further, this means that AI/NA people are both a racial/ethnic group and a political/tribal group, and therefore, policies aimed at AI/NA people need to address both facets of this identity. However, Title IX only addresses the political/tribal aspect as it gives legal provisions for prosecution of non-tribal members, but largely ignores racial/ethnic historical legacies of AI/NA distrust of federal government involvement in tribal affairs. That being said, according to TribalCrit, Title IX does not adequately address prosecution of non-AI/NA members in a way that decreases colonization and addresses the liminal space of which AI/NA people occupy. This approach does not support the use of restorative justice, which has been effectively utilized for centuries by Indigenous peoples when someone has been victimized as it fails to allow the entire community to evaluate the crime and focuses solely on punitive measures of justice (Hand et al., 2012).

Feminist lens. Even though Title IX (2013) encompasses all genders experiencing IPV, the prevalence of IPV among women shows that the policy was developed to protect

mostly AI/NA women from IPV perpetrated by non-AI/NA people. Furthermore, the essence of the original VAWA was framed as a gendered crime piece of legislation (Whittier, 2016). In this way, Title IX accounts for historical and political/legal contexts of women's lives because it provides a legal remedy for AI/NA women who experience IPV through the prosecution of their abusers, if tribes choose to opt in. Conversely, Title IX does not provide specific access to assistance for victims. Although the motivation for this deficiency is to allow tribes to retain sovereignty and cultural relevance, it is possible that victims may not be aware of changes to the law or have pathways to prosecute their abuser.

However, there are ways which Title IX fails to account for the historical, legal, social, political, and cultural contexts of both women and AI/NA peoples. The historical legacy of tension between AI/NA people and law enforcement in general means implementation of Title IX may still be met with opposition, mainly from AI/NA women. Carceral feminism, for instance, argues that the criminal justice system and “control over women’s lives and bodies...is increasingly exercised at a cultural level through a gendered and ubiquitous ‘fear of crime’” (Bernstein, 2012, pp. 234-235) which has numerous social implications. Notably, some states have mandatory arrest laws which insist that at least one person be arrested when a domestic violence issue has warranted police response (Hirschel, 2008). These laws may prevent victims who may fear being arrested from reporting the crime, and therefore inhibit women suffering abuse from reporting it. Although these state laws do not impact tribal governments and tribal law enforcement, AI/NA women who are victims may fear the implementation of such laws and the potential of such events occurring.

Moreover, from an intersectional standpoint, any intensified criminal justice interaction for AI/NA women experiencing IPV may be met with three-fold opposition. First, even though tribes may have tribal members in their police force, AI/NA woman may distrust western-imposed law enforcement regulations, which may limit their acceptance and participation in any new policy of prosecution (Redner-Vera & Galeste, 2015). Second, women’s distrust of patriarchal, paternalistic systems (Podana, 2010) can influence use and access of new services provided under the umbrella of Title IX. Finally, women who are victims of gender-based violence may fear any individual or entity in a position of power which is male or belonging to a patriarchal system, including fear of losing their children (Podana, 2010). Therefore, even with funding for outreach and victim’s services, Title IX fails to address the underlying systemic (patriarchal) causes and mediators of gender-based violence. In this way, Title IX can empower victims by providing new pathways to prosecution against non-AI/NA abusers. However, it lacks the more extensive systemic approach necessary to address the issue from a feminist perspective.

Meanwhile, the narrative surrounding Title IX fails to address the historical context of sexism, racism, and oppression which have contributed to the high rates of IPV within AI/NA communities. As illustrated in Robertson's (2012) dissection of how Title IX was developed and passed, even though the legislators heard voices of AI/NA women, it is still legislation that seeks to continue a legacy of white supremacy and heteropatriarchy because it does not support the decolonization of society including AI/NA people. Further, Robertson (2012) argues that Title IX fails to incorporate AI/NA voices as it "attempts to

'include' women of color in a superficial and subordinating manner that further strengthens white supremacy and violence" (p. 41).

A final point regarding the feminist analysis of Title IX is that this policy had the potential of pathologizing Native women as helpless victims who are incapable of personal empowerment. As Tuhiwai-Smith (1999) discussed in *Decolonizing Methodologies*, imperialism over the AI/NA experience often creates the narrative that AI/NA people are incapable of forming their own interventions or institutions. Ramirez (2004) also discusses the historical narrative of AI/NA women that perpetuated subservience of AI/NA women and images of this were "degrading colonial representations" (p. 113). In this way, Title IX is an imperialist-imposed government structure, the western constructed criminal justice system, which tribes can choose to use as a solution to IPV. For women, the government imposition of Title IX (even though it is voluntary for tribes) may support a larger narrative that tribes and women, particularly AI/NA women, are incapable of empowering themselves.

