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RURAL CRIME AND POLICING IN AMERICAN INDIAN COMMUNITIES

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ABSTRACT

While people in rural places generally have less crime, American Indians and communities are an anomaly, by suffering from unusually high rates of criminal victimization despite being predominantly rural. One element with this heightened vulnerability to crime is the historic *under-policing* of Indian reservations and communities. This paper examines the policing of Indian communities, first by tracing the historical development of Indian tribal police in the United States over the past two centuries, which shapes the legal-social context for present-day Indian police agencies. Next the paper identifies three major factors limiting the implementation of effective police forces by Indian communities: (1) *legal limitations* on the policing authority of tribal governments as historical vestiges; (2) *cultural conflicts* between traditional Native American values and modern bureaucratic policing practices; and (3) *ecological limitations* on tribal police from the extremely rural settings in which most Indian communities are located.

The common image of rural America is as a safe environment where people's lives are simpler, more orderly, and more secure. Rural communities are often depicted as homely and uneventful places where people often do not lock (or need to lock) their doors because "nothing ever happens," where people are safe from serious harm, either in their neighborhoods or out on the streets of their communities. Overall, that image is not mythical, but is consistent with objective crime data and national statistics. According to the National Crime Victimization Survey (NCVS), personal and violent criminal victimizations in rural areas occur at half the rates reported in central cities and about three-quarters the suburban rates of violence (Catalano 2006; Duhart 2000; Rennison 2001). Such rural-urban differentials have been maintained over decades of data collection and hold for most forms of violent crime–with the exception of domestic violence (where the urban-rural differences are greatly diminished). Thus, taken together, the well-known advantage of rural communities in having greater personal safety and less vulnerability–at the cost of less excitement–seems a stable and taken-for-granted truism.

However, what is true overall may not apply in specific subgroups or locations. There are notable rural communities and populations where the familiar pattern of rural safety does not hold, and where some rural residents are measurably *more vulnerable* to violent criminal victimization than many urban residents. Most notable of these are the rural communities and reservations of our society's original native inhabitants–i.e., American Indians and Alaska Natives–whose rates of violent victimization are about two-and-a-half times higher than the victimization rate for the United States overall. Even more striking is the fact that the violent victimization rate for American Indians is *twice* that of the group with next highest victimization risk–i.e., African-Americans–which is a group commonly identified with disproportionately high risks of crime. While separate statistics for American Indian/Alaskan Natives are not specifically provided in the yearly reports of the National Crime Victimization Survey (Native Americans being lumped into the "Other" race category), a special report by Perry (2004) for American Indian and Alaskan native victimizations between 1992 and 2001 documents a profound pattern of disparity. For American Indian/Alaskan Native respondents on the NCVS, 101 out of 1000 were victims of violent crimes (including assaults, rapes, and robberies), while the corresponding rates were 41 per 1000 persons for white respondents, 50 per 1000 persons for black respondents, and 22 per 1000 persons for respondents classified as Asian.

This unusual disparity in vulnerability to violent victimization is unexpected, given the familiar emphasis in media coverage on crime patterns of African-Americans and Hispanic minorities, and is not widely reported or acknowledged. While the size of the disparity in victimization seems striking, what is especially notable about the much higher crime risk for American Indians is that they are disproportionately a rural population, compared with the U.S. overall or with any other racial/ethnic category. According to 1990 census data, about half (51%) of American Indian citizens lived in rural counties, with only 1 in 5 (21%) living in urban central cities (Snipp 1996). In contrast, less than one-in-four (22%) of U.S. residents overall lived in rural areas, with the largest numbers living in suburbs (46%) and central cities (31%), and more than half of African-Americans living in central cities. If only those Native Americans who live on reservations are considered, then more than 80% of this population were residents of rural areas in 2000 (Taylor and Kalt 2005). Considering these patterns of *disproportionate ruralness* among Native Americans, we would expect their risks of crime victimization to be much lower than the general non-Indian population and dramatically lower than the African-American rates. Yet, American Indians living in rural areas have

measurably higher rates of violent victimization than the *urban rates* for any other segment of the population, including the rates for African-Americans in metropolitan central cities.

We note that the heightened rates of criminal victimization hold for most forms of serious violent Index crime, except murder, where American Indian rates of victimization have become comparable to overall U.S. rates over the most recent decade (Greenfield and Smith 1999; Perry 2004). The differential pattern of higher victimization of Native Americans by various forms of violent assault holds true despite sex or age of victims. That is, the differences between Indians and non-Indians are comparably strong for both males and females and at all age levels. The patterns holds true for *domestic violence* between intimates and family members, as well as for both *street violence* between strangers and acquaintances. Catalano (2007) reports that American Indian females are victimized in nonfatal intimate partner violence over twice as often as Black females or white females; and the rates for males are similarly disproportionate (although the numbers of intimate victimizations of males are much smaller than for females). Greenfield and Smith (1999) report that the incidence of abuse and neglect among American Indian children is twice the national average, greatly exceeding the rates for all other racial/ethnic groups except African Americans (whose rate is equal to American Indians at one in 30 children).

Thus, the available crime data reveal a striking and disproportionate vulnerability to violence among Native American populations and communities. This disproportionality embodies a striking contradiction, which is that: (a) rural areas consistently have lower risks of criminal victimization than other areas of the U.S.; (b) American Indians are the most rural-dwelling segment of the U.S. population; and yet (c) American Indians have the highest victimization rates of all racial/ethnic groups in the U.S. This represents a very problematic anomaly in rural patterns of crime and victimization that generally draws little attention from either criminologists or criminal justice policymakers.

CONTEXTUAL FACTORS IN INDIAN COUNTRY VICTIMIZATION

While crime and victimization patterns are widely acknowledged to reflect complex outcomes of many causal factors and predisposing conditions, two dominant issues loom large in most discussions of vulnerability to criminal victimization among Native Americans. One is the *pervasive social disorganization* that characterizes many Native American communities, reservations, and families where rates of poverty, unemployment, alcohol and substance abuse, family

dissolution, racial discrimination, and educational deficiencies are much higher than for the rest of the U.S. population (Sandefur and Liebler 1996). Such factors have been strongly implicated in the higher levels of violence among and against American Indians (Bachman 1991, 1992; Lanier and Huff-Corzine 2006; Snipp 1996; Young 1996). Historical and demographic data on Indian communities show that these criminogenic conditions of social disorganization and *anomie* are uncommonly persistent and pervasive throughout Indian country; and they have been very resistant to numerous efforts at constructive social change (from both without and within the communities) (U.S. Commission on Civil Rights 2003).

