

Ending Sexual Violence Against American Indian Women

A Diné Woman's Perspective on Renewing Concepts of Justice on Tribal Lands

by

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A Thesis Presented in Partial Fulfillment
of the Requirements for the Degree
Master of Science

Approved November 2015 by the
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ARIZONA STATE UNIVERSITY

December 2015

ABSTRACT

In Indian Country, the investigation and prosecution of sexual assault crimes have been described as arduous task. More so, determining whether the federal, state, or tribal government has criminal jurisdiction is perplexing. The various U.S. Supreme Court decisions and Federal Indian policies that influence tribal sovereignty restrict tribal government's authority over violent crimes that occur on tribal lands. In my thesis, I discuss U.S. Supreme Court decisions and federal Indian policies create a framework for colonial management and federal paternalism in Indian Country, which restrict tribal sovereignty and sentencing authority in criminal cases that occur on tribal lands and against their citizens. I introduce the Indigenous Woman's Justice Paradigm as a conceptual framework for Indian nations to develop an alternate system for responding to sexual assault crimes on tribal lands. The purpose of my research is to promote the cultural renewal of Indigenous justice practices to develop sexual assault jurisprudence or reform tribal rape law that are victim-centered and community controlled.

DEDICATION

I dedicate this thesis to American Indian women, survivors of sexual violence, Diné People, my beautiful family, and, in particular, my beloved shícheii (grandfather), the late Joseph Hashkeihe Teller. Shícheii (my grandfather) recognized that although I was a quiet child, I was a thinker. Throughout his life shícheii (my grandfather) believed in me and encouraged me to go to school to receive the highest degree. Through shícheii's (my grandfather's) legacy, love, and belief, I am able to receive my Master's Degree.

ACKNOWLEDGMENTS

This thesis would never have been completed if not for the help of my mentor and Chair, Dr. Myla Vicenti Carpio (shik'is/shi'ólta'í), thank you for all the hard work and dedication you put into this project. You truly have been a blessing throughout this writing process. The following have also helped me in the completion of this thesis: My family (the late Joseph Hashkeihe Teller (shicheii), Evelyn Teller (shimásání), the late Dennis Fulton Sr. (shinálí hastiin), the late Loualla Fulton (shinálí asdzáá), Margaret T. Fulton (shimá), Darrell D. Fulton (shizhé'é), Gabriel D. Fulton (shinaaf), Deserae D. Fulton (shádí), Morgan C. Hashkeihe (shideezhí), Wilfred J. Hashkeihe (shitsilí), Taylor D. Fulton (shideezhí), Madylynne M. Etsitty (shich'é'éh), Jacob B. Etsitty (shiyáázh), Skylar Fulton (shich'é'éh), and Arrianna Fulton (shich'é'éh)). Dr. Tennille Marley (shik'is/shi'ólta'í), Dr. James Riding In (shik'is/shi'ólta'í), Dr. Leo Killsback (shik'is/shi'ólta'í), Joyce Martin (shik'is), Jessica Antonio (shik'is), Naomi Tom (shik'is), Jayme Deschene (shik'is), Misty Preston (shik'is), Waquin Preston (shik'is), and Eric Hardy (shik'is).

