HIDING BEHIND TRIBAL SOVEREIGNTY: ROOTING OUT HUMAN TRAFFICKING IN INDIAN COUNTRY

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The white man’s police have protected us only as well as the feathers of a bird protect it from the frosts of winter.
Crowfoot, Blackfeet Chief [FN[FN1]]

Future generations will not excuse those who turn a blind eye to [human trafficking].
United States Secretary of State, Condoleezza Rice [FN[FN2]]

I. Introduction

Native Americans [FN[FNd1]] are a profoundly strong and proud, however insular, people. This isolation, coupled with multi-jurisdictional complexities, heightens their vulnerability to human trafficking, one of the most profitable and fastest growing humanitarian crimes today. [FN[FN3]] An emerging body of *454 research indicates that Native Americans face a confluence of victimization, oppression, and poverty, making them particularly susceptible to this modern-day form of slavery. [FN[FN4]]

While human trafficking is both a state [FN[FN5]] and federal [FN[FN6]] crime, questions arise as to who has the jurisdiction to investigate and prosecute traffickers operating on tribal lands. [FN[FN7]] To operate effectively, tribal, local, state, and federal authorities must each understand the joint and concurrent criminal jurisdiction they possess. As legislatures focus on eradication of human trafficking, research and legal scholarship should promote a coherent framework of laws to maximize the effectiveness of enforcement. The impact of trafficking on Native American communities and the potential legal hurdles of exercising concurrent state and federal criminal jurisdiction in Indian country is often overlooked. [FN[FN8]] The detection and prosecution of trafficking in Indian country [FN[FN9]] has been generally ineffective, due in large part to underfunded law enforcement, education, and training. [FN[FN10]] This situation has created a de facto haven for traffickers, allowing the traffickers to operate with little concern of detection or prosecution. Consequently, criminal trafficking enterprises flourish in the resulting legal uncertainty. [FN[FN11]]
This Article will address some of the unique challenges that Native Americans face in the investigation and prosecution of human trafficking. It will critically examine the perceived notion that tribal sovereign immunity can act as an affirmative shield, and therefore, prevent state and federal criminal prosecution of trafficking activities. Part II will detail some of the specific characteristics that render Native American cultures vulnerable to human trafficking. Part II will also describe the historical effect of trafficking on Native Americans and illustrate how the trafficking industry currently affects tribal lands. Part III will review California law, federal law, and tribal law enacted with the goals of preventing and prosecuting human trafficking. Part IV will analyze the jurisdictional interplay, demonstrating how those who traffic on reservation lands do not have individual or tribal sovereign immunity. When discovered, these traffickers should be held accountable for their actions in all courts of competent jurisdiction—whether a California court, a federal court, or a tribal court. [FN[FN12]]

II. Historical and Modern Perspective--Human Trafficking of Native Americans in California

The Native American community in California has a long history of maltreatment and exploitation at the hands of white settlers. [FN[FN13]] Much of this exploitation was authorized by law and memorialized in the press. [FN[FN14]] The modern understanding of human trafficking has enabled people to begin to draw historical connections and understand the institutional prevalence of human trafficking on tribal lands.

A. Historical Review of Native American Servitude and Slavery

The impact of slavery on Native Americans in California manifests the horror that European colonization inflicted on the aboriginal people of the Americas. [FN[FN15]] During the process of expansion and colonization westward, the capture and sale of Native Americans was commonplace. [FN[FN16]] Native American women were coerced into sexual slavery and indentured servitude--practices identified today as human trafficking. [FN[FN18]] The California State Legislature authorized these monstrosities. [FN[FN19]] In April of 1850, after a prolonged debate concerning the appropriate number of lashes permitted for disobedient Native Americans, the California State Legislature passed An Act for the Government and Protection of Indians. [FN[FN20]] Among other consequences, this act enabled white people to not only obtain control of Native American children, but also provided for a scenario similar to debt bondage. [FN[FN21]] If an Indian was convicted of a crime, a white person could produce bail for which the Indian's future labor would eventually be paid back through forced labor. [FN[FN22]] Congress subsequently amended this act, making it legal for Indians to be held in penal servitude at tender ages and for even longer periods of time. [FN[FN23]] As amended, An Act for the Government and Protection of Indians allowed whites to retain the service of Indians until the Indian being held reached forty years of age for men and thirty-five years of age for women. [FN[FN24]] The existence of these statutes supplied moral and legal justification for peonage and the enslavement of Native Americans in California. [FN[FN25]]

*457 Published accounts from 1855 to 1864 of the kidnapping and selling of Indian children demonstrate the ubiquitous and cavalier attitudes that the public applied to such servitude. In 1855, the Alta California reported:

One of the most infamous practices known to modern times has been carried on for several months past against the aborigines of California. It has been the custom of certain disreputable persons to steal away young
Indian boys and girls, and carry them off and sell them to white folks for whatever they could get. In order to do this, they are obliged in many cases to kill the parents: for low as they are in the scale of humanity, [the Indians] have that instinctive love of their offspring which prompts them to defend them at the sacrifice of their own lives. [FN[FN26]] In 1856, the San Francisco Herald posted:

In the Fourth District Court yesterday . . . for the hearing of the return to the writ of habeas corpus issued to produce the body of Shasta, the Indian girl claimed by Dr. Wozencraft, Charlotte Sophie Gomez appeared . . . and made the following return as to the cause of her inability to produce Shasta:

“That an Indian child by the name of Isabella, not about eight years of age, has lived in her family since the month of June, 1852, at her residence in the city of San Francisco. That during the last three years, or thereabouts, the said child has attended the public day school in said city. That . . . Isabella has resided with . . . Gomez until last Monday. On that day, about five o'clock in the afternoon, a person presented himself at her residence and told her that said Indian child belonged to him, and wanted to take her away. Of this fact she was told by a member of her family . . . Gomez says she has no knowledge of the person who took the child from her house, nor does she know where she now is, or has been, since taken away therefrom . . .”

. . . It is the belief of Dr. Wozencraft that the girl, Isabella . . . is the one that has been stolen from him. He is most anxious to recover Shasta and will use every legal means to recover possession of her. [FN[FN27]] In his 1860 journal, William H. Brewer, one of the members of the original California Geological Survey, wrote:

The Indian wars now going on, and those which have been for the last three years in the counties of Klamath, Humboldt, and *458 Mendocino, have most of their origin in this. It has for years been a regular business to steal Indian children and bring them down to the civilized parts of the state, even to San Francisco, and sell them - not as slaves, but as servants to be kept as long as possible. Mendocino County has been the scene of many of these stealings, and it is said that some of the kidnappers would often get the consent of the parents by shooting them to prevent opposition. [FN[FN28]] In 1862, the Alta California reported:

Little more than a hundred miles from San Francisco, in Mendocino County, the practice of Indian stealing is still extensively carried out. Only recently, George H. Woodman was caught near Ukiah with sixteen Indian children, as he was about to take them out of the county for sale. It is well known that a number of men in that region have for years made it their profession to capture and sell unfortunate juveniles, the price ranging from $30 to $150 depending on their quality. [FN[FN29]] Child stealing and selling was in no way an isolated practice. United States Agent George Hanson reported:

A band of desperate men have carried on a system of kidnapping for two years past. Indian children were seized and carried into lower counties and sold into virtual slavery. . . . The kidnappers follow at the heels of the soldiers to seize these children when their parents are murdered to sell them at the best advantage. [FN[FN30]] California law also provided the ability for city officials to pick up Indians as vagrants and turn them over to local ranchers who needed laborers. [FN[FN31]] After no longer having a use for the laborer, the “employer” would return the Indian to the streets, only to be picked up again by public officials. [FN[FN32]] These practices continued until 1866, when the State Legislature repealed the Act in order to comply with the Fourteenth Amendment of the United States Constitution. [FN[FN33]]

While no longer authorized under law, the enslavement of Native Americans still occurs in the form of criminal activity. Street gangs and organized crime syndicates have increasingly targeted American Indian *459 women and children as a renewable resource. [FN[FN34]] As a consequence, some American Indian women and children are forced into prostitution, while criminals extract the profits. [FN[FN35]]
B. Current Landscape of Native American Human Trafficking

Human trafficking is the exploitation of another's labor or body for profit. This egregious crime does not discriminate based on race, gender, or socio-economic class. As a class, Native Americans have many characteristics that tend to increase their susceptibility to this crime.

1. Known Instances of Human Trafficking

“Human trafficking, perhaps the most pernicious form of modern-day slavery, occurs when an individual extracts labor or sexual services from other individuals by depriving them of their free will.” [FN[FN36]] Human trafficking is classified and commonly organized into three chief categories: (1) commercial sexual exploitation, [FN[FN37]] (2) forced labor, [FN[FN38]] and (3) domestic servitude. [FN[FN39]] Although federal [FN[FN40]] and California [FN[FN41]] statutory definitions of human trafficking vary, there are common elemental threads. Human trafficking is generally defined as the recruitment, transportation, or harboring of a person against his or her will through the use of force, coercion, fraud, or deception in order to exploit the person for sexual or labor purposes. [FN[FN42]] California has codified its definition of human trafficking in Penal Code 236.1. [FN[FN43]]

The United States Department of State estimates that 800,000 to 900,000 people are annually trafficked across sovereign borders, with approximately 20,000 of those victims coming into the United States. [FN[FN44]] Surpassed only by narcotics dealing, human trafficking is the second largest criminal industry in the world and is easily the fastest-growing. [FN[FN45]] Traffickers seek out vulnerable populations and use specific techniques to instill fear and exert control over victims. [FN[FN46]] Some traffickers will control the actions of victims and move them farther away from their families to isolate and control them. [FN[FN47]] However, traffickers more frequently use the less obvious technique of debt bondage, asserting financial obligations over the victim and causing the victim to feel honor-bound to satisfy an often erroneous debt. [FN[FN48]]

The “clandestine nature” of trafficking makes accurate and reliable data collection particularly difficult. [FN[FN49]] However, numerous governmental and non-governmental agencies have partnered to gather improved data. [FN[FN50]] Recent federal statistical analysis reveals that the largest concentrations of trafficked victims are located in California, Oklahoma, Texas, and New York. [FN[FN51]] The National Human Trafficking Resource Center (NHTRC) collects and disseminates statistical data gathered through its national toll free human trafficking hotline. [FN[FN52]] Publication of these statistics has been critical in fostering social and local awareness of the presence and trends of human trafficking in a given state or region. [FN[FN53]] Calls to NHTRC have nearly doubled in the last two years, [FN[FN54]] and California originates the most known callers of any state, with 15.76% of the calls. [FN[FN55]] California and its tribal lands are especially vulnerable to international trafficking because of the state’s extensive border with Mexico, numerous international seaports and airports, diverse economic labor needs from large agricultural, manufacturing, and service industries, and the close proximity of tribal lands to large cities where traffickers seek to peddle victims. [FN[FN56]]

Trafficking of Native Americans has become a major subject of discussion between nation-states and various Indian tribes. The 2007 United League of Indigenous Nations Treaty, signed by tribes around the world, pronounce “preserving and protecting the human rights of our Indigenous people from such violations as involuntary servitude,
human trafficking, or any other forms of oppression” as one of its primary goals. [FN[FN57]] By framing the intent of this treaty as a reaffirmation and declaration addressing fundamental rights of indigenous people, it will hopefully bring renewed attention to the ongoing plight and vulnerabilities of Native Americans.

A large portion of statistical research on human trafficking of Native Americans centers on the subcategory of commercial sexual exploitation. [462] Several major reports focus specifically on the Native tribes of Minnesota. [FN[FN58]] In her 2009 report, Alexandra Pierce described the cultural and law enforcement difficulties that impede the effective detection and prosecution of commercial sexual exploitation of Native Americans. [FN[FN59]] While the thrust of the report is limited to Native Americans in Minnesota, many of the concerns presented are fundamental and equally applicable to issues facing the larger American Indian community, especially those who reside in states governed by Public Law 280. [FN[FN60]] These issues transcend state lines and will likely impact the tribal nations in California.

Experts acknowledge that prostitution disproportionately harms Native American females. [FN[FN61]] In Pierce's report, over forty percent of the victims interviewed described involvement in some form of commercial sexual exploitation, and twenty-seven percent of those activities would likely sustain a claim under Minnesota sex trafficking laws. [FN[FN62]] Many Native American gangs and subsets of street gangs now operate under this sex trade and prostitution-based model. [FN[FN63]] Among other unnamed Mexican and Latino gangs, the Native Mob and Gangster Disciples operated under this model in Minnesota. [FN[FN64]] This is unsurprising, as numerous studies of gang activity show a concerted effort by street gangs to shift away from narcotics trafficking and adopt a sex trade and prostitution-based economic model. [FN[FN65]] This evolution probably occurred because the sex trade is much more profitable than trafficking narcotics, and the criminal penalties for sex trafficking are significantly less than those associated with narcotic-based crimes. [FN[FN66]]

While street gangs are involved in a substantial portion of Native American human trafficking, they are not the only generator of problems. One of the more disturbing sources of trafficking is Native American mothers who traffic their own children. [FN[FN67]] Eighteen percent of the victims interviewed indicated that a family member, such as a mother, aunt, step-uncle, or uncle, had exploited them. [FN[FN68]] In addition, many underage Native American women view prostitution as their only means of income or as an opportunity to leave reservation lands and find “love” and “attention” from their pimps. [FN[FN69]] Moreover, frequent exposure to violence, substance abuse, and the generational sexual exploitation in Native American homes tends to normalize these behaviors, giving them apparent legitimacy. [FN[FN70]]