The second major issue in explanation of American Indian victimization is the pervasive *lack of policing and law enforcement resources* in Indian country. Given the alarming size of the crime problems in Indian country in the United States, the most commonly expected policy response is to "bring in more police." That is, even if more fundamental changes in social and economic conditions cannot be made, a dramatic increase in the formal, coercive presence of police should at least provide some protection from harmful outcomes to victims and some deterrence of victimizing behavior by offenders. For Indian tribal communities, however, the opposite situation prevails and has existed for well over a century. Namely, American Indian reservations remain among the most chronically *under-policed* communities in the United States despite their higher crime levels and their alarming rates of victimization. This pattern, often noted but little changed throughout the twentieth century, is the principal focus of this present paper. Our aim is to review the development of police agencies by American Indian reservations as distinctive rural communities and to identify the factors that have shaped (and limited) this development.

The paradoxical co-occurrence of high crime and limited policing in Indian country reflects the historically complex relationship between the U.S. federal government and Indian tribal nations as "sovereign peoples." This relationship has varied widely and frequently over the past two centuries reflecting frequently changing political policies for the demarcation and control of "Indian country"–including patterns of domination, segregation, enculturation, suppression, assimilation, elimination, restitution, and paternalistic protection. The result of these changes has been tribal populations or communities with attenuated governmental structures and weak-to-nonexistent agencies of formal social control. This has resulted both in the social disorganization of families and social networks (leading to higher rates of poverty, substance abuse, violence and crime on reservations) as well in the political disorganization of reservation communities

(leading to weaker or nonexistent structures of self-government and -policing). Thus, understanding the context within which high rates of criminal violence and low rates of policing co-occur in rural Native American populations requires some initial understanding of how the so-called "Indian problem" in the United States has developed and changed over the past two centuries. To provide a brief historical backdrop for explaining modern Indian country policing, the next section traces the policing of Indian tribal populations in the United States over the past two hundred years or so. For reference, Figure 1 provides a summary of the major eras in US-Indian policy over this period, and Figure 2 provides a brief listing of the major political events that have shaped these eras.

THE HISTORICAL EVOLUTION OF INDIAN POLICING IN THE UNITED STATES

To begin with, as Luna (1998:750) notes: "Law enforcement, in the way that it has been practiced in Indian Country during the 20th century, is a foreign concept to most Native American communities." In its aboriginal form, policing in American Indian tribes was accomplished through informal social control mechanisms reliant upon embarrassment, shaming, and social appeals to a collective "harmony ethic" to control most deviant behavior (Barker 1998; Deloria and Lytle 1983; French 1982, 2003, 2005; Melton 1995; Peak 1989). When stronger, more forceful enforcement actions were needed to deal with more serious violations and threats to social order, these were accomplished without formal ceremony by the warrior sub-societies, such as the *akicita* of the Sioux (Barker 1998; French 1982). The European concept of law enforcement as a specialized function of a formal government agency was unknown or unneeded, since native tribal policing occurred as an organic element of communal tribal life and social structure. In this context, interpersonal transgressions (even homicides) were viewed more as a tort against the aggrieved family–to be settled between the conflicting clans or kinship groups–rather than as a legal wrong against the entire community or society as a whole. Thus, the history of organized policing of American Indian communities has reflected an evolving (and lopsided) dialectic between the traditional values of Native American tribal societies and the modern imposed political values of Anglo-European legal systems.

With the arrival of Europeans in North America, the structure of native tribal life was not immediately changed, since Indian tribes were regarded by the colonizing governments as sovereign nations whose domestic social control

FIGURE 1. MAJOR ERAS IN U.S. POLICY TOWARD INDIAN TRIBAL POLICING.

VASSAL STATE ERA (up through early 1800s)

Indian tribes were regarded as *semi-sovereign nations* to be dealt with militarily–either through use of military force or through treaties negotiated by military officers. Harmful actions occurring between Indians and non-Indians were "international" issues to be corrected through military or diplomatic interventions. Harmful actions occurring between Indians were regarded as internal matters resolved within the Indian nations.

REMOVAL ERA (1820s through 1840s)

Indian tribes were redefined as *domestic dependents* who could be moved out of the way for economic and political expansion of Indian lands. The military remained the primary police agency to insure using military force that tribes were relocated to the designated Indian Territory west of the Mississippi River and stayed within that territory.

RESERVATION ERA (1850s through 1870s)

Reservations were developed under the Department of Interior, and policing was shifted from exclusively military to increasingly civilian agencies. Late in this period, many tribes developed their own tribal police to handle crimes between Indians and to maintain order on the reservation. By 1880 most reservations had their own tribal police forces, organized and administered by the local Indian Affairs agent but staffed by Indians.

ALLOTMENT ERA (1880s through early 1900s)

Reservation lands were converted into individual property parcels and allotted to individual tribal members to become their personal property. Most tribal lands were sold or forfeited away to non-Indians; tribal memberships were dramatically reduced through allotment of private property; tribal governments were dramatically weakened. Tribal police forces fell into disuse or misuse, and most were discontinued.

REORGANIZATION ERA (1930s and 1940s)

The arrival of the New Deal brought a shift in federal attitudes about Indian tribes and the *Indian Reorganization Act of 1934*. This reversed the policies of allotment and assimilation, and it provided federal support for reorganizing tribal governments and reestablishing tribal justice systems, including police, under BIA guidelines and direction. These reforms were cut short by World War II and were cut off in the ideological changes that followed the war.

TERMINATION ERA (1950s and 1960s)

Federal recognition was withdrawn for many tribes through congressional acts; *Public Law 83-280* in 1953 transferred legal jurisdiction over Indian tribes in six "mandatory" states from federal to state governments; another nine "optional" states accomplished the transfer of jurisdiction over Indian tribes by formal requests from state legislatures. For tribes in the affected states, these changes put Indian tribes under local justice authority and police jurisdiction; they ended all federal support and funding for tribal police forces.

