

Measuring Tribal Law: Some Considerations

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Introduction

There are 574 federally recognized sovereign tribal nations in the United States. Applying legal epidemiology methods to tribal laws has the potential to shed light on beneficial laws, policies, and practices that address legal and health disparities facing Indigenous communities. However, the complex jurisdictional web of Indian Country with overlapping federal, tribal, and sometimes state jurisdiction can complicate the systematic analysis of these laws. A discussion of how best to address these complexities is warranted to facilitate the effective collection and analysis of tribal laws.

Methods

Tribal communities have rich conflict resolution traditions that are often integrated into their criminal justice system, however, little systematic research has been conducted across Indian Country. Drawing on traditional dispute resolution methods tribes have developed alternative legal systems such as the Navajo Peacemaker Court and Yurok Wellness Court. The creation of these restorative based legal systems often operate side-by-side with more traditional Western systems. In this era of legal pluralism, expanding legal epidemiology into Indian Country to systematically explore tribal laws, regulations, and policies could be greatly beneficial. However, because of the complexity of jurisdiction in Indian Country there are numerous novel and common challenges.

Using a reflective case study the author provides an in-depth perspective on some of the challenges in applying a legal epidemiology methodology to a research project in Indian Country. The author draws on her own experience in attempting to design a legal epidemiology study on restorative justice policies across Indian Country to highlight specific areas of concern. In particular, issues relating to the scope of population inclusion and the ease of access to laws are common areas of concern that align with other projects. Some novel issues are also present, including appropriately considering Indigenous data sovereignty concerns, updating the dataset to incorporate underlying federal laws that may impact the analysis, and analyzing the data in light of the complexity of tribal criminal jurisdiction. This case study compiles the challenges to conducting legal epidemiology research on tribal laws and seeks to start a conversation on how to best address these challenges in order to open this methodology up to a new population in an ethical and constructive manner.

Challenges

Both common and novel challenges were exposed when designing the tribal restorative justice project. A paramount concern that arose early in the design stage related to respecting Indigenous data sovereignty. Further, the sheer number of federally recognized tribal communities along with the difficulties in obtaining laws from smaller tribal communities created concerns related to resources requirements. Moreover, the geographic setting in MonQle limits the specificity of descriptions related to tribal land tenure. Finally, centuries of federal

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policies have created a patchwork of underlying laws that are not uniform across tribal communities. For example, while all tribal nations have retained their sovereign authority to enforce tribal criminal laws, the federal government has devolved its dual jurisdiction on Indian Country felony cases in certain states. As a result, analyzing trends in tribal criminal laws must take into account a variety of state and federal laws requiring a diverse research team.

Discussion Questions

1. How do you effectively compare across jurisdictions when there are significant differences in the legal foundation? How does this impact the analysis of the efficacy of the laws?
2. Can the legal epidemiology methodology account for unwritten laws that may be acknowledged by a closed community, but are not necessarily easily knowable outside the community?
3. How do we make sure that we are respecting Indigenous data sovereignty when conducting large mapping studies when obtaining individual tribal consent may not be feasible?