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Nasrin M. Chaudhry

nasrin.chaudhry@umontana.edu

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The Traffic of Native American Women

Nasrin Chaudhry

University of Montana

Davidson Honors College

Introduction

The United States is faced with endemic rates of violence against Native American women. Studies have shown that Native American women are subject to disproportionate rates of gender-based violence. Moreover, preliminary studies on the rates of sex trafficking among vulnerable populations reveal that native women are also being trafficked at higher rates than non-native women. This paper will include some insights I gained from a collaborative Global Leadership Initiative (GLI) project entitled “Combatting Global Sex Trafficking through the Recollection of its Humanitarian Impact.”

The purpose of this paper, however, is to examine a special case within the issue of sex trafficking: the traffic of Native American women. The paper will explore in depth the ways in which native women may experience sex trafficking differently. Focusing on the historical and legal context of violence against native women in the United States and in Montana, I will analyze why native women are more vulnerable to, and uniquely or differentially affected by, sexual exploitation. I will begin by giving some context on the issue of sex trafficking and some preliminary remarks on its association to native women. Next, I will turn to an analysis of the historical and legal context of the problem. I will then conclude with a proposed solution and some concrete recommendations for action.

Statement of the Problem

Sex Trafficking

He told me I owed him for everything he had done for me. He forced me to dress up like an Indian maiden to fulfill this European Colonizer fantasy for his white friends. Each night I had to dress up and let them control my body – watch with tears of anger sliding

down my face as they disrespected me and my culture – centered on honoring women and their life-giving powers. These white men would whisper racist innuendo as they raped me. They would disrespect my sovereignty as a Native woman.

This excerpt is taken from a fictional script performed this April in a live performance exhibit created by my Franke Global Leadership Initiative sex trafficking research team (see Appendix). Yet, the script is based on real stories of Native American women who are trafficked here locally in Montana.

In writing this and other scripts, my Global Leadership Initiative (GLI) group hoped to bring local community awareness and education to the issue of global human sex trafficking, and the importance of recalling its humanitarian impact. By creating a live performance exhibit, the group aimed to use art and storytelling to bring to life the haunting, lived reality of sex trafficking survivors. The group chose these art forms because we wanted community members to be drawn in, moved, and even inspired to take political action on this issue. It was important for audience members to progress beyond an intellectual understanding of the facts and statistics associated with sex trafficking to gain an emotional understanding of the faces and lives of these resilient women. For example, we wanted community members to think of these women as their daughters and sisters, and begin to process how this trauma may affect the physical, mental, and emotional well-being of trafficking victims.

Through art, we hoped to capture the concrete details of trafficking cases, i.e. who these women are, how they are trafficked, and what legal hurdles they often face. Yet, we could also convey the big picture message: it is a human rights issue when a growing number of lives of young women (and men) in our own community are being uprooted and defiled by traffickers

who are commodifying their bodies and profiting upon their violation. The hope was to engage and inform community members on an important local and global issue.

To understand the depth and severity of the problem, it is important to give some background knowledge and context on the issue of human sex trafficking. Although a complete understanding of human sex trafficking requires the knowledge of its historical context, and its sociocultural, economic and moral implications, I will only give a broad overview of the problem in this section.

The problem of human sex trafficking is a complex global issue. The International Labor Organization (ILO) reports that approximately 4.5 million people across the globe are victims of sexual exploitation each year and, according to the Department of Justice (DOJ), there has been a 59% increase in identified victims of human trafficking worldwide since 2008. Human sex trafficking has become the third largest criminal industry in the globe after drug trafficking, and it is happening within our borders. It is a human rights violation that greatly affects Montanans and the United States.

Globally, the industry of human sex trafficking attains approximately \$32 billion annually. According to the Department of Justice (DOJ), victims are on average between the ages of twelve and fourteen. It is also estimated that less than two percent are able to escape or leave the industry. The majority of victims are forced to remain in a life of sexual servitude, enduring captivity and debt bondage, physical and psychological abuse, starvation and malnourishment, sexually transmitted diseases and unwanted pregnancy, and mental health issues such as Post Traumatic Stress Disorder (PTSD) and depression (TIP Report, 2012).