Shattered Hearts, a report focusing on the sexual exploitation of Native American women, builds upon data collected as part of a 2007 survey on human trafficking performed by the Minnesota Office of Justice Programs. [FN[FN71]] The report indicates that trafficking of Native American girls is a common occurrence. [FN[FN72]] citing a Minnesota statewide human trafficking survey in which twelve respondents (service providers, nurses, and law enforcement personnel) “reported working with a total of 345 American Indian female victims of sex trafficking in the previous three years.” [FN[FN73]] The victimization in these cases revealed a practice of transporting girls from reservation lands into metropolitan cities throughout Minnesota, as well as a practice of trafficking them into other states. [FN[FN74]] Interviews and other anecdotal evidence suggest that sex traffickers have taken victims in Minnesota to at least thirty-two states, thereby infecting over sixty percent of the country. [FN[FN75]]
Due to the quick money gained through prostitution, victims are often forced to repeatedly engage in sexual acts in order to survive when faced with no other way to make money. [FN[FN76]] Nearly half of the women interviewed had been exploited by more than 200 sex buyers during their lifetimes, and sixteen percent estimated that they had been forced to have sex with at least 900 sex buyers in their lifetime. [FN[FN77]] In a particularly despicable development, individuals fetishized Native American women as an exotic, purchasable experience. [FN[FN78]] One victim described this obsession by stating:

*464 “It was taboo to be with a Native woman. When guys asked my ethnicity and I said [Native], they wanted to come right there on the spot.” In some cases, johns wanted to role-play colonist and colonized as part of prostitution, “He likes my hair down and sometimes he calls me Pocahontas. He likes to role play like that. He wants me to call him John.” [FN[FN79]]

With more than 560 federally recognized American Indian or Alaska Native tribes, [FN[FN80]] a substantial part of the Midwest and Western regions in the United States are under Native governance while still reliant on state and federal law enforcement. According to the 2010 United States Census, Native Americans account for 2.9 million residents in the United States, constituting approximately one percent of the population. [FN[FN81]] While Native Americans represent roughly one percent of adult and two percent of youth in the general United States population, they make up eleven percent of homeless adults and twenty percent of homeless youth. [FN[FN82]] California is home to the largest population of American Indians in the United States (650,000) [FN[FN83]] and contains reservation land of 109 of the 560 federally recognized tribes. [FN[FN84]] Indigenous Native Americans in California represent approximately 333,511 individuals. [FN[FN85]] Therefore, federal and state governmental and law enforcement agencies should devote more energy to combating human trafficking in tribal areas, especially considering the long history of official abuse and neglect that Native Americans have suffered. [FN[FN86]]

2. Data on Human Trafficking of Native Americans

Collecting accurate and reliable data on human trafficking and crimes occurring on tribal lands is particularly difficult. Many crimes committed on tribal lands go unreported to federal and state law enforcement agencies for a myriad of reasons: lack of trust in the judicial system, belief that reporting a crime will not materialize in a beneficial outcome, law enforcement's lack of understanding of cultural or traditional sensitivities, and law enforcement's fundamental misunderstanding of criminal jurisdiction in a state governed by Public Law 280. [FN[FN87]] The lack of reportable crime data in Indian country caused the United States Department of Justice to convene a national conference in 2006. [FN[FN88]] In 2010, the Office for Victims of Crime (OVC) held a focus group on human trafficking of American Indian and Alaska Native women and children. [FN[FN89]] In testimony before the United States Senate, Principal Deputy Assistant Attorney General Mary Lou Leary supported this focus group, stating:

Participants discussed how human trafficking is affecting American Indian and Alaska Native women and children, looked at who is being trafficked and for what purposes, identified gaps in services and research, and discussed promising practices and cultural considerations in providing services—information which will help inform [the United States Department of Justice's] response to human trafficking in Indian Country. [FN[FN90]]

The OVC held a question and answer session with Native American trafficking experts Suzanne Koepplinger and
Alexandra Pierce, who answered some of the fundamental questions from a Native American's perspective. [FN[FN91]] Professor Pierce acknowledged that she is unaware of any *466 human trafficking research specifically focused on American Indians and attributed that absence to logistical hurdles in gathering data. [FN[FN92]] However, she did not dispute or discount the existence of trafficking in the Native American population. [FN[FN93]] When the interviewer asked Pierce to discuss the methods used to recruit American Indian victims into sex trafficking, Pierce responded:

Native girls are recruited by people within the American Indian community and by people outside the Native community. Within the community, these include boyfriends who are pimps or gang members (both Native and non-Native), gang girls (usually Native) who use guerrilla pimping/recruitment through violence, friends already in prostitution, pimps (male and female) that promise safety to desperate women and girls then call in the debt, finesse pimping. One major point of entry is young girls, often underage, being recruited by pimps to work as dancers in strip clubs. They are promised a high-paying, glamorous career, and then isolated from their support systems by putting them on a circuit where they are moved from strip bar to strip bar. Once isolated, the pimp either emphasizes how much more money they could be making if they trade sex to customers, or he forces them. Either way, girls working the strip bar circuit are very quickly moved into prostitution. [FN[FN94]] The interviewer next asked Pierce if sex trafficking of American Indians is becoming a more recent problem on reservations. [FN[FN95]] Pierce replied:

[The] short answer is that I think more of the younger girls are being trafficked than in the past, and Native gangs are more involved in trafficking them--but there is so much back-and-forth traffic from [Minnesota] cities and reservations that it's hard to say where the problem is growing fastest. The tribal advocates told us that the discussion of sex trafficking of Native women and girls is only beginning on reservations. [FN[FN96]]

Ms. Koepplinger also suggested that their research “showed that some of the victims are indeed being transported from reservations to urban areas *467 or outside the reservation, but that trafficking is also happening within the boundaries of cities and towns.” [FN[FN97]] While they did not gather data on the trafficking of Native boys, Ms. Koepplinger indicated that research on Native boys may be an appropriate subject for a future study. [FN[FN98]]

A report from the United States Department of Justice (DOJ) illustrates the lack and difficulty of obtaining reliable statistical data. While the DOJ has compiled the most comprehensive statistical data and analysis on human trafficking within the United States, human trafficking of Native Americans was still marginalized in the data. [FN[FN99]] The DOJ Statistics Special Report, Characteristics of Suspected Human Trafficking Incidents 2007-08, [FN[FN100]] recognized Native Americans as a segment of the United States population but included them in the “Other” category under the Origin/Race classification. [FN[FN101]] Strangely, the most recent report on Characteristics of Suspected Human Trafficking Incidents, 2008-2010 [FN[FN102]] completely failed to account for Native Americans. [FN[FN103]] Under the definitional footnote for the “Race/Ethnicity”, the government did not mention Native Americans in the “Other” category. It is extremely unlikely that Native Americans have ceased to suffer from human trafficking. Therefore, the government's failure to list Native Americans as a represented class in the statistical analysis exemplifies official ignorance of Native Americans as victims of human trafficking and of tribal lands as active locations for these crimes.

The California Criminal Justice Statistics Report also separates reported crimes by ethnicity. [FN[FN104]] The report reflects a statewide aggregation and does not focus on a particular location where crimes occurred, such as
offenses occurring in Indian country. [FN[FN105]] The data collected combines those who are *468 not white, black, or Hispanic into a generic category of “Other.” [FN[FN106]] Unlike the DOJ report, the California report fails to define the category for “Other.” [FN[FN107]] Presumably this category would not only include Native Americans, but also Pacific Islanders, Hmong, Middle Easterners, Chinese, Japanese, and other people of Asian descent. [FN[FN108]] Therefore, any attempt to extract or draw meaningful statistical assumptions applicable to Native Americans from this statistical model would be speculative.