SELF-DETERMINATION ERA (1970s through 1990s)

The civil rights movement of the 1960s prompted another renewal of support for recognizing Indian tribes and tribal self-governance. Passage of the *Indian Self-Determination and Education Assistance Act* in 1975 (*Public Law 93-638)* provided federal funding for tribal governments and allowed PL-280 states to retrocede jurisdiction over Indian reservations and lands back to the Federal government. Other legislation restricted application of PL-280 to optional states and required tribal consent for changes in jurisdiction. Increased formal recognition of tribal groups also increased to more than 500 tribes.

practices were regarded as internal tribal matters (Deloria and Lytle 1983). After the military conquest and domination of Indian tribes by the newly established American nation, Indian nations were redefined as "semi-sovereign" vassal states–separate political entities but conquered, dependent, and under military authority. Thus, "Indian affairs" were viewed as military matters and initially placed under the jurisdiction of the War Department of the U.S. government, where they were handled by the Secretary of War. These merely involved the regulation of interactions and treaties between Indians and non-Indians as a military responsibility of the federal government. In contrast, policing of actions and practices within Indian tribal communities remained an "internal tribal matter" to be handled by traditional Indian practices.

While most tribes continued to follow traditional customs, a few tribes adapted to the growing Anglo-European expansion by adopting many social customs of the conquering society. The "Five Civilized Tribes"–Cherokee, Chocktaw, Chickasaw, Creek, and Seminole–were so called because they more readily adopted many social practices and structures of Euro-American society. Rudimentary tribal "police forces" appeared first among these tribes in the late 1790s and early 1800s, with the first permanent Indian police force occurring in the creation of the *Lighthorse Guard* by the Cherokee tribe in 1808 (Barker 1998; Barlow 1994; French 2003, 2005; Hagan 1966). According to French (2005: 70), "This marked the beginning of Euro-American law enforcement adaptations made in Indian country." However, for most other tribes, "policing" remained quite traditional and an internal matter for each tribe to determine according to its cultural traditions.

With increased growth and national expansion during the first decades of the 19th century, tribal lands became increasingly valuable for non-Indian settlement and exploitation. This resulted in escalating disputes over territorial ownership between Indians and non-Indians, along with increasing acts of aggression and warfare between Indians and non-Indian settlers (Deloria and Lytle 1983, 1984; Prucha 1969, 1984). In this context, the principle of Indian tribes as semi-sovereign nations became increasingly problematic and subject to political reinterpretation. A series of legislative enactments and court decisions extended federal sovereignty over events within Indian lands until Indian tribes were redefined as "domestic dependents" rather than as semi-independent sovereigns (despite the terms of prior treaties). This eventually resulted in the national decision to relocate Indian tribes from traditional tribal lands to remote areas located well beyond the regions coveted for non-Indian expansion efforts (Frantz 1999). This would both free up the

FIGURE 2. IMPORTANT LEGAL AND POLITICAL LANDMARKS IN THE DEVELOPMENT OF INDIAN POLICING.

1817	Federal Enclaves Act established exclusive federal jurisdiction over Indian country with U.S. Army acting as national police. Indian-against-Indian crimes remain tribal matters.
1824	Secretary of War Calhoun administratively created an office of Indian Affairs or Indian Services in the War Department.
1830	Indian Removal Act relocated all Indian tribes west of the Mississippi.
1831	Congress formally authorized the Office of Indian Affairs within the War Department.
1849	Office of Indian Affairs relocated from War Department into newly created Department of Interior.
1871	Congress terminated further treaty-making with Indian tribes. Prior treaties remained in effect.
1878	Congress authorized the creation of Indian Police forces.
1885	Major crimes committed by Indians against Indians were made subject to Federal prosecution rather than tribal law.
1887	Dawes Severalty Act (General Allotment Act) authorized dissolution of tribes and reservations through allotment of tribal lands to individual tribal members who then became autonomous property-owning U.S. citizens.
1924	Indian Citizenship Act formally granted U.S. citizenship to all American Indians.
1934	Indian Reorganization Act (Wheeler-Howard Act) halted the dissolution of Indian tribes by reestablishment of tribal self-government under Federal protection.
1953	Public Law 83-280 authorized some states to assume legal jurisdiction (civil and criminal) over Indian reservations, disavowing the legal sovereignty and federal trusteeship of Indian tribes.
1968	Indian Civil Rights Act provided for retrocession by states of legal jurisdiction over Indian country back to the Federal government and applied Federal constitutional law to Indian justice systems.
1975	Indian Self-Determination and Education Act (PL 93-638) allowed tribes to assume responsibility for managing all services provided by the Federal government (including law enforcement) by formal contracts with the BIA.
1990	Indian Law Enforcement Reform Act (PL 101-379) established Division of Law Enforcement Services within the BIA to administer law enforcement services in Indian country.
1994	Indian Self-Governance Reform Act (PL 103-413) supported tribal reclamation of self-government and control of local justice organizations.

tribal lands for non-Indian ownership and settlement, as well as minimize the potential for violence between Indian and non-Indian populations.

To accomplish such a solution, the *Indian Removal Act of 1830* mandated the relocation of all Indian tribes to an area west of the Mississippi River. The area designated as Indian country, covering modern-day Oklahoma and parts of Kansas and Nebraska, was divided so that specific territorial areas were to be allocated to each tribe or tribal confederation. The legislation authorized the U.S. government to negotiate treaties with all Eastern Indian tribes exchanging their traditional tribal lands in the East for new lands in the West, and then to use the U.S. Army to migrate the tribes to their new areas. These treaties were accomplished with many but not all tribes, and often with considerable pressure and subterfuge by federal agents. A few tribes, such as the Seminoles and the Creeks, aggressively resisted signing treaties, but ultimately were militarily subdued and compelled to migrate (Deloria and Lytle 1983, 1984). Among the best known of these migrations is the "Trail of Tears" relocation of the Cherokee from Georgia to Oklahoma in 1838-1839 when one-quarter of the original population died during the migration (Frantz 1999). During the removal period, the U.S. Army became the *de facto* law enforcement agency for social control of Indian tribes and remained so after relocation to their new territories in the West.