The United States and Montana have enacted important measures, such as the Victims of Trafficking and Violence Protection Act of 2000, the Trafficking Victims Protection

Reauthorization Act of 2013, and the Survivors of Human Trafficking Empowerment Act within the Justice for Victims of Trafficking Act of 2015. Yet, based on the views expressed by key stakeholders on this issue – namely Montana Attorney General Tim Fox, Attorney Brandi Ries, Detective Guy Baker, social workers, and activists – it is evident that there is much that still needs to be done to deter traffickers, give survivors of human trafficking the resources they need to further their lives, and prompt community members to aid in eradicating this global business. Prevention and intervention efforts on the issue of sex trafficking will include: community education and awareness, more comprehensive trainings for law enforcement, enforcement of existing laws, and efforts aimed at reducing the demand for sex which drives the sexual exploitation of women and girls.

This paper will focus on the trafficking of women and girls, because research suggests that a person's status as a woman makes them vulnerable to sex trafficking. As the International Labor Organization estimates, approximately ninety-eight percent of sex trafficking victims are women and girls (2012). It is also clear, however, that – due to their intersecting social identities as women and persons of native descent – native women are at increased risk to be targeted by sex traffickers.

In writing the story of a Native American women from Montana, our group aimed to hone in on the specific risk factors that make native women especially vulnerable to being trafficked, including; historical or generational trauma, poverty, homelessness, lack of resources, a history of drug and alcohol abuse, high rates of exposure to sexual abuse or violence, and high rates of adverse childhood experiences. As Andrea Johnson explains, “all of these factors are present at disproportionate rates in American Indian communities (2012).”

Research suggests that Native women are more vulnerable to sex trafficking in the United States and across the globe. A 2015 report surveying the United States and Canada found that approximately forty percent of female survivors of sex trafficking were identified as native women, or First Nations people (“Fact Sheet”). It is important to note that first nations women made up less than ten percent of the overall population. Public Safety Canada refers to Aboriginal people as the country’s “population most vulnerable to exploitation (Grant, 2016).” This is because, a study conducted in 2014 found that indigenous women and girls make up four percent of the population, yet account for approximately half of trafficking victims (Grant, 2016).

Although it is a highly-underreported and under-studied crime, a preliminary study of commercial sexual exploitation among Native women in Minnesota also found that half of the 105 women interviewed met the legal definition of sex trafficking (Johnson, 2012). The stories of these women met the necessary definitional elements of sex trafficking maintained in United States’ federal law: “the recruitment, harboring, transportation, provision, or obtaining or a person for the purpose of a commercial sex act (Rieger, 2007).” Sex trafficking is distinguished from prostitution or other forms of sexual misconduct by the presence of force, fraud, or coercion (Gerassi, 2015). Whereas a woman who is trafficked is forcefully sold and exploited for the profit of another, a woman who becomes a prostitute makes the decision to enter the industry and sell her body for personal profit.

Traditional risk factors to sex trafficking are poverty and homelessness (Johnson, 2012). Native women are subject to added risk factors, however, due to the normalization of sexual exploitation and the violent crimes committed against them in tribal communities. As this paper

will address in a later section entitled *Historical Context*, the normalization of violence against native women dates back to the colonial period in United States' history. Additionally, native women face generational trauma, which is correlated to higher rates of substance abuse, violence, and lower rates of reporting and intervention in trafficking crimes. As Johnson explains, this myriad of risk factors has led native women and girls to “live the perfect storm of vulnerability factors (2012).”