Native Americans living on tribal lands undoubtedly wish to keep trafficking out of their communities, but crime has a global reach and transcends borders. Criminal enterprises seek to exploit technological advancements [FN[FN109]] and lax law enforcement [FN[FN110]] to advance their monetary goals. As human trafficking expands, finding new consumers to supply and communities to exploit, law enforcement must maintain a high level of awareness and competency. Gathering statistical data is a starting point for enforcement, demonstrating both crime trends and structural weaknesses. Initially, law enforcement must accurately assess the realities before formulating strategies and tactics. Without a reliable database and collection process, it is difficult, if not impossible, to secure funding, as well as develop the programmatic and evaluative strategies necessary to address crimes victimizing this underrepresented population.

III. Human Trafficking Laws That Affect Native Americans in California

Criminal jurisdiction in Indian country is a complex web of state and federal statutory action, enhanced by case law. This overlap could prevent law enforcement from adequately enforcing human trafficking laws. In order to examine and hopefully address law enforcement's jurisdictional confusion, one must first try to unravel the varying jurisdictional overlaps.

*469 A. Federal Statutes

Indian tribes initially possessed exclusive jurisdiction over crimes committed in Indian country and perpetrated by one tribal member against another. [FN[FN111]] However, the Supreme Court, in Oliphant v. Suquamish Indian Tribe, held that tribal jurisdiction over non-Indians in Indian country relinquished when tribes “submit[ted] to the overriding sovereignty of the United States . . . .” [FN[FN112]]

Absent authority expressly granted by Congress, states lacked criminal jurisdiction over crimes committed by Native Americans on Native grounds. [FN[FN113]] While sole tribal jurisdiction exists, there is also a substantial overlap or concurrent jurisdictional authority with state and federal law enforcement. [FN[FN114]] Constitutional rulings and treaty-based agreements created this jurisdictional morass. [FN[FN115]] These rulings and agreements acknowledged the connection between actions that occur on tribal lands and their effect on citizens off of tribal lands, as well as the ability of a state to extend its umbrella of statutory protections for its citizens onto reservation land. [FN[FN116]]

The General Crimes Act is one of the most important federal criminal statutes applicable in Indian country pertaining to jurisdiction. [FN[FN117]] This Act states the following:
The general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States . . . shall extend to the Indian country.

This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively. [FN[FN118]] The statute's primary purpose is to govern prosecution of Indians by non-Indians for criminal and non-major crimes. [FN[FN119]] Although more limited, the General Crimes Act also applies to Indians by providing three scenarios in which the act specifically does not apply: (1) crimes by Indians against Indians; (2) crimes committed in Indian country by Indians that have been punished by the tribe for the crime; and (3) crimes over which a treaty gives exclusive jurisdiction to the tribe. [FN[FN120]]

1. State Criminal Jurisdiction Application Through Public Law 280

Public Law 280, [FN[FN121]] enacted in 1953, was comprehensive federal legislation transferring federal criminal jurisdiction to state criminal jurisdiction in Indian country. [FN[FN122]] This was a significant departure from the longstanding balance of jurisdictional authority that had previously existed between tribal, federal, and state authorities. [FN[FN123]] Congress gave six states (referred to as the “mandatory states”) [FN[FN124]] extensive mandatory criminal and civil jurisdiction [FN[FN125]] over tribal lands within those states and permitted other *471 states (referred to as the “optional states”) the option [FN[FN126]] to assume complete or partial jurisdiction over crimes in Indian country. [FN[FN127]] Nine states exercised this option before Congress amended Public Law 280 to require tribal consent to state jurisdiction. [FN[FN128]] Since 1968, no tribe has consented to jurisdiction under state law. [FN[FN129]]

Public Law 280 did not abolish tribal jurisdiction. [FN[FN130]] However, the Bureau of Indian Affairs (BIA) understood Public Law 280 as a mandate to withdraw or reduce federal funding for services to tribes in states governed by Public Law 280, including law enforcement and tribal justice system funding. [FN[FN131]] When tribes voiced their opposition to the reduced funding, the Government diverted federal monies from educational programs to pay law enforcement. [FN[FN132]] Despite increasing the enforcement burden, mandatory states did not receive additional federal funding for their newly imposed obligations. [FN[FN133]] These obligations clearly necessitate the hiring of “more police, more judges, more prison guards, more probation and parole officers, and more juvenile aide officers, and[ would . . . require the] build[ing of] new police stations, courthouses, and jails.” [FN[FN134]] Inadequate law enforcement funding levels would prove to be a constant, prolonged, and ongoing *472 battle. [FN[FN135]] Nowhere was this lack and reallocation of funding more damaging than in California. [FN[FN136]]

As tribes not governed by Public Law 280 attempted to assert their sovereignty through the passage of the Indian Civil Rights Act of 1968, [FN[FN137]] Congress increased federal funding for those tribe members, diverting it from the tribes under Public Law 280. [FN[FN138]] Tribes that were forced to recognize Public Law 280 found themselves in an untenable position with a substantial loss of sovereignty over criminal law enforcement on Native lands coupled with decreased funding to fight crime on those lands. [FN[FN139]]

In 1974, Wendell Chino, President of the National Congress of American Indians, condemned Public Law 280, stating the following:

As far as the American Indians are concerned it is a despicable law . . . On those reservations where states have assumed jurisdiction under the provisions of Public Law 280, lawlessness and crimes have substantially increased and have become known as a no man's land because the state and federal officials will not assume the responsibility of Public Law 280. [FN[FN140]] Stories of unreasonable law enforcement delay or inadequate response to crime on reservation lands are common. [FN[FN141]] Unlike some tribes in states that are not under the jurisdiction provisions of Public Law 280, many of the tribes in California do not operate a tribal court or law enforcement system and rely instead on the State of California for protection, as mandated under Public Law 280. [FN[FN142]]

*473 Public Law 280 has a substantial impact on Native Americans. The legislation has affected law enforcement in twenty-three percent of the reservation-based tribal population in the lower forty-eight states and Alaska. [FN[FN143]] This encompasses fifty-one percent of all federally recognized tribes in the lower forty-eight states and seventy percent of all recognized tribes, including Alaska Native villages. [FN[FN144]]

Limited and uncertain state jurisdiction under Public Law 280, coupled with the absence of tribal justice and law enforcement systems, [FN[FN145]] has resulted in a perceived explosion of lawlessness on reservations. [FN[FN146]] Crime data for reservations in states covered by Public Law 280 does not exist, as law enforcement fails to differentiate between crimes that occur in Indian country and in the non-Indian country parts of the state. [FN[FN147]] Preliminary data from California reservations suggests a higher crime rate than other parts of the state. [FN[FN148]] The lack of data also has the unsettling ancillary effect of preventing analysis of how county prosecutors are conducting investigations and exercising their discretion in Indian country cases, or even how judges and juries respond to cases originating from Indian country.

