



Protect Indian women without diluting Bill of Rights

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Native American women suffer outrageous rates of rape and domestic violence. The problem could be targeted far more effectively by taking political agendas out of the equation – and by taking the Constitution more seriously.

The U.S. Senate has proposed a remedy in its update of the Violence Against Women Act: It wants to give tribes the authority to prosecute and try non-Indians accused of beating or raping Indian spouses or partners on tribal reservations.

This might work if done right; if done wrong, it could strip American citizens of key constitutional protections. Unfortunately, Democrats are framing the issue in simplistic, election-year slogans: House Republicans with misgivings about the plan supposedly either hate women or want to coddle abusers.

In fact, opponents of those provisions are raising concerns that ought to give pause to any civil libertarian.

Multiple agendas are at work here. One of them – partisan politics – is obvious. Another – the simple protection of Indian women – ought to be above politics. They are victimized at scandalous rates and often have little legal recourse.

Tribal criminal justice systems currently have no jurisdiction over major crimes committed by non-Indians. Federal prosecutors, who do have jurisdiction, are typically far too busy to handle common domestic violence cases. This is an intolerable gap of justice.

Giving jurisdiction to tribes would seem to be the obvious solution. But the tribes have an agenda of their own: They see the domestic violence issue as a way to assert and reclaim broader sovereign powers. They have chafed for decades over federal limitations on their power to prosecute crimes by non-Indians on their lands.

Their point of view is understandable. The problem is, tribal criminal justice systems vary greatly in quality from tribe to tribe, and many are underfunded. More important, some of them fail to provide defendants with the full range of constitutional protections any

American – Indian or non-Indian – should be entitled to.

Existing federal law requires tribes to honor most of the protections in the Bill of Rights, but there are exceptions, including limitations on appeals and defense prerogatives in jury selection.

Congress could get around this simply by delegating jurisdictional power to tribes; delegated power can't be disconnected from the Bill of Rights.

But delegation wouldn't expand tribal sovereignty. To do that, the Senate has framed its measure as a "recognition" of "inherent" tribal power. Tribes would grant "all other rights" that are "necessary" to exercise their power.

Weasel words. Even if "all other rights" meant everything enumerated in the Bill of Rights, this provision would be guaranteed only by congressional statute, not the Constitution itself.

The simplest remedy would be to earmark enough money for the Justice Department to aggressively pursue domestic violence on Indian land.

It should be emphasized that non-Indian criminal justice has suffered from grievous gaps over the years. Some state and local governments didn't guarantee the full Bill of Rights to suspects until the 1960s.

But America's movement has always been toward expanding constitutional liberties. The rights of the accused are not favors, gifts or mere privileges. Congress should not be watering them down for any citizen, for any reason.

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