

Welcome. You are listening to Poverty in Focus. This podcast series produced by the Center for Poverty Research at UC Davis brings together experts in their fields to discuss new poverty research and public policy. I'm Lisa Pruitt, a professor of law at UC Davis in the Center for Poverty Research faculty affiliate.

Today it's my pleasure to host visiting scholar Ezra Rosser. Rosser is a professor of law at American University's Washington College of Law. Rosser has written extensively on American Indian law. American Indian poverty, at 28%, is higher than the rate for any other ethnic group in the nation. And yet, the American Indian situation is largely invisible to most Americans, as well as to most critical race scholars.

Today we will discuss why so little attention is devoted to this phenomenon. What policies might effectively combat American Indian poverty and how it differs from rural poverty, which is my own area of research. Ezra, thank you for joining me today.

>> Thank you.

>> Let's start by talking about labels.

Some scholars and some media outlets refer to Native Americans and some refer to American Indians. What's your preference and why? Yeah. So, this is a good question and the one I often get push back on. Certainly, the first time people hear you say Indians, a lot of people are told to say Native American.

In law, Indian is the, it's not preferred term, it's the most used term. And so, most cases talk about Indians not even American Indian, just Indian. And Native American in law is used a lot less frequently. In real life my own rules are, if I'm talking to somebody that has not really thought about Indians then I might use Native American just, but it's for their sake not cuz it's what's right.

And with Indian I tend to use it if I'm talking about overall Indians, but if I'm talking about a particular group, it's best to identify that particular group. And, if you know, the better term would be that a group name that they use. So, for example, I do a lot of Navajo work.

And when I talk about the Navajo Nation as a government I use Navajo Nation. But when talk about to the people I use DinĀ© cuz that's their name for themselves are. So I think there are, in any of this, lots of name choices you can do, but I think the central message is Indian is a perfectly fine term, and one that is used by Indians, by non-Indians.

Another term that I haven't said yet is Natives, and a lot of, you know, Native students, Natives is also perfectly fine.

>> Great, so how did you become interested in American Indian law? And, it's hard to be interested in American Indian law without being interested in poverty, among that people.

>> Great. So my, I had a, what's a somewhat unusual experience of growing up in part on the Navajo Nation. I am white and my parents were divorced but one lived in part of the reservation called Kayenta which is just south of Monument Valley and very pretty. And he was a teacher there, and he, that's my father.

He remarried a Navajo woman, and eventually they moved to another part of the reservation, which is her traditional homeland for her family, which is on the road between Shiprock and Lukachukai. So a very remote part of the reservation. And my mother worked for the Navajo EPA and spent her career doing, being an environmental planner for the tribe in various capacities.

And so that's really the connection. I will say, though that I moved away from the reservation in high school and my time on the reservation varies dramatically depending on what my parents are doing. But that's really how I got interested in it. And then as to Indian law, I went to law school I, because I failed to become a professional photographer, and then, when I got to law school I met my mentor, who did Indian law, Rob Williams at Arizona.

He convinced me that doing this and being an academic in Indian law would be a good path, so I think that answers. And I came into it wanting to focus on tribal economic development, largely because, I thought that was area where I

knew something about that lots of white people don't.

>> Great, great. So as I mentioned earlier, poverty rates among, American Indians are higher than other race or ethnic group. What are the factors that contribute to that, really extremely high poverty rate?

>> Yeah. I think before going into that quite, I wanna say that poverty rates for tribes vary dramatically.

And so, one of the challenges whenever you talk about Indians is recognizing the extreme degree of tribal differences. So, there are more than 500, almost 600 federally recognized tribes, and there are also state recognized, but not federally recognized tribes and they have very different experiences. My own experiences are drawn from Navajo, and most times when people think about this level of poverty it's from Navajo or Pine Ridge, the Sioux reservations.

That being said, all those figures are true. Nixon Nixon famously said that Indians measure at the bottom of all these social metrics, whether it's unemployment, housing conditions, poverty. And he said that in 1970, and that remains true today and I think the reasons are some of them are unique to Indians, and some are just what poverty is.

So I think it's hard to separate these things out. I would point to lack of opportunities, lack of jobs, these sort of standard things, but just in a very extreme form. So the reservation, Navajo reservation has more than 50% unemployment, and when you have that much unemployment, you're gonna be poor.

The reservation also has, you know, on a per capita basis, it's usually about one third to one fourth of the United States, and consistently so, and that is a, a level of poverty that, it has impacts on education, it has impacts on everything you can imagine on what life there is like.