Relocation of Eastern Indian Tribes to new territories in the West in the 1830s and 1840s changed the nature of the "Indian problem" for the U.S. government (Barlow 1994; Frantz 1999). The process of relocation into new locations and the restriction to federally administered reservations severely disorganized traditional Indian cultural practices and social orders, and left tribal communities weakened and dependent (Frantz 1999). In the new locations Indian tribes were unable to sustain traditional economies and became increasingly "wards of the state" dependent on the U.S. government for sustenance and support (Barker 1998; Deloria and Lytle 1983). Reflecting the transformation of the "Indian problem" from a military problem of warfare against hostile nations into an internal problem of managing national resources and domestic obligations, the Office of Indian Affairs was transferred in 1849 from the War Department into the newly created Department of the Interior. In these terms, solving "the Indian problem" meant managing the populations of people exiled in Indian country, not through military conquest but through reorganization and resocialization. The aim was to civilize these populations to become more "American" and less "Indian" through the political imposition of religion and education into the reserved Indian territories (Frantz 1999). The enforced resocialization to non-Indian customs and practices led

to a general breakdown of the kinship and communal relationships that had made Native American tribal culture and social organization viable–including native self-policing practices.

During this period, law enforcement in Indian Country was largely provided by the U.S. Army simply because there were no real alternatives (Barker 1998; Barlow 1994). Traditional Indian tribal mechanisms of social control had been severely weakened or neutralized by the Western dislocation, and the Office of Indian Affairs included no separate organizational provision for law enforcement. This situation became problematic when tribal lands and communities were formally organized into reservations in the late 1860s under the jurisdiction of the federal Office of Indian affairs (which was not under administrative control of the Secretary of War). To deal with the absence of formal control mechanisms, tribal police officers and police forces began to appear on many reservations in the early 1870s to provide a measure of autonomous tribal enforcement, independent of the U.S. military. The first use of tribal police officers in the reserved Indian territories occurred among the Iowa, Sac, and Fox tribes in Nebraska in 1869 (Peak 1989:396), which was shortly followed by a special force of tribal police officers among the Navaho tribe in Arizona in 1872 and an additional force on the San Carlos Apache reservation in Arizona in 1874. The effectiveness of these tribal police agencies in controlling crimes on tribal lands and apprehending renegade tribal members (e.g., the bloodless capture of Cochise by Apache tribal police) gradually convinced the skeptics of their utility over continued reliance on U.S. military force. As a result, tribal police subsequently were established by Indian agents on many more reservations (Barlow 1994:146) and Congress formally authorized the creation of Indian reservation police forces in 1878 (French 2005; Peak 1989).

The adoption of Euro-American-style justice and law enforcement practices by Indian tribes was a central element of the 19th century national policy of "civilizing the Indian tribes" to adopt more modern Western cultural values, customs and social structures while abandoning their native traditions. The ultimate goal was *assimilation* of Native Americans into American society as modernized, civilized subpopulations, although complete equality was not expected given the racial and political ideologies of that era. Central to this civilization strategy were the Christianization and compulsory education of individual natives to civilized ways of thinking along with compulsory adoption by tribal groups of Euro-American forms of governance and justice (Frantz 1999). The development of Indian police forces in the 1870s and 1880s suggests a policy of increased tribal self-regulation; however, this is somewhat illusory. Tribal police forces, while staffed by Indian

officers, were administered and controlled by Indian Affairs agents and were poorly supported by the federal government (Barlow 1994; Hagan 1966). When tribal ideas of justice conflicted with Euro-American concepts, tolerance for autonomous Indian justice systems disappeared resulting in legislation to restrict the scope of tribal self-policing. Following the controversial Crow Dog case in the mid-1880s where popular opinion widely disapproved of the tribal resolution of the case (*Ex Parte Crow Dog* 1883), U.S. Congress asserted federal control over Indian legal systems and restricted tribal jurisdiction to minor disputes. The *Major Crimes Act* was enacted in 1885 effectively giving the federal government exclusive legal jurisdiction over most major crimes (including those between Indian tribal members) that occurred in Indian lands and reservations. The restriction of tribal jurisdiction to minor crimes greatly diminished the importance of tribal judges and police officers and gave the Office of Indian Affairs greater legal control over Indian Country policing (Peak 1989).

The changes in the 1880s signaled a major shift in federal Indian policy away from a strategy of gradual assimilation of tribal groups collectively living on reservations to one of active dissolution of tribes as federally recognized communities and dismantling of reservations as protected and reserved tribal lands. In the process, the salience and importance of tribal memberships or identities to Native Americans would be eliminated and American Indians would be recast as independent and individual U.S. citizens, rather than collective members of Indian tribes. The process of "de-tribalizing" American Indians was accomplished by converting tribal land into *private property* owned by individual members of the tribes. In 1887 Congress enacted the *Dawes Severalty Act* (also called the *General Allotment Act*), which authorized division of tribal reservations into separate property parcels, which were allotted to individual tribal members who could acquire them as personal private property (if they stayed on the property, farmed it, and paid taxes on it). The allotted parcels were converted from tribal to private property (which could then be sold to other persons, Indian or non-Indian). All reservation land not specifically allotted to tribal members could become surplus property and auctioned off to non-Indian buyers.

Allotment directly resulted in detribalizing Native Americans in two important ways. The first was the physical reduction of reservation lands owned in common by tribes and protected by federal trust. Allotted parcels were converted from tribal to personal ownership. The tribal sense of community, along with tribal culture and social structure, were dependent on communal ownership of the lands on which the tribal members lived. As the land was divided and individually allotted, the basis for

tribal unity and traditional leadership was greatly reduced. The second result was the removal of Native American individuals from tribal membership. As tribal members accepted ownership of their allotted individual land parcels, they simultaneously lost their official status as members of federally protected Indian tribes, becoming individual property-holding American citizens, rather than recognized tribal members. By this process, Indian tribes would gradually be reduced in population size, as well as in social/political influence and property ownership. With these reductions came a pervasive and dramatic reduction in tribal governance, justice, and policing, except in a few very large tribes such as the Navaho.

The policy of detribalization through allotment of tribal lands continued from the late 1880s through the first three decades of the 20th century. Its impact on the social, political, and economic conditions of American Indian populations was devastating. Many smaller tribes were simply erased, while larger, better organized tribes struggled to maintain tribal social organization and identity. Reserved tribal land holdings were dramatically reduced from 138 million acres in the late 1880s to about 48 million acres in the 1920s. Tribal memberships lapsed and blurred, and most members moved away from tribal lands–all according to the original policy strategy.

