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COMMENTARY

A Research Note on American Indian Criminal Justice

RICH BRAUNSTEIN AND WILLIAM D. ANDERSON

One confronts many difficulties when conducting policy-relevant criminal justice research that focuses on American Indian interests. Foremost among these difficulties is the great variation in relevant contexts that apply to this area of research. From the urban context of large American cities, where American Indians constitute a slim minority that is prone to victimization by members of other racial and ethnic groups, to the solidly rural context within northern Plains reservation communities where American Indians constitute strong majorities and violent crime is likely to be intraracial, there are challenges when it comes to understanding and addressing the dynamics of criminal behavior and its impact on American Indians. These two extremes, and the contexts that lie between, are difficult to compare because of the tremendous variation in interests, behaviors, and legal structures associated with them. The observation that such a continuum exists at all necessitates that we more carefully examine the source of crime and potential remedies in specific contexts and reject “one-size-fits-all” research approaches and policy responses.

The challenges of doing reliable research in this area produces a demand on researchers, policy makers, advocates, and journalists to be disciplined in not presenting incomplete information as fact when arguing for legal or social

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change. What is needed in this area of research and policy-making discourse is a form of humility among those active in the exchange of information in order to describe the limits of what they know carefully so that the true contributions of research and public advocacy are not distorted in the policy realm. We need to get beyond established approaches and biases if we are to advance the call for more just results for the American Indian community and, by extension, the community at large.

This is largely the point of our research on American Indian crime victimization published in this journal. Our sense was that the methods the Bureau of Justice Statistics (BJS) used to study American Indian crime did not take into account the great variation in tribal communities or the context in which tribal communities exist. Similarly, we suspected that although BJS had done a good job studying one aspect of American Indian crime—namely, a national sample of crime victimization patterns outside of Indian country—their published reports were not explicit enough in the discussion of their methods to alert us to the potential shortcomings or limited focus of the BJS research plan. The disclosure of such information is essential.

A statement of the potential weaknesses of the BJS studies on American Indian crime would not diminish the value of this research. In our view, complete transparency in the research community strengthens our contributions and provides a clearer path for others to follow. We understand this is difficult given the conflicts present among stakeholders in this area of research and policy making. However, to this day, we remain confused about the extent to which the 1999 and 2004 BJS reports on American Indian crime included participants who actually live on or near reservations. A conversation with a BJS representative and research author in July 2008 suggested that BJS methods used in its 1999 and 2004 reports excluded tribal members from their victimization sample to protect tribal sovereignty. In the same month distinguished scholars wrote an op-ed piece that showed that approximately 40 percent of the BJS sample included reservation respondents.¹ Such confusion is simply unacceptable in a research area where so much is at stake.

Regardless of the uncertainty about what BJS has in its data file, there are, in our view, three main approaches to conducting research that ought to be considered for this area of study: rely on existing data and research practices; examine established research questions through different lenses to understand the more nuanced aspects of social problems and their solutions better; and focus praxis- or action-driven projects on the ends rather than the means of research efforts. We suggest that a blend of all three will produce a range of benefits. To begin, a blended approach will allow difficult social problems, such as crimes against American Indians, to be treated as multidimensional and contextual. Also, policy solutions that emerge from the research on American Indian crime will be sufficiently varied to account for and address the different contexts in which these crimes occur. Finally, a blended strategy respects the need to engage individuals and organizations responsible for implementing change where change is justified by sound empirical findings.

The first approach to relying on existing data can be useful if researchers creatively mine for new insights into classic problems such as person-on-person

crime, the causes of that criminal behavior, and public-policy approaches to remediating both the crime and its underlying behaviors. It is necessary, however, that such efforts detail the limits of these studies to ensure that they are not improperly presented to policy-maker and stakeholder groups as unqualified or generalizable unless they are genuinely appropriate in all American Indian contexts—an unlikely but possible circumstance.