>> Mm-hm. So you mentioned that one of your early interests in American Indian law was in economic development, so what, particular ideas, do you have about alleviating, poverty, particularly job development, job creation, since unemployment is such a major issue?

>> Yeah, I think they're, I think for every sector if you look at tribes that have successfully done this, they've done a range of things.

The Harvard project on Indian economic development what they say is that tribes need to. Exercise their de facto sovereignty. So it's more about what they actually do, then what the law says they can do, and so to some degree this is a move away from law as a field and more a move towards in fact what happens on the reservations.

The same could be said, Phil Fricky, who was at Berkeley before he died, he had a similar point that what we need to do was care about what's happening on the reservation. And so what's happening on the reservation, that I know Navajo, is there are some, you know, Navajo's have a lot of resources, and the question is how to use those effectively.

Some of those resources are very dirty, like coal, or power plants. And others are, or uranium mines. But, some of those are not so dirty. And the question becomes how do you sort of weigh these development goals with other goals that you have such as the environment or social goals.

I think there are other challenges the tribe has that, we don't think about. So we take for granted. Say a land registration system, you know, you go and click. Check your title. Well, you can't do that if you're on reservations so it slows down development of just, if you have a business idea, to make it formal it's much more like, Hernando de Soto talks about for Peru, that what we think of as the base line in the United States.

So I think some of these things are. Very unique to the reservation, sort of defy easy analogies, but, do come down to lack of jobs.

>> Mm-hm. Sure. So, I suspect that many, Americans are not aware of just how dire the poverty situation is among many Indian populations, among many tribes, and I certainly hear what you're saying about variation.

From tribe to tribe. And I've noticed in the legal academy that while critical race scholarship is this really vibrant,

thriving subdiscipline that there's very little attention to the American Indian situation among critical race scholars. So, Sort of thinking about those two different populations of consumers or you know critics if you will, right?

Why is there not a greater awareness of the American Indian situation? Why is that not more part of, if you will, the common consciousness of the United States and. Why has the American Indian situation struggled to gain traction I would say in the legal academy broadly, but, but also in the critical race scholars where you would think it would have an actual home if you will?

>> Yeah, so I think, I'll start with the first one. Common per perception or indifference. And I would say on that, there's a number of thoughts you could have. One is just that in general, we like to imagine ourselves as innocent of any wrongdoing, and we like to imagine that what happened to Indians is very historical and not.

Ongoing. And so, I, in my own work have focused a little bit on this innocence question. But I think there's a convenience to thinking of Indians as, deceased or disappeared. And thinking about them as having a merely, you know, Hollywood, existence. And it becomes a lot less comfortable when we think about we're benefiting from.

Their land. And yet we have not compensated them, even in the ways we promised to compensate them. And so I think part of it is this sort of willful denial. I think another explanation that's a little less, you know psycho, psychologically based or something is that. For, at least for the East Coast, and California, the coasts in general, the Indians they do encounter are not necessarily the poor ones.

So they encounter Indians with casinos. Now even though Indians, even when you take into account the casino wealth, when you overall include all Indians, that still leaves Indians below any other group. It does mean that there are these pockets of extreme wealth, associated with indians and people wrongly feel that these casino's represent indians when in fact they represent really fortunate few indians, so I think that can have part of an explanation, I think another sort of challenge with that indians create is.

Why do, why should we care? essentially. If they are removing their homelands and removed from our experience, what is the reason that whites or non-indians should care about them? And I think we have not satisfactorily answered that, And so it's easier to ignore and we're at least little teenie notes about them but not comprehensive.

Because of their demographics, they're only 2% of the population, they're never going to be like Latinos are becoming, or other group, and so that's another I think on the critical race scholarship. Issue. I guess I don't, quite fault scholars as much, as I think the question might, the.

I think that the, critical rate scholars have a lot of work to do, and, in our society as a whole and so. The fact that they're not paying attention to Indians when others also don't pay attention to Indians. I don't fault in a big way. I would say, even within critical race scholarship, this isn't my observation, this is others', but there may be a difference in sort of end goals that may explain this, so.

If you think just about, civil rights work. Civil rights work for minorities generally has been to get minorities up to the level of rights enjoyed by, the whites, and, on the other hand, when you think about Indians, their goal is not necessarily that incorporation, in fact it may be to.

Preserve the possibility of tribal difference or preserve isolation. And because those goals are not the same, the scholarship may not lend itself necessarily to using CR critical rate scholarship and poverty law. That being said, my mentor, Rob Williams, certainly. Would call himself a crip, probably critical race person.