Policy Contributions

Feasibility. Even with the allocation of federal funds for implementation of opting into Title IX, some smaller or poorer tribes cite financial costs as prohibitive (US DOJ, 2015a). Furthermore, some tribes lack the organizational structure needed to implement this program (National Congress of American Indians, 2018). Even with the funds allotted from Title IX within VAWA, some tribes still do not have the monetary resources to train law enforcement, recruit non-AI/NA jury participants, pass and publish updated laws, and to pay for increased incarceration (National Congress of American Indians, 2018). Other implementation barriers include costs related to detention (like health care for non-AI/NA defendants) and an unwillingness to house non-AI/NA defendants due to ambiguity of who funds housing and health care costs of the incarcerated individuals in the new provision (National Congress of American Indians, 2018).

Latent outcomes. Many potential consequences are a result of Title IX (2013). The cost for implementation may exceed the funds provided by the government to tribes. Organizational structure and personnel resources might also prohibit tribes from implementing this policy. Similarly, the voluntary nature of Title IX means that victims who are members of different tribes may be impacted differently.

Other latent outcomes included the issue of prosecution for additional crimes. As the five-year report and some media articles noted, the perpetrators of IPV may also be committing drug-related crimes or commit other crimes during the arrest which cannot be prosecuted by tribal courts (Fonseca, 2018; National Congress of American Indians, 2018). Further, Title IX does not cover abuse against children nor protect them if they are witnesses of IPV. Notably, Title IX does not include crimes perpetrated by strangers or those not affiliated with the tribe in some way, further endangering children and victims of internet-based crimes (National Congress of American Indians, 2018).

Title IX can potentially further colonize tribal people. Although the policy provides legal pathways to prosecution, as well as funding for victim provisions, shelters, and social service implementation, it continues to address IPV through a patriarchal and settler-

colonialism lens, which is a perspective that insists that cultural values of AI/NA people be replaced with the more dominate, western approaches by omitting the historical context of oppression and cultural differences, Title IX is not an Indigenous-first policy, but rather a AI/NA-informed policy that asks AI/NA peoples to continue to subscribe to colonial methods and ideals of law enforcement, prosecution, and violence.

Evaluation. According to the report on VAWA 2013 (National Congress of American Indians, 2018) released in April 2018, Title IX had some success in increasing prosecutions of the non-AI/NA perpetrators of violence against AI/NA people. This report stated that 18 tribes have prosecuted non-AI/NA perpetrators of violence. This report further indicated that, in the five years since the pilot project began, there were 74 convictions of non-AI/NA offenders and half of those were sent to batterer-intervention programs or rehabilitation programs. The implementation of Title IX has also illuminated the past prohibition of tribes to prosecute non-AI/NA perpetrators because a majority of them were prosecuted since its enactment and have a previous criminal history (National Congress of American Indians, 2018).

This policy has changed attitudes and behaviors toward IPV and prosecution according to a report by the National Congress of American Indians as well as some news reports (National Congress of American Indians, 2018). Notably, despite historical hesitance to approach tribal police, some tribes report that since Title IX has taken effect, women have slowly seen that the past barriers in the criminal justice system changed to provide more protection such as increased response to IPV calls and more IPV reports made to law enforcement (National Congress of American Indians, 2018). Similarly, changes in collaboration among tribal leaders and law enforcement have altered the culture surrounding IPV and brought the issue to the forefront of advocacy in tribes (Fonseca, 2018).

Discussion

From an indigenous-focused and feminist perspective, the most salient point from analysis of Title IX was the prevalence of non-AI/NA perpetrators of IPV. These rates informed the creation of and response to Title IX within VAWA 2013. Although the policy now encourages empowerment through access to prosecute a non-AI/NA perpetrator of IPV, it fails to address the historical issues that contributed to the proliferation of not only IPV but of IPV committed by non-AI/NA against AI/NA women. The introduction of alcohol to indigenous tribes by European settlers has been cited as one cause of the high rate of IPV on tribal lands (Women of Color Network, 2006). IPV against AI/NA women is the imposition of European familial hierarchy on AI/NA peoples (Women of Color Network, 2006). Even further, the imposition of *domestication* of AI/NA women by white men could be related to the prevalence of non-AI/NA perpetrated violence (Ramirez, 2004). Although Title IX was meant to look like an AI/NA-first policy, it failed to reflect the voices of AI/NA women, which indicated the continuation of a legacy of non-AI/NA imposition. Title IX also does not address substance use, the attitude of non-AI/NA entitlement to AI/NA bodies, nor the perpetuation of colonizing policies. As Ramirez (2004) noted, “[r]ecovering and encouraging Native spiritual practices can also provide Indian women with a means to nurture and heal.... [These cultural approaches] also

demonstrate that Native philosophy and points of view must inform our thinking so that we can one day decolonize a culture that has sanctioned violence against us” (p. 113). In addition, restorative justice, which is an approach to justice long used by indigenous peoples which does not focus on retribution but rather collective healing in the aftermath of a crime (Hand et al., 2012) was not incorporated into the policy. Therefore, Title IX did not support AI/NA women victims of non-AI/NA abuse in a way that encouraged them to heal in culturally appropriate ways.