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CHAPTER 1

INTRODUCTION

I am a Diné woman of the Dibélishini (Blacksheep clan), born for the Ashiihi (Salt People clan) and am originally from the Tse Chizhi (Rough Rock) community on the Navajo Nation. The Navajo Nation is the largest American Indian reservation, approximately sixteen million acres, located in the Southwest region in the state of Arizona, which also stretches into surrounding states New Mexico, and Utah (Tiller 1996, 326). According to the 2010 Census the total population of Navajos living on the reservation and off the trust land in Arizona, New Mexico, and Utah is 173,667. Females make up more than half of the population at 88,351, while males are 85,316 on the Navajo Nation (Demographic Analysis of the Navajo Nation: Using 2010 Census and 2010 American Community Survey Estimates, 7). The Rough Rock community is a small rural society and is without a hospital or police department to provide immediate care or safety for sexual assault victims. In particular, I decided to focus my attention and research on sexual assault crimes that occur on tribal lands because there is a great need for sexual assault advocacy in Indian Country. In this thesis, I am addressing violence in the context of sexual assault against Indian women, particularly rape in Indian Country. Rape is defined as “forced sexual intercourse, and/or using force to commit oral, anal or vaginal sex. This forced sexual intercourse can also include drug or alcohol facilitated, in such cases; a victim’s ability to consent is removed by drugs or alcohol” (Gilberg et al. 2004, 2). Rape is unsettling because of the brutality of the damages and trauma women experience. This thesis was partially motivated by the need to develop a community response system to emergency situations that occur in rural communities, like Rough

Rock, and explores the possibility of creating an alternate justice system to restore tribal jurisdiction, sovereignty, and wellness.

Since I am Diné, I will be examining “wellness” through a Diné lens. The path Diné chose to walk is determined by our attitudes, behavior, and identity. There are two roads in the Diné culture; the Sacred Corn Pollen Road of Life and the Road of Evil Things. The Sacred Corn Pollen Road is the road the Diné travel with a positive spiritual attitude and The Road of Evil Things is the road Diné with a negative attitude walks (Aronilth Jr 1994, 59). Diné achieve positivity through self-image and self-identity, which reflects a cultural and spiritual foundation. The body is an essential element that helps build a positive self-image and self- identity. Diné wellness is derived and measured by these concepts.

In Diné teachings the body is considered sacred because the Diné are constructed by the Diyin Dine’e and Changing Woman, therefore, the Diné are the children of the Diyin Dine’e (Clark 2012, 16). Additionally, the Diné have many cultural meanings attached to their body. One of the teachings being that the body is constructed with meaning and purpose. For example, the Diné say they are created from Mother Earth’s flesh because the Holy People used sacred elements to create their body and the earth to make their flesh (Aronilth Jr 1994, 174). A “well” body is considered beautiful. So from a Diné feminist perspective, the sexual assault of Indian women is a disruption of individual and communal wellness.

The disproportionate rates of violence regarding Indian women are relatively the same since its exposure in 1999 (Deer 2013, 376). The Office of Violence Against Women, a department of United States Department of Justice, reports that Indian women

are 2.5 times more likely to be sexually assaulted and that 1 in 3 Indian women report being raped. The likely occurrence of violence is followed by another detrimental and grim trait. In addition to the likelihood of being assaulted, Indian women are more likely to be violently assaulted. Bubar and Bachman et al.'s research revealed that in comparison to other races of women, Indian women are more likely to require medical attention or result in death (Bubar 2009, 56, 62; Bachman et al. 2010, 211; Hamby 2009, 62). Particularly alarming is the fact that 57% of sexual assaults are committed by white men (Bachman et al. 2010, 212) (I will expand my analysis on the issue of white men committing more than half of the assaults against Indian women in the prosecution section). Hamby offers congruent statistically evidence backing the claim that assaults against Indian women is more violent in general:

94 percent of rapes of American Indian women involved physical assault, versus 74 percent of non-Indian women. Half (50 percent) of American Indian women were injured during rape, compared to 30 percent of non-Indian women. More than three times as many rapes of American Indians involved weapons—34 percent compared to 11 percent (Hamby 2009, 62).

Indeed, statistical analysis research supports the fact that violence is a constant factor impacting the lives of Indian women. While the research does provide the exposure of Indian women victimization, data collection in Indian Country is not the best due to a general lack of tribal funding and resources. Therefore, the current statistical research may expose only an area of the issue but does not exactly reveal the magnitude of violence in Indian Country. For instance, Deer reports that the “1 in 3” may not actually apply (Deer 2013, 376) because victims conceal their assault (Deer 2013, 379) and

underreporting (Deer 2013, 376). Due to the instances of underreporting, it is possible the rates of sexual violence are substantial.