In 2007, Carole Goldberg, a professor at UCLA School of Law, [FN[FN149]] and others, finalized a report entitled Law Enforcement and Criminal Justice Under Public Law 280. [FN[FN150]] This report specifically analyzes the effectiveness of Public Law 280 in California Indian country. [FN[FN151]] The report highlights the lack of awareness and misunderstanding of state jurisdiction both by law enforcement and Native residents. [FN[FN152]]

When asked about state law applying to Indian country, sixteen percent *474 of criminal justice personnel interviewed were unaware of its proper scope. [FN[FN153]] One response was, “It is not something I’ve ever thought of.” [FN[FN154]] Not all residents on the reservation grasp the extent to which California law applies. [FN[FN155]] Some sample responses included:

It’s real typical for people to think that the police can't come on here, they can't do anything to you here . . . . . I mostly think that the lack of understanding is because they have no knowledge of it really. And the tribal members mostly think that, “Well, we are federal. Cops can't come out here.” . . . and for whatever reasons, they want to believe just that. [FN[FN156]] California tribes have experienced a high level of state resistance to effective law enforcement trainings and continued levels of inadequate federal funding. [FN[FN157]] These ingredients have created a foreseeable outcome of poorly trained law enforcement officers and underfunded justice systems.

2. Tribal Law and Order Act
In 2010, Congress addressed disproportionate crime rates on tribal lands by enacting the Tribal Law and Order Act (TLOA). [FN[FN158]] In signing the bill, President Obama remarked that it is “unconscionable that crime rates in Indian [country] are more than twice the national average and up to 20 times the national average on some reservations.” [FN[FN159]] TLOA supplements Public Law 280 by permitting tribal governments in Public Law 280 states “to request that the Federal Government exercise concurrent jurisdiction over reservation crimes, with consent by the Attorney General.” [FN[FN160]] According to *475 Jacqueline Johnson-Pata, Executive Director of the National Congress of American Indians, the “purpose of this change is to address long standing concerns that some states and local governments have not fully addressed reservation crime under [Public Law] 280.” [FN[FN161]] In the first year and a half of the implementation of TLOA, no Native American tribe has chosen to exercise this jurisdictional option. [FN[FN162]] However, Indian nations suffering unchecked human trafficking may consider contacting federal law enforcement to investigate and prosecute these crimes under the Federal Trafficking Victims Protection Act (TVPA). [FN[FN163]]

B. California Human Trafficking Statutes

In 2005, California passed its broadest and most aggressive legislation in the fight against human trafficking: the California Trafficking Victims Protection Act. [FN[FN164]] This act created state civil [FN[FN165]] and criminal penalties [FN[FN166]] for *476 human trafficking and allowed limited criminal forfeiture of assets derived from human trafficking. [FN[FN167]] One forward thinking aspect of this act was its specific inclusion of a nuanced criminal restitution code for trafficked victims. [FN[FN168]] California Penal Code section 1202.4(q) gives four options for calculating human trafficking criminal restitution and instructs the court to choose the calculation that results in the greatest recovery for the victim. [FN[FN169]] These protections are designed to help protect and restore victims and hold traffickers accountable. [FN[FN170]]

Human trafficking is a complex crime. Traffickers swiftly adapt to local circumstances by reacting to market demands and exploiting weaknesses in prevailing laws. The California State Legislature has acted in an aggressive, flexible, and forward-thinking manner. However, if law enforcement does not fully enforce the laws, traffickers will find ways to subvert the process. Enforcement vacuums will frustrate the statewide combat of trafficking in California.

IV. A California Trafficker May Not Claim Tribal Sovereign Immunity to Avoid State or Federal Prosecution

“Violence against Native [American] women has reached epidemic proportions.” [FN[FN171]] This Part examines the California jurisdictional structure and the ability of law enforcement to track and identify human trafficking rings and victims. Consequently, this Part provides insight into the extent that Native Americans may be at risk of human trafficking.

*477 A. Absence of Individual Sovereign Immunity Based on Native American Heritage

The term “sovereignty” has a deeply complex, powerful, and expansive definition. In its most basic sense, the term relays the inherent right or power to govern oneself. [FN[FN172]] The problem that Native Americans face with sovereignty is long and abstruse. While it is beyond the scope of this Article to expansively examine Native American sovereignty, this subsection will address the topic only as it directly relates to human trafficking among Native
Americans. Tribal sovereignty has substantially operated as a shield against intrusions by the State, absent some congressional authorization or tribal consent. [FN[FN173]]

Tribal immunity does not completely immunize individual tribal members from criminal culpability. [FN[FN174]] Immunity is generally afforded to tribal governments, enabling them to perform their official duties without the threat of liability for their actions. [FN[FN175]] Individual Indians who go beyond reservation boundaries are subject to nondiscriminatory state and federal laws of general application. [FN[FN176]] In McClanahan v. Arizona State Tax Commission, the Supreme Court held that state law could only intrude into Indian country under two conditions, if: (1) there was no interference with tribal self-government; and (2) non-Indians were involved. [FN[FN177]] Unless specifically authorized by an act of Congress, the jurisdiction of state governments and the application of state laws do not extend to Indian lands. [FN[FN178]] As discussed in Part III regarding Public Law 280, Congress has granted California criminal and civil jurisdiction in Indian country.

B. De Facto Immunity for Traffickers

Predators seek out the path of least resistance and vulnerable populations to prey upon. These populations are usually characterized by “high rates of poverty, lack of education, lack of employment opportunity, social normalization of violence against women, fractured social structure, *478 and high rates of demand for prostituted women.” [FN[FN179]] Native American communities suffer from many, if not all, of these characteristics and are among the poorest in the United States. [FN[FN180]]

Criminal enterprises have long targeted and exploited Indian country as a base of operation, successfully capitalizing on jurisdictional loopholes and lack of law enforcement. [FN[FN181]] With street gangs rapidly expanding into human trafficking, criminal enterprises will likely focus on Native American women and tribal lands. [FN[FN182]] “Traffickers and pimps specifically target native girls” due to their “versatilty,” [FN[FN183]] which allows traffickers to advertise them as being of Hawaiian, Native American, Native Canadian, or Asian descent. [FN[FN184]] According to the Federal Bureau of Investigation (FBI), organized criminal or traditional street gangs conduct much of the trafficking of Native Americans. [FN[FN185]] Specifically, Native American women are perceived as an exploitable resource. [FN[FN186]] Furthermore, tribal lands have become havens for drug traffickers, because they provide shelter necessary for the business—a remote location and the prevalence of a culture of shame, silence, and distrust of authority. [FN[FN187]]

Violence against Native American women has reached epidemic levels. [FN[FN188]] The Senate Committee on Indian Affairs has predicted that thirty four percent of Native American women will be raped in their lifetime and thirty-nine percent will be the victim of domestic violence. [FN[FN189]] The committee has also reported that “non-Indian perpetrators are well aware of the lack of Tribal jurisdiction over them, the vulnerability of Indian women, and the *479 unlikelihood of being prosecuted by the Federal Government (or state government in Public Law 280 states) for their actions.” [FN[FN190]]