And he's an Indian law. So there are people, they may more known as indian scholars than they are critical race people. But they are applying lessons from critical race scholarship, to indian issues.

>> Great, very helpful. So maybe you can explain a bit about the relationship between the federal government and, Indian tribes, particularly in relation to poverty alleviation.

I think a many people who are even, having some passing familiarity with the American Indian situation. Realize that money flows from the Federal Government

>> Mm-hm.

>> To the tribes. So, can you tell us a little bit more about the parts of that that have to do with poverty alleviation in particular.

>> Yeah. So, Indians are semi-sovereign. So one of the quotes is that they're domestic dependent nations. And in practice what this means is that, while over time we have done things to lessen their sovereignty. We're now in a moment where at least two of the three branches, the executive and the, the legislative, believe in this self determination.

And they, what that takes the form of is grant making so the tribes can take on activities that had been formerly done by parts of the federal government. So tribes are now doing things that the BAA used to do. Or doing things that, I in the indian health service may be doing it, but they're giving now grants for tribes to take over hospitals and so a lot of this is, converting the federal trust obligation into a flock grant, forms, and that isn't much different than what we do with states or what we do in all sort of poverty alleviation.

What I think is different is that because they are these sovereign entities, even though they're not often recognized as such, they do have power to change those goals and to think, you know, we got money for this and housing to build houses, but what we think is, we need a senior center.

Well maybe that's what their decision should be. So I think one is just this sovereignty thing makes it a little different than other sort of poorer communities. And then another on what I guess what our policy is. We are continually trying to figure out ways to step back as far as our federal obligations to these tribes.

And so, there have been, this is one of the arguments for gaming was that we were in a moment where even Reagan was saying, gaming should take place. And it should take place because we want tribes to, essentially not have to rely on federal dollars. Well, if that's what you're doing, then that may create more space for the sort of leveraging the sovereignty for development purposes or for anti-poverty purposes.

Which are often, for the tribes, the same.

>> Okay. I wanted to go back to something that you said earlier that I failed to follow up on initially. And in that issue you suggested that we have maybe scholars, or thought leaders, or maybe politicians the government has failed to answer the question of why we should care about American Indian poverty.

And so, I wonder what, what pitch you would make about why we should care, about American Indian poverty. How would you respond to that?

>> Yeah, that's a good question. I think this is the question anyone who knows poverty, is concerned about, whether it's Indian or general, to make, you know, popular and focus on these, And I think, just like in regular poverty the rise in inequality may be drawing some of this, or creating some momentum behind this conversation, the same could be true of Indians.

Indians have some things that we want, and so, all along Indians have had land and we've wanted their land or we've wanted access to their land. And certainly with the energy resources that they have, there is a chance to use that as a way to talk about these things.

So, whether it's fracking in South Dakota, coal mines in Arizona wind resources on other reservations. There are lots of studies saying that essentially our interests and Indian interests are coming more into contact. And you see this, even if from such things as mundane as bar exams now, requiring Indian Law.

Well that is a sign that we Indian, lawyers at least, are encountering Indians in their daily life in a way that was not done before. And I think that that will move some of the conversation about what Indians' obligation, what our obligations to Indians are. Reason why we should care.

I think the other is it's just very extreme, and so, the New York Times sent a ph, photojournalist to go take photos of poverty in America and made the mistake of sending him to Pine Ridge. Or Rosebud. I think it was both. But I think he went to Pine Ridge and he'd also taken photos of Rosebud.

As his first assignment in this supposed to be year long tour of poverty in America, and he never left. There was more than enough material, he decided he's just gonna spend a year taking photos of the reservation. And we are seeing, you know, it, at, at some point the extremity of the situation compared to what's found off reservation is such that.

Our conscious is shocked.

>> Mm-hm. Yeah. Well it's interesting, your comments on as a matter of strategy to gain attention to the American Indian situation. And particularly their economic needs. To focus on what it is that they have that, quote, we want.

>> Okay. And I notice a similar phenomenon among advocates for rural America.

In fact, there was a great piece, that I got yesterday in, by email from the Center for Rural Strategies. And, you know, they've put together a little video clip, and it's all about, right, garnering metropolitan attention to rural America by playing up. What it is that rural America supplies.

And some of it's energy and some of it's water and, you know, so forth and so on, as a way of making metropolitan America, you know, care about rural peoples. And that is rural peoples besides those you see on Duck Dynasty or, you know, for Honey Boo Boo.

You know, that it's, it's, it's, it's about more than that. So anyway that just prompts me to ask about sort of differences that you see or that you would highlight between American Indian poverty, much of which is rural, although I think we're aware of the migration phenom to cities.