The BJS data is a useful source because it is collected at regular intervals, canvasses crime victims from across the United States, and relies on individuals to detail how they were victimized. The data's weaknesses, which need to be overcome when pursuing future research under this approach, include a suspect sampling method and unidimensional focus on victimization data. The second research approach requires looking at established research questions and answers through a different set of lenses, including qualitative designs, quantitative case studies, or additional unique approaches. Our article in this journal does this by using a single case study of federal and state crime data from South Dakota to reassess the BJS's long-accepted finding that American Indians are disproportionately victims of interracial crime. Our data focus on tribal and nontribal areas in South Dakota and find that among the federal criminal cases reported on reservations in the state, American Indians are more likely to be victims of intra- rather than interracial crime.

We recognize that our study has limitations and have attempted to be transparent about these limitations. Our hope in challenging BJS's findings was to open up an informed debate among scholars, practitioners, and policy makers regarding the reliability of this research, which is widely cited in press reports, scholarly work, and legislative policy debates. The research method we chose for our study is by no means the only way that one might augment the BJS's findings. It is one of many ways scholars can challenge and build on established wisdom to understand complex social phenomena and, most importantly for this particular research endeavor, help craft public-policy solutions that ensure that American Indians see decreases in violent crime both on- and off-reservation.

The third research approach includes a focus on praxis or action elements in the overall research design.² The orientation of this research approach is to affect social problems or, more simply, change behavior. An ideal form of this research would include quantitative data similar to what BJS has collected during the past eight years (of course, with the inclusion of Native respondents living on and near reservations). Also, case data at the state, federal, and reservation levels should be collected to augment the victim survey data. These data will provide additional insights into cross-tribal variation in crime reporting and the character of inter- and intraracial crime in those contexts. Finally, researchers adopting this approach should spend time collecting narratives at the state, county, and tribal-community levels to engage individuals and organizations directly responsible for facilitating new approaches and living with their implications. Engagement of persons at this level is essential to understanding how crime happens in reservation and nonreservation areas, identifying appropriate policy alternatives, and guiding implementation and community acceptance.

Conducting practical policy research that adequately frames and offers solutions to difficult social problems requires multiple approaches. Here, we have suggested that research in this area should be diverse without being dismissive. We also have argued that transparency and humility are essential if good answers are to follow from difficult problems. Like other scholars and policy makers, we wish to understand the dynamics of crimes against American Indians so that appropriate policy responses can be developed. Collectively, our findings need to be stated explicitly and then be qualified within appropriate contexts. An explicit plan and qualified findings will help us carefully consider alternative approaches for strengthening justice in individual communities.

Through a commitment to methodological pluralism and a willingness to challenge established truths, our belief is that sound research efforts can work to the benefit of Native and non-Native communities. Methodological pluralism of the type that we advocate provides a sound basis for the consideration of alternative research approaches and conclusions. Such research would surely have helped the 2008 review of jurisdictional authority and structural remedies convened by the US Senate Indian Affairs Committee (SIAC). The lack of a common base of information in those deliberations frustrated progress at a time when Congress and the president were motivated to assist tribal efforts to reduce the incidence of crime in reservations and border towns. Although we may have contributed to this frustration through our *AICRJ* article by challenging the applicability of the BJS research to rural Indian country in North and South Dakota, we felt obligated to present an alternative set of findings that could not be reconciled given the data.

It is important to note that our research findings do not compel a specific policy position for or against jurisdictional change in Indian country. We still struggle to discover the impact of jurisdictional arrangements on criminal justice system outcomes. As a research community, we simply do not know the answer to these questions because they have never been systematically studied. There are a few investigators on existing grants who are likely to uncover significant findings, and we suspect a few more studies that have similar potential will launch in the wake of the recent SIAC hearings.

The challenge will be whether or not these studies are able to welcome and synthesize diverse methodological approaches successfully. We believe such approaches increase the chance that the research will provide useful insights capable of being incorporated into policy reform directed at both victims and offenders. Until such time it would be inappropriate to propose structural reform at federal, tribal, or state levels. We believe there is great momentum behind the call for a new approach to protect the rights of American Indian victims and defendants, and this effort needs the support of disciplined and systematic empirical research.

NOTES

1. Carole Goldberg and Kevin Washburn, "More on Lies, Damn Lies and Crime Statistics," *Indian Country Today* 28, no. 8 (2008): 5.

2. Paulo Freire, *Pedagogy of the Oppressed* (New York: Continuum International Publishing Group, 2000).