Limitations of Analysis

Regardless of attempts to standardize crime data reported among tribal entities, there is still a lack of crime data and fragmented data collection (Perry, 2015). Also, tribal crime data available to the public is limited. As a result, evaluation of the prosecutorial effectiveness of Title IX at this time is limited to the recently released five-year report (VAWA 2013’s Report, 2018). Similarly, since the policy was implemented in 2015, the policy is still recent and therefore peer-reviewed research is limited as well. Furthermore, the VAWA 2013 report of 2018 which was heavily utilized in the outcome analysis of this policy was released by agencies invested in demonstrating the success of the policy. As a result, further investigation into the successes and failures of Title IX both quantitatively and qualitatively is needed to fully ascertain the outcomes of the policy since its implementation.

Another critical limitation of this analysis is that it only pertains to VAWA Title IX in its current state. At the time the article was written, reauthorization of VAWA is awaiting Senate approval, amid controversy of an addition that would implement red-flag laws which would make it illegal for perpetrators of domestic violence with a misdemeanor to own a gun (Dingell, 2019). As such, this analysis does not include any recent provisions or changes to the legislation, including any updates to Title IX. However, the findings of this analysis strive to support future incarnations of the legislation.

Future Research

Even though Title IX allows for prosecution of non-AI/NA abusers, it does not implement a standardized pathway for prosecution. Although the impetus for this facet of the provision is to retain tribal sovereignty and culturally relevant implementation of Title IX, the downside is that it guarantees only the ability to prosecute, not actual access to legal justice for the victims. Therefore, future research focused on ease of use for victims, network path analysis on services, and evaluation of experiences of victims navigating the tribal court process against non-AI/NA IPV abusers is needed. Similarly, a comparison between tribes that have implemented Title IX and those that have not, may illuminate the benefits and barriers of Title IX from a uniquely AI/NA perspective. Even further, research that encompasses genuinely AI/NA-created interventions for violence, such as restorative justice, and their efficacy would allow for any future provisions to be more relevant to AI/NA people and tribal communities.

Implications for Policy

The many limitations of Title IX, including crimes committed by strangers, crimes against children, and crimes co-occurring with violent crimes indicate there are many implications for future policy. Indeed, at this writing, amendments are being proposed to allow tribes jurisdiction “over crimes of domestic violence, child violence, and violence against police officers” (McKie, 2018, para. 2). Another proposed bill would allow tribal authority over domestic, dating, or sexual violence, sex trafficking, or stalking to close the gap on those offenders who are not affiliated with any tribe (McKie, 2018). Both bills are still being discussed (Smith, 2019; Udall, 2017).

This analysis posits another implication for policies focused on AI/NA populations, i.e., that policies must always incorporate the input from various tribal members to ensure the cultural values of each tribe is reflected in the policy. Furthermore, policymakers should pay particular attention to historical contexts that shaped tribal environments to account for potential outcomes arising from policy formation. As one news story reported, VAWA as a whole “has significant flaws: It overlooks many proven causes of violence (substance abuse)...in some cases there is a reason to believe policies advanced in VAWA have backfired on victims” (Hays, 2018, para. 4). These flaws should influence future policies, and the reauthorization of VAWA due in 2020, to incorporate voices of the victims, as well as focus on children involved in IPV cases.

Conversely, the voluntary nature of Title IX, as well as the autonomous nature of implementation is a strength and a weakness of the policy that should inform future policies regarding tribal jurisdiction and sovereignty. Policies focused on gender-based violence should learn from Title IX and attempt to address the patriarchal nature of law enforcement and systemic oppression against women in their formation, moving away from carceral interventions that may harm women further. That said, evaluating the positive experiences of victims within tribes who elected to participate in prosecuting non-AI/NA perpetrators of IPV, such as moments of empowerment, can highlight aspects of Title IX which may be useful in future policy directed at gender-based violence reduction.

Conclusion

Title IX-Safety for Indian Women of the Violence Against Women Act Reauthorization of 2013 was described by evaluative reports as successful in changing cultural responses to intimate partner violence within tribes (VAWA 2013’s Report, 2018). The development of Title IX was heralded as a change in the right direction towards addressing the issue of violence against AI/NA women (Robertson, 2012). Yet, Title IX has its flaws because it fails to address the intersection of historical colonial abuse against AI/NA people and women and substance abuse on tribal land. In addition, it fails to recognize the gendered nature of IPV, and the impact law enforcement involvement may have on AI/NA women who might distrust law enforcement due to its patriarchal and western foundation. To more fully understand the impact of Title IX, further analysis of victim experiences and prosecution data is needed. Additionally, comparison of tribes that did and did not implement Title IX provisions would illuminate the strengths and barriers of Title IX more clearly. To be more effective, Title IX should implement provisions that

address substance abuse; tribal, cultural, and familial traditions; sexism and entitlement by non-Indians; and the impact of colonialism on tribes and Indigenous people. Furthermore, future incarnations of Title IX would do well to incorporate an AI/NA-created policy informed by AI/NA peoples.

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