As a consequence of the ‘perfect storm,’ native women and girls are sexually exploited at tremendous rates. They are subject to severe physical and verbal violence perpetrated by pimps (traffickers) and Johns (the demand, or men who purchase sex). Native women experience added emotional, mental, and spiritual distress as they often experience sexual exploitation as “a continuation of the exploitative colonization process (Johnson, 2012).”

As I have tried to show in this section, sex trafficking does not affect all women (and men) equally. Traffickers target vulnerable populations such as native communities, LGBT individuals, and people of low socioeconomic status. In the next section of the paper, I will continue to focus my discussion of the problem on the experiences of native women, attempting to explain why they are affected differently by trafficking crimes committed against them. By analyzing the historical and legal context of violence against native women, I hope to explore how native women experience violent crimes differently as a consequence of legal complexities and the historic devaluing of Native American culture and ways of living.

Historical context

I believe Tavia Grant is correct when she writes, “for many indigenous women, trafficking is part of a continuum of violence that has deep roots and has left them with far higher

rates of abuse and exploitation (2016).” Simply being born as an indigenous woman in the world, you are at greater risk to violence and trauma. This phenomenon must be understood first through a historical lens.

Prior to the Colonial Era, native women were honored and respected, serving as influential figures in the economic, political, and religious spheres of tribal life. The onset of colonization, however, triggered a reversal of cultural attitudes toward native women accompanied by an erasure of spiritual and linguistic roots within families and communities of native descent (Downing, 2014). Today, native women in Montana are disproportionately affected by gender-based violence. According to the Department of Justice (DOJ), native women - who make up approximately seven percent of the Montana population - are over two times more likely to be raped or sexually assaulted than women of other races (2015). Native women in Montana are also reported to suffer higher rates of intimate partner violence than women of other demographics (Downing, 2014).

Moreover, the issue of violence against native women is not confined to Montana, nor the United States. Indigenous girls and women across the globe face increased vulnerability to gender-based violence and violent crimes associated with racism and hatred (CEDAW, 2015). For example, the Aboriginal women of Canada are more likely to experience more severe and potentially life-threatening forms of family violence than non-Aboriginal women (CEDAW, 2015). As indicated in a United Nations report of the inquiry concerning Canada of the Committee on the Elimination of the Discrimination against Women (CEDAW), the root causes of this issue are diverse and complex, linked to inter-generational trauma, cultural and language minority issues, poverty, socioeconomic disadvantages, and cultural loss (2015).

Violence against Aboriginal women can be traced to several root causes, including; Colonization and the devaluing of Aboriginal women (from virtuous “Indian Princesses” to sexually deviant, uncivilized “squaws”); the forced removal and assimilation of Aboriginal children from their families and communities into the residential school system; and a lack of legal clarity and protection. The disruption of Aboriginal roles, values, and traditions during Colonial history – compounded by systemic racism and inequality for Aboriginal communities within the current system – inevitably led to an increased risk of poverty for Aboriginal women, poor housing options, inadequate social support and welfare services, lower educational attainment, higher unemployment, and worse physical and mental health conditions. These risk factors have left Aboriginal women vulnerable to violence (“Fact Sheet”).

Legal Context

Within the United States, the issue of violence against native women is made still more complex through legal or jurisdictional barriers. Tribal nations are explicitly limited in exercising their sovereignty or criminal jurisdictional authority to protect native women and girls due to the Major Crimes Act, the Indian Civil Rights Act, Public Law 280, and *Oliphant v. Suquamish Indian Tribe*; tribal nations are denied the authority to prosecute and punish the perpetrators of crimes against native women (Waheed, 2004).

Indeed, these legal rulings grant the federal or state government concurrent (or shared) sovereignty over tribal governments, limiting tribal authority over its people or non-natives in its jurisdiction. For example, the ICRA restricts the penalty amount tribal courts can impose in criminal cases to a maximum one-year prison sentence or a \$5,000 fine, forcing tribal attorneys to prosecute serious crimes of sexual assault and rape as misdemeanor crimes (Waheed, 2004).