However, by the 1920s the idea of allotment was being questioned and criticized by a series of reform-oriented commissions that acknowledged the failure (and sometimes, malignity) of the allotment and assimilation policies (Waldman 2000). The growth of New Deal politics in the 1930s prompted a move to remediate the harmful effects of allotment. The *Indian Reorganization Act* (also called the *Wheeler-Howard Act*) enacted in 1934 formally ended the policy of "allotment" of tribal lands and restored the recognition of tribal identity and limited sovereignty. It also provided for reestablishment of tribal self-government, tribal justice systems, and tribal police, along with funding to support them. Ironically, while aimed at increasing tribal autonomy, the Indian Reorganization Act extended federal jurisdiction over many activities within Indian Country. It authorized Indian reservations to re-establish their tribal governments, but by adopting federally approved constitutions, charters, and legal structures incorporating Anglo-American principles and values, rather than organizing in traditional tribal ways. All tribal policy creation and governance practices were subject to approval and oversight by the Office of Indian Affairs (then called the United States Indian Service). The reorganized Indian courts and police were still limited in their jurisdiction to less serious matters, while serious crimes remained under the

jurisdiction of the federal government (as they still are today due to continuing effects of the *Major Crimes Act*).

Overall, the Indian Reorganization Act provided an important movement toward tribal self-governance and self-policing. However, its well-intentioned reforms were short-lived, falling into neglect during the World War II years (with a dramatic reduction in the number of tribal police officers funded) and being radically overturned during the Eisenhower administration (1953 through1961). In the political and economic recovery after World War II, a policy of *termination* was initiated by the U.S. Congress through which tribes as federally protected, legally sovereign communal entities would be eliminated and replaced by economically viable corporate enterprises made up of economically autonomous citizens. With this policy members of Indian tribes would be assimilated into the general population as free and equal participants in the national economy; Indian communities would be liberated from the onus of federal supervision and intrusion; and the federal government would be liberated from the responsibility and expense of maintaining the Bureau(cracy) of Indian Affairs.

The "termination" era in federal Indian policy was implemented in several major pieces of legislation in the early 1950s. The first was *House Concurrent Resolution 108*, passed by the U.S. Congress in 1953, which gave official expression and federal approval of the policy of "termination." Still, the most important legislative act was the passage of the landmark *Public Law 83-280* (1953). This law (PL-280) mandated the legal transfer of federal legal jurisdiction over Indian tribes in several specific states (Alaska, California, Nebraska, Minnesota, Oregon, and Wisconsin) to state and local governments; it also abrogated the special federal trusteeship status of many American Indian tribes. Beyond the six "mandatory transfer" states, PL-280 provided that the remaining states had the option of implementing a similar transfer of jurisdiction of Indian tribes and lands within their borders, conditional upon enabling legislation and constitutional amendments by their state legislatures. Ten additional states did so in varying degrees, transferring at least partial legal jurisdiction over Indian affairs to state and local governments: Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington – for a fuller description, see Canby (1998), Goldberg (1997), Jimenez and Song (1998), Melton and Gardner (2003), and Wilkinson (2005).

In Public Law 280 states, Indian residents living on Indian-owned lands were now policed by state and local police agencies, and subjected to state and local legal systems, just like all other non-Indian residents of the states in which they located. They were not subject to federal law enforcement or Bureau of Indian Affairs

authority, but they also had no special protection or recognition as semi-sovereign groups. As Jimenez and Song (1998:1664) note: "By enacting Public Law 280, Congress disregarded the historical trust relationship that existed between the Federal Government and the Indian tribes. Indian country law enforcement was exclusively a federal-tribal responsibility, but with Public Law 280, Congress ignored history and tradition and treated Indians *like any other citizens*, removing their historic insulation from state authority."

Public Law 280 had several notable and negative effects on Native American justice. One was that Indian tribes had no voice in whether or not this policy was implemented. It was merely forced on them by Congress in the mandatory states and by the state legislatures in the optional states, resulting in a pervasive sense of injustice and illegitimacy among many tribes (which persists today). The second problem was that the law provided no funds to the states for assuming the additional responsibilities of policing the lands within Indian Country. It represented an unfunded and generally unfulfilled mandate, which effectively left many reservations without any functional law enforcement–either federal or state. A third problem was the prejudicial and sometimes hostile relationships that existed between Indians and non-Indians in many states where PL-280 was implemented, making tribal members even more subject to abuse and discrimination, and even more wary of and hostile to local law enforcement. A fourth problem was the arbitrary selectivity of the statute in applying mandatorily to some states but to other states only at their option. This resulted in a confusing patchwork of legal jurisdiction over policing on reservations, which has never been clarified or corrected.

In the 1960s, several developments encouraged the abandoning of termination as government policy and led to the renewed promotion of "Indian self-determination." One factor was the resurgence of New Deal politics in the Great Society programs under Presidents Kennedy and Johnson. These featured a renewed activist role for the federal government in protecting the interests and fortunes of disadvantaged minorities and resulted in the passage of the *Indian Civil Rights Act* (ICRA) in 1968 to promote tribal self-governance and self-determination. Beyond affirming the basic rights of Native Americans as American citizens, the *Indian Civil Rights Act* amended PL-280 significantly to restrict the optional transfer of legal jurisdiction over Indian tribes from federal to state governments by requiring tribal approval for the transfer to occur. Significantly, after this latter limitation was enacted, no tribe consented to such a jurisdictional transfer. The ICRA also amended the original provisions of *Public Law 280* slightly to allow

states to "retrocede" jurisdiction over Indian tribes back to the federal government upon appropriate legislation by state governments, which has resulted in 30 tribes in PL 280 states being retroceded back to federal jurisdiction.

Because the 1960s was a period of considerable social activism, Indian tribes themselves provided a major impetus for revising and liberalizing federal Indian affairs policies. Many tribes, as well as pan-tribal organizations like the American Indian Movement (AIM), adopted a more activist, confrontational, militant stance in demanding a greater degree of tribal self-determination and fair compensation for past wrongs by the U.S. government. These activities, along with several critical reports produced by various governmental commissions, led to the passage of the *Indian Self-Determination and Education Assistance Act* in 1975, also known as *Public Law 93-638*. This law authorized a political mechanism for tribes to assume responsibility for many governance services administered by the Federal government. It provided for contracts negotiated by each tribe with federal agencies, such as the Department of the Interior and the Department of Health and Human Services, to provide federal funding for tribally administered agencies, including social services as well as tribal courts and police forces.