And rural poverty, you know, more generally. Are there, aspects of, of those two different but overlapping populations that you would highlight as relevant to policymakers?

>> Yeah. I think there are some things that are just flow from the sovereign status of tribes that makes things different. And, in particular, for poverty, if you're focusing on poverty, the delivery of the programs to these.

So if you are a. Poor person in a state you may get your, TANF benefits through the state, rather than through the trip. Where the tribe may be administering those TANF programs. or, you know, in, you know, in urban areas you almost never think of commodities. Right? Of getting deliveries of commodities, but in rural areas.

Including the reservations, you can have commodity, delivery and in fact there are whole jokes about commodity, how important that is. So I think those things are both the same and different. I think, or healthcare. So we, when healthcare reform was being considered, they looked at Indians as the population that gets free healthcare.

Well that's true. But it also if you look at the amount that's being spent per person. It's actually less than the federal government subsidizing the average American who's not getting free healthcare. So, I think there are some misleading aspects about, the differences as well. I would see lots of them as very similar.

I think one difference that's a stereotype, although a stereotype that. Has some backing behind it, is the connection to place that may be somewhat different. So as somebody who grew up I thin you and I have talked about this already. We've talked, we talked about this. I grew up in different rural areas.

In some of those rural areas, people have a really strong connection to place. They're from there, they're going to go up there and they're going to resist moving, for Indians that may be even more so, right there, it's not just that they know this place, which makes it something that they are tied to, but also their entire spiritual world is based around this place, whereas for most americans their spiritual world is.

Based on Adam and Eve or some other foreign country.

>> I thought, I thought you were gonna say the mall.

>> Yeah, the mall! That's a good one. So there may be just an additional tide and place that we have to, rural Indians versus rural. non-Indians. That beats rural non-Indians often are very place bound.

>> Mm-hm.

>> Yeah.

>> So I just wonder if you had you know, unlimited funds, how you would consider spending it to to alleviate American Indian poverty? What programs do you see. Missing now or programs that you would bolster, would you send more money to the tribes for their discretionary spending?

What do you think would be an effective strategy for greater alleviation of American Indian poverty?

>> Great. So I am gonna do a duck some way. To some degree, my answer to this. and, but I think it's a fair doc. And this is something just to go back to my original comments about why I got into this.

As a non-Indian I don't believe it's necessarily my place or should be my place to say that. So I think one of the things, you know, why I became an academic versus going to work for a tribe, and this was encouraged by Williams and other mentors, was that I have a privilege to be able to be a white person and say things about this while still leaving the decision making up to Indians.

And I think that that's very important. Charles Wilkinson wrote this book called Blood Struggle that came out very, in, I think 2005. And what's great about it is he describes, over the last century, how. Tribes have made tremendous progress by pushing on boundaries and many of those boundaries are not things that I would have thought of.

He also ends the book, he he ends the book first with, last chapter is on economic development, which is sort of the negative side on the whole story to some degree. But his last paragraph is about how, there's, there are challenges facing tribes. That these are societies that have lived much long, survived much longer than we have.

And have done so in the face of tremendous adversity. You know, largely done by non-Indians towards them. And so he had faith in, in a sort of a uplifting promise about it. I'm a little more pessimistic about it. But I do believe in the idea that they're in charge of their destiny.

That being said, I think a good starting point that's not unlimited money, but it is more money, is at the bare minimum the U.S. government should fulfill its trust obligations. So. If we make a promise, we should live up to those promises, especially when we benefited so much from it.

So, some concrete examples are housing and there should be more money towards housing and some of this is guaranteed by, it's either guaranteed by treaty itself. Some of these treaties say housing rights. Others it's guaranteed implicitly. When we take away a lot of land and we leave them with less land, there's a promise we're gonna make it livable there.

It's the basis of the Reserve Water Rights Doctrine. And it could be the basis of other sort of social amenities such as, or social necessities such as housing. So I think. And it's not saying, what I do with all the money, but at the very least, we should make a real commitment on the federal side that we have not.

>> Right. Well, that's a nice place to conclude. You have. Certainly a leader, a thought leader. Particularly as a relatively young scholar in the areas of both poverty law and American Indian law. And so, we are very grateful to have had you with us today.

>> Thank you very much.

>> I'm Ann Stevens, the Director of the Center for Poverty Research at UC-Davis. And I want to thank you for listening. The center is one of three federally designated poverty research centers in the United States. Our mission is to facilitate non-partisan academic research on domestic poverty, to disseminate this research, and to train the next

generation of poverty scholars.

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