Native women and girls within United States' borders (and within Montana) are exposed to higher rates of violence, protected less, and denied meaningful access to justice by the United States legal system (Indian Law Resource Center, 2013). Yet the United States government still fails to address violence against native women – an issue which has become a human rights violation. It is essential that the United States fulfill its responsibility to native women, recognizing that violence against native women is a national problem that merits a collective, comprehensive response. Thus far, the United States' Congress has taken little action to bring violence against native women to the forefront of their political agenda. The Bureau of Indian Affairs (BIA) and Department of Justice (DOJ) have also taken inadequate measures to procure or manage funding for this issue. Taken together, the American government is sending a clear message to native women and tribal communities that crimes against native women are not a priority. Furthermore, by failing to defend the rights of Native Americans, our nation is failing to respect the cultural heritage and identity of tribal communities.

The enactment of the Tribal Law and Order Act (TLOA) of 2010, and the Reauthorization of the Violence against Women Act (VAWA 2013) are important first steps in combatting endemic levels of violence against native women. TLOA offered a more effective deterrent for perpetrators of violent crimes against women by giving tribal nations enhanced sentencing options over Native defendants. TLOA also developed new criteria for handling sexual assault and domestic violence crimes. This criterion included trainings for law enforcement and court officers, more comprehensive services for victims, and better evidence collection aimed at achieving higher conviction rates (DOJ, 2010).

VAWA 2013, on the other hand, empowered tribal courts to exercise “special domestic violence, [concurrent] criminal jurisdiction (Indian Law Resource Center, 2013)” over all

persons for crimes including domestic violence, dating violence, and violation of protection orders committed on tribal lands. VAWA 2013 also provided tribal courts with the full civil jurisdiction to issue and enforce protection orders for all persons (Indian Law Resource Center, 2013).

Although VAWA 2013 and TLOA of 2010 are important measures in beginning to address the systemic problem of violence against native women, widespread change will require several policy and legal shifts. As I have attempted to show, violence against native women is a grave and complex problem. It is exacerbated by historical and legal reasons, including jurisdictional complexities, economic barriers and the devaluation of native peoples' traditional culture, religion, and self-sufficient living.

Recommendations for Action

In this section, I will attempt to provide concrete recommendations for actions on the traffic of native women. To do this, I will first discuss what actions I believe are necessary to combat the violence against native women more specifically. I will then give more general remarks about what must be done to provide better outcomes for all victims of sex trafficking.

Combating Violence against Native Women

First, lawmakers within the United States and Montana must take decisive political and legal action on the issue of violence against native women. VAWA and TLOA are insufficient legal remedies with multiple barriers to implementation. Critical changes can be made, however, to combat further exploitation of native women through increased capacity-building measures, legal reform, and collaboration between stakeholders. Building on the Tribal Law and Order Act (TLOA) and the Reauthorizations of the Violence against Women Act (VAWA), my proposed

recommendations will seek to provide native women with equal access to culturally-sensitive advocacy, comprehensive resources, and timely protection under the law, promote the self-determination of native women, and dispel a notion of lawlessness in native communities.

More specifically, I will propose three recommendations for action. These recommendations aim to; defend the basic human rights and self-determination of native women; to promote the equal protection of native women under the law; and to combat the discrimination against native women that originated in the Colonial Era. First, Indian nations must fully reclaim their sovereignty over the prosecution of violent crimes against native women. If tribal courts are given full jurisdiction to prosecute natives and non-natives for major crimes, then native women can obtain justice and healing for the crimes committed against them. This way Indian nations can also work to dispel a sense of lawlessness created by a lack of action taken to prevent or intervene in cases of violence against native women.

Second, Indian nations, non-governmental organizations, and their allies must unite to demand increased federal and state accountability on this issue. As it will take time to dismantle legal policies and Supreme Court rulings which grant federal governments concurrent (or shared) jurisdiction over the prosecution of crimes against native women, during the transitional period there must be pressure put on federal and state governments to prosecute these cases.