Critics of PL 638 have noted that, while it does provide for tribal self-governance, it does so under BIA-approved conditions and terms that determine the kinds of police agencies being adopted–namely, following modern Anglo-American non-Indian policing models. In response to such criticisms, the *Indian Self-Governance Reform Act* of 1994 (House Resolution 4892) subsequently provided for additional, more liberalized avenues of self-governance, authorizing global block grants (rather than specialized line-budget contracts) for funding tribal governmental functions. According to Waldman (2000), federal programs to support and encourage tribal development and improvement declined in numbers during the 1980s and 1990s due to cutbacks in funding for domestic programs generally; however, "the federal government continues to back nominally the principles of Indian self-determination (Waldman 2000:224)," at least in principle.

This final phase, the "Self-Determination era" in federal Indian policy, continues today and generally reflects the greater public endorsement of federal support for tribal self-governance and self-development, along with a renewal of federal and state recognition of Indian tribal sovereignty. However, critics have noted that federal authority and oversight over Indian community affairs has increased during recent years as the administrative and bureaucratic reach of the BIA has expanded over a wider range of tribal operations and become more centrally organized in federal supervision of tribal concerns. For example, the *Indian Civil Rights Act* of

1968 extended federal legal restrictions on the operation of tribal courts. The *Indian Law Enforcement Reform Act* of 1990 (Public Law 101-379) established a Division of Law Enforcement Services within the BIA to provide more unified and centralized federal administration of local tribal and reservation policing. The latter effectively shifted the administration of BIA-provided police forces from local to national command, as well as established a national Indian Police Training Academy administered by the FBI to train local tribal police at a single, central location. Thus, while more resources are available to support tribal self-government, availability of these resources is centrally controlled and managed by the federal government following standard procedures and criteria (which work against local tribal autonomy and uniqueness). The overall posture of the federal government toward Indian tribes, while markedly more sympathetic than in prior decades, remains somewhat paternalistic, bureaucratic, and elitist. It is still pervasively distrusted by many tribal members, as illustrated by the decade-long class-action lawsuit by numerous Indian groups against the Department of the Interior *(Cobell v. Babbit* 91 F. Supp. 2d. 45-48, 57-59); thus far, this tort action has persisted through three different presidential administrations and will likely involve several more.

THE SOCIAL CONTEXT OF AMERICAN INDIAN POLICING

In contemporary U.S. society, tribal police agencies in Indian reservations and communities are fundamentally constrained by three elemental dimensions of those settings. One is *political*, reflecting the ambiguous legal structures and restraints within which Native American police agencies are authorized to operate. Indian reservations (or analogously designated Indian communities) are not typical governmental divisions like states or counties or municipalities; their political sovereignty and legal authority are ambiguous, controversial, and subject to frequent reinterpretation or modification. As a result their legal jurisdictions remain complex and confusing, a condition that limits their capacity for self-government and self-policing. A second element is *cultural*, reflecting the ideological conflict that accompanies the attempt to implement modern Western institutions or practices (e.g., formal bureaucratic organizations like the police) in communities with distinctively non-Western cultural traditions. This conflict yields incongruent ideas about what constitutes "justice" and what counts as effective social control. The third elemental factor is *ecological*, reflecting the distinctly rural settings in which Indian reservations or communities are mostly located, far removed from metropolitan populations and urban resources, containing small populations spread

over large geographic areas. We suggest that all three of these features are essential considerations in understanding why policing in American Indian communities has been so inchoate and difficult to implement.

THE LEGAL-POLITICAL CONTEXT OF TRIBAL POLICING

Perhaps the largest difficulty facing the establishment of effective law enforcement and policing in reservations and tribal communities is the restrictive and variable legal environment within which Indian governments must operate. Indian communities are unlike other rural (non-Indian) communities because of the unique historical relationship between the federal government and Indian tribes (as outlined earlier), which assigns a special status to Indian reservations and places special legal restrictions and conditions on tribal justice agencies that do not apply to other rural communities.

By virtue of the Major Crimes Act of 1885, the jurisdiction of Indian courts and law enforcement agencies is restricted to minor crimes. By federal law, major crimes (most Index crimes and felonies) occurring in Indian country are excluded from tribal or Indian reservation jurisdiction and placed under the authority of the federal government (to be handled by BIA or FBI agents). In Public Law 280 states, the jurisdiction over major crimes has been transferred from the federal to state government, but it remains outside tribal or reservation jurisdiction. This means that the authority of Indian reservation or tribal police to handle more serious crimes in their communities depends on establishing agreements with other non-tribal police organizations in the areas where they are situated (e.g., state, county, or municipal agencies in Public Law 280 states and the BIA in non-PL280 states). They provide, either by understanding or by contract, for cross-deputizing or cross-commissioning of tribal police by the outside agency. Such agreements are not mandated or regulated by federal law, but are cooperative arrangements negotiated with any relevant law enforcement agency with legal jurisdiction over major crimes in that area. As voluntary agreements, they provide only variable authority to Indian community police and are subject to the changing (sometimes contentious) political relationships between Indian reservations and the surrounding non-Indian communities. Without formal cross-deputization agreements, Indian communities have only limited legal authority for investigating crime, for searching and seizing evidence, and for making arrests. They are dependent on outside non-Indian governments to provide essential law enforcement authority or services.

As noted earlier, the enactment of Public Law 280 and its modification through subsequent piecemeal federal legislation has created a confusing mixture of legal

jurisdictions for Indian reservations and tribal governments both *across* and *within* states. The initial legislation ceding legal jurisdiction over Indian tribes from federal to state government applied only to Indian tribes and reservations in six states. However, even in these six mandatory states, some tribes were explicitly exempted from the legislation. Subsequently, ten other states opted for some degree of jurisdictional transfer over tribal communities to state control. However, even here the nature and the extensiveness of these transfers varied widely from state to state, and in some states applied only to some tribes (while excluding others). Subsequent retrocession of tribes back to federal jurisdiction has been carried out selectively only to a few tribes; most tribes in PL-280 states remain under state jurisdiction and retain all the legal disabilities that this entails. The cumulative impact of Public Law 280 legislation over the past half-century means that the simple question: "Who has jurisdiction here?" seldom has a simple or consistent answer for tribal police.