The Minnesota Human Trafficking Task Force found that over a three-year period, 345 American Indian girls fell victim to commercial sex trafficking. [FN[FN191]] Tribal advocates report that small rural bars traffic Native American girls through “strip shows,” during hunting and fishing season. [FN[FN192]] In congressional testimony,
Professor Sarah Deer highlighted statistical data showing that seventy percent of the women interviewed knew another who had been “lured, tricked or trafficked into [sexual exploitation].” [FN[FN193]]

Sex trafficking of Native American women is not isolated to Minnesota tribes. In 2004, the Washington State Task Force Against Trafficking of Persons reported instances where “underage women have been transported from reservation to reservation for the purposes of sexual exploitation.” [FN[FN194]] These young women are enticed with the promise of money and opportunity, and are not fully cognizant of the exploitation that is likely to follow. [FN[FN195]]

Scholars have recently recognized a lack of research on human trafficking of Native Americans. [FN[FN196]] As a result, reports have emerged that delve deeper into addressing hurdles facing law enforcement, explore trafficker demographics, [FN[FN197]] and survey relevant tribal criminal codes. [FN[FN198]] One particular area that is garnering significant attention is the growth of gang activity, including Native gangs, and their expansion into the human trafficking trade. [FN[FN199]] In a report from 2011, the National Intelligence Center of the FBI explained that the increase of gang involvement in human trafficking was “primarily due to [its] profitability and lower risk of detection and punishment [compared with] drug and weapons trafficking.” [FN[FN200]] *480 Criminal organizations are increasingly taking advantage of the lax law enforcement in Indian country. [FN[FN201]] Traffickers have been exploiting the 28,000 acres in the St. Regis Mohawk Territory, which are off limits to United States and Canadian authorities. [FN[FN202]] The Intelligence Center also noted the increase in gang presence on reservation land stating, “Native American gang members, operating on numerous reservations throughout the United States, are emulating Hispanic, . . . African American, . . . and predominately Caucasian gangs such as the Juggalos.” [FN[FN203]]

Giving police officers “the tools to recognize trafficking victims” is an essential first step in combating trafficking. [FN[FN204]] Without appropriate training, an officer who encounters a trafficked victim is not likely to recognize the situation, and thus fail to adequately respond. [FN[FN205]] A promising approach to effective training and victim identification is the establishment of active and dedicated multidisciplinary task forces and coalitions. [FN[FN206]] Regional task forces are a collaboration of federal, state, and local law enforcement agencies. [FN[FN207]] With the assistance of nongovernmental organizations, these task forces are able to tailor training to address unique customs and circumstances of their local communities. [FN[FN208]] California currently has nine task forces, three that are state-funded and six that are federally funded. [FN[FN209]] Many of the task force regions are geographically proximate to or include tribal lands. [FN[FN210]] Law enforcement officials should capitalize on this local expertise and focus on the vulnerability of Native Americans to human *481 trafficking. While identification and protection of trafficked persons across California share many common themes, understanding the local complexities of human trafficking and providing flexibility for regional law enforcement is an innovative, smart, and nuanced way to combat the crime.

V. Conclusion

While numerous challenges remain to understanding and effectively combating human trafficking, the lack of awareness about law enforcement jurisdiction should not be one of them. As integrated societies and criminal justice systems, California and Indian Nations must work together to develop an understanding of relevant human trafficking laws in order to protect Native American communities. If traffickers perceive weakness or lax law enforcement, they
will work tirelessly to exploit it. “Trafficking of any kind is notoriously difficult” to detect as traffickers rely on vulnerabilities in their victims to avoid being reported. [FN[FN211]] The lack of documented Native American victims of human trafficking reflects inadequate research and data collection rather than an absence of criminal activity. [FN[FN212]] Native Americans exhibit many of the characteristics of vulnerability that traffickers seize upon. [FN[FN213]] History provides ample evidence that traffickers view reservations as soft targets. [FN[FN214]] Traffickers, some who are connected to organized crime, actively target Native American women. [FN[FN215]] Trafficking recruiters often mislead victims into believing that the opportunities offered will bring them affection and money. [FN[FN216]] These techniques morph into debt bondage and further isolation from the public. [FN[FN217]]

Human trafficking thrives on secrecy and operates in the shadows. Just as traffickers seek out vulnerable individuals, they also base their operations in locations that provide the maximum amount of coverage from law enforcement and prosecutors. [FN[FN218]] Tribal lands, as a result of the underfunding of law enforcement and the fundamental misunderstanding of applicable criminal laws and jurisdictional duties, may provide fertile soil for a strong yet invisible industry of human trafficking. Taking a proactive approach to highlight and correct weaknesses in the criminal and civil jurisdictional structure will deny traffickers a potential breeding ground. The full force of California’s criminal jurisdiction extends onto reservation land. [FN[FN219]] While detection of trafficked victims remains a hurdle that is best addressed with education and training, the ignorance of enforcement agencies of their own jurisdiction should not persist. Native Americans should be able to live in secure environments free from predation by human traffickers.

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[FN[FNd1]]. The terms “American Indian,” “Native American,” and “Indian” will be used interchangeably. Should any person take offense, the Author is deeply sorry, as that was not his intent.

[FN[FN1]]. The Wisdom of the Native Americans 69 (Kent Nerburn ed., 1999).


[FN[FN4]]. See generally Farley et al., supra note 3; Shattered Hearts, supra note 3.


[FN[FN8]]. Id.

[FN[FN9]]. 18 U.S.C. §1151 (2006) (defining Indian country: “Except as otherwise provided in sections 1154 and 1156 of this title, the term “Indian country”, as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.”).


[FN[FN11]]. See generally Shattered Hearts, supra note 3.

[FN[FN12]]. Sandra Day O’Connor, Lessons from the Third Sovereign: Indian Tribal Courts, 33 Tulsa L.J. 1, 1 (“Today, in the United States, we have three types of sovereign entities--the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.”).


[FN[FN14]]. An Act for the Government and Protection of Indians, 1850 Cal. Stat. 408-10; “Lo, the Poor Indian,” Alta California, Apr. 7, 1855, at 2, col. 1, available at

http://cdnc.ucr.edu/cdnc/cgi-bin/cdnc?a=d&d=DAC18550407&cl=CL1%eDAC&e=-------en--20--1--txt-IN-altacalifornia----#

[FN[FN15]]. A History of American Indians in California, supra note 13; Relocation Revisited, supra note 13, at 640.

[FN[FN16]]. A History of American Indians in California, supra note 13; Relocation Revisited, supra note 13, at 640.


[FN[FN21]]. A History of American Indians in California, supra note 13; Relocation Revisited, supra note 13, at 640.

[FN[FN22]]. A History of American Indians in California, supra note 13; Relocation Revisited, supra note 13, at 640.

[FN[FN23]]. A History of American Indians in California, supra note 13; Relocation Revisited, supra note 13, at 640.

[FN[FN24]]. Id.

[FN[FN25]]. See Johnston-Dodds, supra note 20, at 22.

[FN[FN26]]. Johnston-Dodds, supra note 20, at 10 (quoting Lo, the Poor Indian, supra note 14, at 2, col.1).