Third, governments, non-governmental organizations, law enforcement, attorneys, and social workers must realize their common purpose, dedicating themselves to knowledge-sharing and collaborative efforts aimed at; one, raising awareness on violence against native women; two, building bridges and understanding between native and mainstream communities and justice systems; and three, placing pressure on states to address the root causes of the problem of violence against native women, including socioeconomic factors, legal hurdles, and

discrimination against native women. It is important to share knowledge and resources on this issue to better organize a united, effective response to the problem. My hope is that these recommendations will help in combatting the diverse factors which underlie violence against indigenous women on a broader, global spectrum.

Our nation must defend the inherent rights of Native American women to equal protections, resources, and justice afforded non-native women, restore full sovereignty or criminal jurisdiction to native communities, and develop a coordinated, sustained legal effort to address violent crimes against native women.

Combatting Sex Trafficking

Second, there are key changes to be made to better meet the needs of sex trafficking victims. To begin, it is important to address sex trafficking within the law. Although the laws are there to protect victims, there are often loopholes that lead to victims not getting the necessary legal support or justice they deserve. Additionally, the state is not enforcing these laws when it comes to sex trafficking.

To combat these legal hurdles, it is essential that lawmakers build on initiatives like the Trafficking Victims Protection Act (TVPA) and comprehensive trainings of police officers through further legislative action and enforcement of existing laws. Furthermore, there needs to be more done to reach trafficking victims on their own terms. Currently trafficking victims are often unaware of legal protections afforded to them, thinking they may be prosecuted for prostitution or drug charges if they choose to disclose what happened to them. To change this, there must be more trainings, education, and targeted outreach to victims which incorporates a sensitivity to their diverse identities and experiences.

Mandatory, comprehensive trainings must also be held for all law enforcement officials to educate officers of the peace on how to react to, and treat, victims of human trafficking. Montana Attorney General (AG) Tim Fox has worked to increase law enforcement trainings at the academy, teaching ways to notice the signs of a person who is being forced or coerced into sex work, and how to effectively interview victims. Yet to access the root of the problem, communities have to begin combatting the misconception that “she’s just a prostitute” in terms of prosecution of these crimes. The problem is that victims can often be viewed as a prostitute rather than a person who is being forced to partake in paid sexual acts.

Beyond combatting this misconception, law enforcement must also be taught patience and empathy to work with these victims. It is essential that law enforcement be empathetic to the trauma victims have experienced if they are to gain the trust and cooperation of victims (i.e. understanding that victims do not see themselves as victims because of the love or trust they may still bear their trafficker).

Efforts should be made to educate the public in the United States and globally on the signs, harms, and resources for human trafficking. NGO’s, INGO’s, and the government need to partner on this issue, doubling their efforts and sharing knowledge and resources to better meet the needs of survivors. Furthermore, cultural attitudes regarding misogyny and consent need to be addressed. The root of the issue stems from the objectification and commodification of women and men. In order to make progress, the United States is charged with challenging these negative attitudes and condemning labor exploitation.

Finally, there are many resources for survivors of trafficking that already exist, including availability of advocates and legal aid. These resources, however, are in need of more funding to

provide survivors with a stable environment during their transition out of trafficking. While these tasks are in no way easy or simple, it is clear that individuals, communities, governments, and international coalitions will need to collaborate on education and awareness efforts, to train our public defenders, enforce the law, and work to prevent the exploitation of human beings.

Conclusion

This paper was meant to be an exploration of the unique way in which native women experience the violence against them. The paper also attempted to draw a connection between historical and/or generational trauma and legal complexities to contemporary trends of violence against native women. Through my analysis of the historical and legal context of violence against native women, I hope to have demonstrated that this context allows us to deconstruct the root causes of violence against native women. By understanding these background factors, or root causes, it is possible to explain the emergence of a “perfect storm” of risk factors which cause native women to be targeted for violent crimes and trafficked at disproportionate levels today.