An additional complication in the legal jurisdiction of Indian Country policing is the geographic and demographic "checkerboarding" of Indian reservations and lands. During the Allotment Era, large portions of the land reserved by federal treaty for Indian tribes were lost to tribal ownership by allotment to individual tribal members who subsequently sold them to non-Indian owners. Other portions of reserved Indian land were declared to be "surplus" (after allotment to eligible tribal members had occurred) and were then auctioned to non-Indian buyers. As a result, large areas within tribal or reservation boundaries became non-Indian private property, although they are physically located within the reservation. Crimes or law enforcement events that take place on those non-Indian/non-Tribal parcels of property are not subject to tribal jurisdiction; instead they are under the jurisdiction of the county or state in which the properties are located. Since such non-tribal parcels are commonly scattered intermittently throughout reservation lands, it makes policing an on-again-off-again proposition as tribal police officers move throughout their nominal jurisdiction. A related problem is "demographic checkerboarding" in which many persons living, traveling, working, recreating, or doing business within reservation boundaries are non-Indians or non-tribal members who are not legally subject to tribal justice and law enforcement (as tribal members are). Simply making a routine vehicle stop for speeding or traffic violations becomes a complex calculation regarding whether the tribal police officer has the appropriate jurisdiction for this type of offense in this specific location with this category of offender. Thus the business of policing on reservations is fundamentally limited and profoundly complicated by the variable and restricted

legal status of Indian communities to govern and police the areas in which they are located.

CULTURAL CONFLICT IN INDIAN COUNTRY POLICING

Indian tribal policing involves a special difficulty of being caught between divergent cultures reflecting substantially different and often conflicting world views. One reflects the tribal "harmony ethos" of traditional Native American cultural systems and the other reflects the individualistic, Western ethos of modern American industrial society descended from the European Enlightenment. Countless writers have described in considerable detail the fundamental contradictions that this dual-cultural context presents to tribal communities and justice agencies (e.g., Barker 1998; Barlow 1994; Deloria and Lytle 1983, 1984; French 2005; Hagan 1966; Wachtel 1982). In traditional Native American world-view, policing is properly accomplished as an organic function of the community's everyday social order and is concerned with achieving reconciliation between conflicting members and restoration of community harmony and cohesion. It is fundamentally oriented to peace-keeping and peacemaking through informal activities sensitive to personal relationships as well as to the community and tribal orders. Chiefs and tribal leaders were respected not primarily for their combative accomplishments, but for their mediational skills in resolving disputes, negotiating agreements among disputants, and preserving communal well-being of the tribal. Formal tribal punishment was authorized only when all efforts at mediation or reconciliation had been rejected (e.g., see Barker 1998).

In contrast, the modern Western view of policing stresses professionalism and detachment from the partisan, day-to-day personal and political concerns of community members. It is concerned with providing impersonal and impartial enforcement of the law through formalized procedures that ignore individual differences in who people are or how they are related to other community members. It is fundamentally oriented not at reconciliation and restoration of the community, but at separating criminal offenders from the law-abiding portion of the community. These two views seem to embody incompatible sets of expectations and standards for what tribal policing should be.

According to Brakel (1982), the police in American Indian communities are "trapped in a cultural no-mans's land" in which conforming meaningfully to both sets of expectations is impossible. Wachtel's (1982) description of how different law enforcement frameworks would be adopted by tribal police officers depending on whether the suspect they stopped for questioning is Indian or non-Indian is a clear

example of this. However, several recent scholars have argued that the dualistic "cultural divide" scenario of tribal policing does not provide a very comprehensive or fully realistic picture of what happens in many specific tribal policing situations. It greatly oversimplifies or over-idealizes the reality of policing in diverse American Indian communities.

One element of this criticism stresses the cultural heterogeneity of Indian country, noting that while the Indian-vs.-non-Indian dichotomy may be important at a very general level, it ignores very substantial and significant variations among Indian tribes in their traditions and structures. Wakeling et al. (2001:6) observe that: "An important additional type of variation is the substantial cultural diversity found among American Indian communities. Although 'American Indian' is a single race category on the U.S. Census, this grouping hides the fact that members of one tribe can be as different from members of another tribe as citizens of Greece are from citizens of Vietnam."

In practical terms, this means not simply that different tribes may have different names and geographic locations, but also different languages, different family structures, different economic systems, different governmental structures, different histories of military and political domination, different relationships to the surrounding non-Indian societies, different moral and religious beliefs, and distinctive cultural traditions. In analytical terms, this means that single global descriptive statements about "Indian culture" or "Indian policing," cannot be very descriptive or informative, since the world they seek to describe in not homogeneous or unitary. In practical terms, tribal heterogeneity means that singular one-size-fits-all programs or policies are unlikely to be very appropriate or effective across different tribal communities. In research terms, this means that case studies of a single tribe or tribal group–no matter how well done–cannot be confidently generalized to be true of all Indian communities, at least without a systematic survey to document what is true in other tribal contexts.

The second criticism of the culture conflict scenario is that cultural erosion has greatly diminished the differences between Indian and non-Indian perspectives. It argues that over time the differences that existed in the 19th century between Native American cultural practices and those of the outside world (embodying modern Western industrial society) have gradually attenuated through the inexorable impact of two centuries of acculturation, intermarriage, immigration, adaptation, accommodation, and overt political domination. In this view, the idea of a distinctive and separate Native American culture (or cultures) is an idealized image of an earlier 19th century time, when tribal peoples were in fact distinct and separate

semi-sovereign nations, rather than a contemporary 21st century reality where most traditional cultural differences have been adulterated, homogenized, and lost in modern mass society.