[FN[FN27]]. Id.

[FN[FN28]]. Id. at 12.

[FN[FN29]]. A History of American Indians in California, supra note 13 (citation omitted).

[FN[FN30]]. Id.
[FN[FN31]]. Id.

[FN[FN32]]. Id.

[FN[FN33]]. Id.


[FN[FN38]]. Id.

[FN[FN39]]. Id. at 45 (explaining that while domestic servitude is a form of forced labor, it has traditionally been separated from other forms of forced labor, such as mining and agricultural work).


[FN[FN43]]. Cal. Penal Code § 236.1 (Deering 2008) (“Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking.”); Cal. Penal Code §§ 266, 266h, 266i, 267 (Deering 2008) (addressing different forms and factual circumstances of prostitution); Cal. Penal Code § 311.4 (Deering 2008) (addressing illegal employment or use of a minor for prohibited acts); Cal. Penal Code § 518 (Deering 2008) (addressing extortion).

[FN[FN45]]. The State of Human Trafficking in California, supra note 34, at 3.

[FN[FN46]]. Relocation Revisited, supra note 13, at 625.


[FN[FN48]]. Id.


[FN[FN51]]. U.S. Dep’t of Justice, Report to Congress from Attorney General John Ashcroft on U.S. Government Efforts to Combat Trafficking in Persons in Fiscal Year 2003, at 9 n.1 (2004), available at http://www.justice.gov/archive/ag/annualreports/tr2003/050104 agreporttocongresstvprav10.pdf (“In Fiscal Year 2002, the Office of Refugee Resettlement issued letters to benefit offices in fourteen states, of which the largest concentrations were to Texas (31 percent) [sic], Florida (nineteen percent), and California (fourteen percent). Note that these concentrations reflect where victims were living after victimization and do not necessarily reflect where they were victimized.”); About the Issue: A Serious Problem-- Around the Globe and in the USA, Coalition to Abolish Slavery & Trafficking, http://www.castla.org/key-stats (last visited Sept. 25, 2012) (noting that California, New York, Texas, and Nevada are top destinations for trafficked victims in the United States).


[FN[FN54]]. Id.

[FN[FN55]]. Id.


[FN[FN58]]. See generally Farley et al., supra note 3; Shattered Hearts, supra note 3.

[FN[FN59]]. See generally Shattered Hearts, supra note 3.


[FN[FN61]]. Relocation Revisited, supra note 13, at 677.


[FN[FN63]]. Shattered Hearts, supra note 3, at 46.

[FN[FN64]]. Id.

[FN[FN65]]. Id.


[FN[FN67]]. Shattered Hearts, supra note 3, at 50.

[FN[FN68]]. Id. at 51.

[FN[FN69]]. Id. at 45, 94.

[FN[FN70]]. Id. at 68.

[FN[FN71]]. See generally id.; Farley et al., supra note 3.

[FN[FN72]]. See generally Shattered Hearts, supra note 3, at 98.
[FN[FN73]]. Id. at 31.

[FN[FN74]]. Id.

[FN[FN75]]. Farley et al., supra note 3, at 14, 25, 27.

[FN[FN76]]. See generally Shattered Hearts, supra note 3.

[FN[FN77]]. Farley et al., supra note 3, at 3.

[FN[FN78]]. Id. at 32.

[FN[FN79]]. Id.


[FN[FN82]]. Farley et al., supra note 3, at 16.

[FN[FN83]]. This number constitutes both indigenous and non-indigenous Native Americans living in California.


[FN[FN86]]. Johnson, supra note 47, at 633.


[FN[FN88]]. Id. (“The primary purpose of this event was to discuss the systematic issues contributing to the lack of information among PL-280 states.”).


[FN[FN90]]. Id. at 12.


[FN[FN92]]. Id.

[FN[FN93]]. Id.

[FN[FN94]]. Id.

[FN[FN95]]. Id.

[FN[FN96]]. Id.

[FN[FN97]]. Koepplinger & Pierce, supra note 91.

[FN[FN98]]. Id.


[FN[FN100]]. Id. at 5.

[FN[FN101]]. Id. The “Other” category included “American Indians, Alaska Natives, Native Hawaiians, other Pacific
Islanders, and persons of two or more races.” Id.


[FN[FN103]]. See id.


[FN[FN105]]. Id.

[FN[FN106]]. Id.

[FN[FN107]]. Id.

[FN[FN108]]. Id.


[FN[FN116]]. See id. at 19-20.


[FN[FN118]]. Id.


[FN[FN123]]. Id.

[FN[FN124]]. “Mandatory states” are those states where the federal government relinquished its Indian country criminal jurisdiction, and declared that state criminal laws shall be effective over Indians within, as well as outside, Indian country. Office of Justice Programs, U.S. Dept of Justice, Nat'l Inst. of Justice, Public Law 280 and Law Enforcement in Indian Country--Research Priorities 3 (2005), [hereinafter NIJ, Research Priorities], available at https://www.ncjrs.gov/pdffiles1/niij/209839.pdf. These state legislatures were not required to take any further action to acquire jurisdiction and could not refuse it. Id. The six mandatory states are California, Minnesota, Nebraska, Oregon, Wisconsin, and, subsequently upon statehood, Alaska. Id. Public Law 280 expressly excluded a few tribes in these states from state jurisdiction. Id. These tribes were the Confederated Tribes of the Warm Springs Reservation (Oregon) and the Red Lake Band of Chippewa Indians (Minnesota). Id.

[FN[FN125]]. Gardner & Melton, supra note 122 (explaining that Public Law 280 expressly declines to authorize states to interfere with hunting, fishing, alienation, encumbrance, or taxation of any real or personal property, including water rights).

[FN[FN126]]. “Optional states” are states that may choose whether to assume Indian country criminal jurisdiction. NIJ, Research Priorities, supra note 124, at 4. Unlike mandatory states, these states legislatures would be required to affirmatively accept this duty by legislative acknowledgement before they could exercise such jurisdiction. Id.

[FN[FN127]]. Gardner & Melton, supra note 122.
Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington all exercised the Public Law 280 option. NIJ, Research Priorities, supra note 124. Some of these states made their acceptance contingent on tribal or individual Indian consent, which was never forthcoming. Id. Other states acceptance of jurisdiction was limited to specific subject areas. Id. For example, Arizona’s legislation limits state jurisdiction to air and water pollution. Gardner & Melton, supra note 122.

Gardner & Melton, supra note 122.

Research Priorities: Law Enforcement in Public Law 280 States, supra note 113, at 3-4 n.11 (citation omitted) (“For example, a 1975 report of the BIA Division of Law Enforcement Services recommends that with respect to funding equity among tribes, ‘guidelines should be based on the assumption that the BIA will provide sufficient funding for a basic law enforcement program in all parts of Indian country where Federal Indian jurisdiction exists’... [T]his statement is [implying] that tribes in Public Law 280 states should be excluded, regardless [of] whether they possess concurrent jurisdiction. It should be noted that the BIA has recently executed a deputization agreement with a PL-280 tribe, the Cabazon Band of Mission Indians in California, for the enforcement of all federal laws that apply to their reservation.”).