Furthermore, this paper sought to provide some preliminary recommendations for action on the problem of the of traffic of native women. By analyzing the traffic of native women alongside violence against native women more generally, I attempted to provide some concrete recommendations which also acknowledged the broader context of the problem. These recommendations are meant to address prevention and intervention efforts which accompany the traffic of, and violence against, native women; this includes eliminating forms of discrimination against native women, promoting their equal protection under the law, enforcing and building upon existing sex trafficking laws, providing comprehensive trainings for law enforcement, and

pushing for more sharing of knowledge and resources among governments, non-governmental organizations, law enforcement, prosecutors, and social workers.

The federal and state governments need to dispel a sense of lawlessness on the reservations by granting tribal governments the authority to prosecute perpetrators of violence crimes on their lands. The federal and state governments must view endemic rates of violence against native women as a national priority that warrants a coordinated, sustained legal response. Education and awareness-building efforts must double, allowing law enforcement and community members to be able to intervene when they witness signs of a sex trafficking operation.

In conclusion, the traffic of native women and girls cannot be overlooked on the national stage. It is a grave human rights violation when our daughters, sisters, mothers, and aunts are being sold into slavery within our own borders and without recourse to any justice or healing within the law. To combat the traffic of native women, we must first combat a larger historical and cultural framework which has led to the normalization of the sexual exploitation of native women. We can only hope to address the traffic of native women if we first address the root causes of the violence against them.

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Appendix

Native Woman Sex Trafficking Survivor Story from Live Performance Exhibit

I was cold, hungry, and I couldn't afford to take care of my two beautiful daughters. At least that's how it used to be, until I met Daniel. He provided a safe home, a father figure for my kids, a family, and some sense of stability in this life. So, when Daniel asked me to marry him, I said yes with all my heart. I never had that growing up. I grew up on the rez – a different world than most Montanans will ever witness, most girls really. A long time ago, with the boarding school era, the white man brought with him a culture of violence that is still with us today. You can still see the sadness in their eyes; we all carry this inter-generational trauma around.

You could see the sadness in my mother's eyes as she looked at me, her only daughter. Her life had been hard. Her whole life she had tried to protect me from the violence and pain at home. My dad was an alcoholic. I would try to block it all out – my mom's muffled screams as my dad beat her for the fifth time that day for refusing to bring him another beer, or asking him to drive her to work; the feeling that I was invisible to my family; and most of all, that sense of emptiness I got from a lack of attention and love from the people that mattered most. My mom wanted a different life for me - she wanted me to break the cycle of violence, get an education, and leave the rez. When I had kids, I understood. I wanted to give them a different life than I had.

But when I moved in with Daniel, he became a whole new person. He started asking me to do things - terrible things - with strange, white men that started coming to our house. I knew he loved me, so I didn't understand. He told me I owed him for everything he had done for me. He forced me to dress up like an Indian maiden to fulfill this European Colonizer fantasy for his white friends. Each night I had to dress up and let them control my body – watch with tears of

anger sliding down my face as they disrespected me and my culture - centered on honoring women and their life-giving powers. These white men would whisper racist innuendo as they raped me. They would disrespect my sovereignty as a Native woman. Yet I had to comply. In those moments, I would flash back to my childhood – those dark nights hearing my mom and dad scream at each other. They reminded me why I was doing this. For my kids and the promise of love, security, and family.

Even if I wanted to report what those men did to me, I was scared of the police... and I knew the law wouldn't help me. White men have a free pass on this land. Our tribal court can't prosecute them for major crimes, so I would get no protection, nor justice. If I left my husband, there was nowhere for me to go. Who would take care of me and my girls? And if I stayed, I had to endure more dark nights with dark men. There was only one choice for me. I would do anything to protect my daughters. I had to stay, because my life was not my own anymore...I had to stay because despite the fear and shame, there was love too...