Additionally, as Indian reservations and communities gained tribal autonomy and some degree of self-governance (during the Reorganization and the Self-Determination eras), they did so by adopting Federal models of court and law enforcement systems embodying non-Indian habits and values. Brakel (1982) notes that the Indian tribal courts developed at the end of the 19th century, while nominally tribal in administration, were closely modeled after non-Indian courts and were centrally supervised by the Bureau of Indian Affairs. The federal programs of the 20th century (e.g., the *Indian Reorganization Act of 1934* and the *Indian Civil Rights Act of 1968*) furthered this modeling process, while the *Indian Self-Determination and Education Act of 1975* (Public Law 638) provide for tribes to adopt a common Western model of police organization to receive BIA approval and funding.

The idea that cultural and physical contexts of policing are very important factors for understanding Indian policing is universally accepted. However, there is considerably less consensus (and clarity) regarding how unique and diverse the cultural contexts found in Indian tribal communities are. Referring to the social science research on modern tribal and Indian reservation policing would be useful. However, a major problem is that we lack systematic, empirical research to resolve such questions reliably. Most of what is ostensibly "known" about the cultural context of policing in Indian country is either historically dated (based in the early twentieth century) or based on limited observations of very few Indian tribal communities or populations. It allows useful conjectures and hypotheses, but few documentable conclusions about Indian tribes and communities to guide the development of more effective tribal police offices and practices.

THE DISABILITY OF RURALNESS IN INDIAN COMMUNITIES

The third major feature of Native American communities that greatly affects the development and operation of tribal policing agencies in Indian reservations is their location in preponderantly *rural settings*. While researchers (e.g., Weisheit, Falcone, and Wells 2006) have noted that rural policing is often distinctively different from the urban-based policing depicted in criminology textbooks and in mass media portrayals of police work, this will be particularly true for Indian country policing (which is often "deeply rural"). According to the 2000 Census of State and Local Law Enforcement Agencies (Bureau of Justice Statistics 2002), three-fourths of the

tribal police agencies covered in the census are located in "non-metropolitan" counties. In addition, many remaining tribal departments nominally classified as "metropolitan" are in rural fringe areas of large multi-county metropolitan areas (e.g., several reservations around the Phoenix-Tucson area in Arizona or the San Diego area in California) where the reservation geography is distinctly rural, and includes lots of "wide-open space" and small residential populations. Beyond their small populations, Indian communities generally are located in remote locations (as a historical result of how reservations initially were placed in distant regions physically separated from non-Indian settlements and involving less desirable or accessible areas of land). Such remote areas are frequently not served by major highways, and occasionally barely served by roads of any sort. Like other rural communities, reservation or tribal communities are not only small in population, but often spread over large land areas making them "thinly populated" places (that require a large amount of time and effort to interact with a few people).

The markedly rural setting of Indian communities and police departments stands in marked contrast to basic assumption about urban and urban social dynamics upon which most police administration models are based, where physical distances are measured in city-blocks (rather than thousands of acres) and populations are concentrated densely in smaller areas. In the urban context, good policing means making police response times as short as possible and achieving preventive patrol by dense coverage of areas by numerous police officers. In Indian country, response times may be measured in hours or days, and preventive patrol coverage is nonexistent, because there are only a few officers to cover hundreds of square miles. Thus, application of conventional thinking about optimal police patrol practices becomes almost unthinkable.

All these features make it very difficult to develop useful models for policing in Indian communities, because the conditions diverge so greatly from the urban conditions that police researchers and policy developers are accustomed to considering. The rural conditions of many, if not most, Indian communities are "off the scale" of most urban-based models, making it difficult for policymakers even to conceptualize what policing should mean in this context, simply because they are too different from the parameters that conventional models assume about the basic features of communities and of effective policing practices. Rural ecological settings like those found in Indian country seem to beg for the development of new models or frameworks for thinking about and organizing police activities in these kinds of communities.

CONCLUSIONS AND SUGGESTIONS

As the preceding discussion shows, the forms and functions of Indian tribal policing in the United States have varied widely over the past two centuries reflecting profound changes and reversals in federal policy regarding Indian country government. However, amid the apparent variations, the history of American Indian policing demonstrates a clear singular trend: namely imposition of Euro-American policing structures, which strongly conflicted with the native customs and cultures of the various Indian nations, particularly in the earlier periods. Whether the "cultural divide" thus created between traditional Native American values and modern Western models of professional paramilitary policing continues to be problematic for Indian community police organizations in the future remains an open question. The viability of developing distinctively Indian forms of policing to bridge this divide may only be assessed through empirically based social-science research, but very little of this research is presently available.

During the last four decades, American Indian tribes moved to reclaim their traditional identities and began to reestablish their social/political autonomy and governance systems. How this belated exercise in self-determination will affect the development of distinctively Indian forms of policing and what these forms might look like remain unclear. On the cusp of a new century (and millennium), Indian tribal policing is still evolving and adapting in directions that have yet to be described or documented in much detail. For example, the federal implementation of Community-Oriented Policing Services has awarded more than $280 million to tribal communities since 1995 (COPS 2006) and seems to offer a viable bridge between traditional Indian cultural values and modern non-Indian modes of policing; yet no data are available to document how this has been implemented or what effects it has had. Although there has been in recent years an attempt to infuse COPS monies into Indian country policing agencies, neither the police organizations assigned to the task of policing rural Indian settings nor the Indian populations can fully embrace community-oriented policing in its present form. First the para-militarized urban police organization is an awkward fit for the COP model. Second, the pronounced conditions of social disorganization found in many Indian settlements work against the successful implementation of a community-based model. Assessing the realistic fit of the COP model to Indian reservation settings is an intractable task at present, if only because there is no usable body of empirical research on Indian country policing upon which to base a systematic assessment. This is an area of social research that has been almost largely

overlooked, resulting in a body of scholarly knowledge that is anecdotal and impressionistic–i.e., suggestive but inconclusive.

In calling for additional research on tribal policing, we emphasize that this is not simply an academic concern but a critical requirement for effective, evidence-based policy development in Indian country justice systems. The strategy of identifying and promoting "best practices" in policing presumes that we have a well developed and documented body of knowledge regarding what now occurs and how it works in Indian tribal communities. To date, as noted above, very little of such research has been available to policymakers and researchers. Thus, our ability to identify and implement more effective policies that will support and enhance Indian tribal policing agencies in the U.S. is stuck in limbo, awaiting better information about what various contemporary tribal policing practices are, in which communities these are used, and how they seem to work. Absent this information, the idea of "best practices" will remain an exercise in wishful speculation.

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