Id. at 4, 17.


Id. at 499 (internal quotation marks omitted).

David H. Gretches et al., Cases and Materials on Federal Indian Law 497 (5th ed. 1998) (“Financial hardship for the states translated into inadequate law enforcement for the reservations. The most notable failure among the mandatory states was Nebraska, where the Omaha and Winnebago reservations were left without any law enforcement at all once federal officers withdrew.”).

Goldberg-Ambrose, supra note 7, at 1418.


[FN[FN140]]. Research Priorities: Law Enforcement in Public Law 280 States, supra note 113, at 5 (internal quotation marks omitted).

[FN[FN141]]. Goldberg-Ambrose, supra note 7, at 1425 (quoting congressional testimony from John Mazetti, Vice Chair of the Rincon tribe, “[t]he County Sheriff’s Office response to criminal activity is almost non-existent. When the Sheriff’s Office receives a call regarding gunfire and someone being shot, it often takes them more than one hour to respond to the incident, if at all. With criminal activities of a lesser degree, often the County Sheriff does not respond at all, leaving the reservation with little or no protection.”).

[FN[FN142]]. Id.


[FN[FN144]]. Id.

[FN[FN145]]. Id. at 386 (citation omitted) (“For those tribes that lack police departments but are fortunate enough to have substantial resources from gaming or other economic development, law enforcement services agreements have become a way of enhancing police services from county sheriffs. Examples include agreements between the Soboba Band of Mission Indians and Riverside County, California (2006), Blue Lake Rancheria and Humboldt County, California, the Confederated Tribes of Grand Ronde and Polk County, Oregon (1999), the Muckleshoot Tribe and King County, Washington (2000), and the Ho Chunk Nation and Jackson County, Wisconsin (2005).”).

[FN[FN146]]. See id. at viii-x (inferring that a decrease in services leads to an increase in lawlessness).

[FN[FN147]]. Id. at 21.

[FN[FN148]]. Id. at 21-22, 474.


[FN[FN151]]. See generally id.

[FN[FN152]]. See generally id.

[FN[FN153]]. Id. at 54.

[FN[FN154]]. Id.
[FN[FN155]]. Id. at 53-54.


[FN[FN157]]. See id. at 7; NIJ, Research Priorities, supra note 124, at ii (“Affected tribes and States have faced obstacles in complying with the statute, including jurisdictional uncertainty and insufficient funding for law enforcement.”).


[FN[FN161]]. Id.


(a) A victim of human trafficking, as defined in Section 236.1 of the Penal Code, may bring a civil action for actual damages, compensatory damages, punitive damages, injunctive relief, any combination of those, or any other appropriate relief. A prevailing plaintiff may also be awarded attorney's fees and costs.

Id.

[FN[FN166]]. Cal. Penal Code § 236.1 (West 2011):

(a) Any person who deprives or violates the personal liberty of another with the intent to effect or maintain a felony violation of Section 266, 266h, 266i, 267, 311.4, or 518, or to obtain forced labor or services, is guilty of human trafficking.
(b) Except as provided in subdivision (c), a violation of this section is punishable by imprisonment in the state prison for three, four, or five years.

(c) A violation of this section where the victim of the trafficking was under 18 years of age at the time of the commission of the offense is punishable by imprisonment in the state prison for four, six, or eight years.

(d)(1) For purposes of this section, unlawful deprivation or violation of the personal liberty of another includes substantial and sustained restriction of another's liberty accomplished through fraud, deceit, coercion, violence, duress, menace, or threat of unlawful injury to the victim or to another person, under circumstances where the person receiving or apprehending the threat reasonably believes that it is likely that the person making the threat would carry it out.

(2) Duress includes knowingly destroying, concealing, removing, confiscating, or possessing any actual or purported passport or immigration document of the victim....

Id.


[FN[FN178]]. Naughton, supra note 135, at 495-96.


[FN[FN181]]. See, e.g., Elizabeth Ann Kronk, The Emerging Problem of Methamphetamine: A Threat Signaling the Need to Reform Criminal Jurisdiction in Indian Country, 82 N.D. L. Rev. 1249, 1249-51 (2006) (describing a meth ring with connections to Mexican drug cartel, moving their production and distribution factories onto the Wind River Indian Reservation with the hopes of exploiting insufficient criminal jurisdictional schemes and awareness); see also Christopher B. Chaney, Overcoming Legal Hurdles in the War Against Meth in Indian Country, 82 N.D. L. Rev. 1151, 1155 (2006) (noting that “drug dealers are targeting Indian country jurisdictions for drug trafficking”).

[FN[FN182]]. Nat'l Gang Intelligence Ctr., supra note 66.

[FN[FN183]]. Pierce & Koepplinger, supra note 35, at 1.

[FN[FN184]]. Id.

[FN[FN185]]. Nat'l Gang Intelligence Ctr., supra note 66.

[FN[FN186]]. Id.

[FN[FN187]]. Goldberg-Ambrose, supra note 7, at 1425 n.68.

[FN[FN188]]. Violence Against Women Reauthorization Act, supra note 171.

[FN[FN189]]. Senate Committee on Indian Affairs, supra note 160.

[FN[FN190]]. Id.

[FN[FN191]]. Id.


[FN[FN193]]. Native Women: Protecting, Shielding, and Safeguarding Our Sisters, Mothers, and Daughters: Hearing


[FN[FN195]]. Id.


[FN[FN197]]. Id. at 624.

[FN[FN198]]. Id. at 622.

[FN[FN199]]. Nat'l Gang Intelligence Ctr., supra note 66.

[FN[FN200]]. Id. at 23.

[FN[FN201]]. Johnson, supra note 47, at 679.


[FN[FN203]]. Nat'l Gang Intelligence Ctr., supra note 66, at 34.


[FN[FN205]]. Johnson, supra note 47, at 667, 674.


[FN[FN208]]. Id.

[FN[FN209]]. Cal. Dep't Justice, supra note 34 (indicating that task forces are located in North Bay (San Francisco), East Bay (Oakland), Los Angeles, Fresno, San Diego, San Jose, Orange County, Riverside County, and Sacramento County.)

[FN[FN210]]. See generally id.

[FN[FN211]]. Relocation Revisited, supra note 13, at 676 (citing David R. Hodge, Sexual Trafficking in the United States: A Domestic Problem with Transnational Dimensions, 53 Soc. Work 143, 148 (2008)) (“Traffickers deliberately seek out obscure venues to avoid detection. Victims often remain in the shadows because of the fear of arrest; reprisals from traffickers; or the fear that officials are corrupt, unconcerned, or aligned with the traffickers ....”).


[FN[FN213]]. Johnson, supra note 47, at 625.

[FN[FN214]]. Id. at 621.

[FN[FN215]]. Farley et al., supra note 3, at 27.

[FN[FN216]]. Johnson, supra note 47, at 639

[FN[FN217]]. Id.

[FN[FN218]]. See generally Shattered Hearts, supra note 3.

[FN[FN219]]. Gardner & Melton, supra note 122.

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