Hamby and Maier's observation of law enforcement in response to rape supports the theory of underreporting. Maier found that if police officers are not properly trained to interview rape victims (Maier 2008, 793) or hold a prejudiced view of what constitutes "real" rape (Maier 2008, 788-789, 803), they potentially increase the incidence of revictimization. Maier defined revictimization as "the blame and stigmatizing responses to victims by police or others and the trauma that victims experience following the rape itself" (Maier 2008, 787). In the context of Indian communities, revictimization is a factor in underreporting. Hamby explains that several factors deter Indian women from reporting, such as social stigma in small communities, issues with prejudice and victim-blaming, fear of offender, and the general lack of legal and health services (Hamby 2008, 96). Hamby reported that Indian women negatively view tribal law enforcement because of a preconceived opinion that tribal police officers will not believe them (Hamby 2008, 101) and prosecution is unlikely (Hamby 2008, 97-98). Prosecution or the lack of prosecution is an additional factor in analyzing the epidemic of sexual violence against Indian women.

Although various research findings highlights the prevalence of sexual violence in Indian Country, the prosecution of these crimes (Bachman et al. 2010, 212) and non-Indians (Bubar 2009, 60) are rare. As stated earlier, 57% of sexual assaults are committed by white men (Bachman et al. 2010, 212) and 86% of reported perpetrators are non-Indian (Hamby 2009, 62). As reported by NCAI, in 2010 59% of Indian women were in relationships with non-Indian men and 46% of people living on reservations were non-

Indian (NCAI Policy Research Center: National Congress of American Indians 2013, 5-6). These statistics are of great importance of advocating for criminal jurisdiction over non-Indians who commit assaults against Indians on tribal lands (Deer 2013, 379). As it stands today, Indian nations do not have Congressional authority to prosecute non-Indians, which is obviously a major deterrent in ending violence against Indian women on tribal lands. The jurisdictional scheme that operates in Indian Country attributes to the lack of prosecution of sexual assaults of Indian women (Bachman et al. 2010, 213; Bubar 2009, 60).

In my opinion, the “jurisdictional jungle” (Cardani 2009, 114) and “jurisdictional knot” (Sayler 2014, 4) are the two most illustrative references used to describe jurisdiction in Indian Country. Currently, tribal criminal jurisdiction in Indian Country falls is determined by the following scope: 1) the location of the crime committed (on tribal lands or not?), 2) status of the victim (non-Indian or Indian?) and perpetrator (non-Indian or Indian?), and 3) severity of the crime (does Major Crimes Act apply?). The scope helps to determine if the tribe, state, or federal justice systems are tasked with investigation and prosecution (Sayler 2014, 3). The complexity of the tribal criminal jurisdiction is attributed to the long-standing U.S. conquest of Indian nations and colonial practice of managing tribal sovereignty.

The heightened rates of violence against Indian women cannot illustrate a better example of why colonial management and federal paternalism need to be practices of the past. The most important reason the elimination of colonial management and federal paternalism needs to happen is the infringement of tribal sovereignty and federal imposition on tribal criminal jurisdiction. Although the Tribal Law and Order Act of

2010 and Violence Against Women Act Reauthorization of 2013 amend the Indian Civil Rights Act (in terms of amending tribal sentencing from one to three years in TLOA and adding the “special domestic violence criminal jurisdiction” clause in VAWA 2013), the Acts do not honor Indian nations’ inherent right and authority to assert jurisdiction on their lands, regardless of their Indian or non-Indian status. Instead of operating within the restrictions of expanded sovereignty (Sayler 2014, 8), Indian nations need to define and assert tribal sovereignty from a cultural worldview. This cultural renewal of tribal sovereignty can help in the development of an Indigenous Woman’s Justice Paradigm, that positions sovereignty in the analysis of tribal rape law and sexual assault jurisprudence (Deer 2005, 455). The IWJP is important because it is a conceptual framework that honors the inherent power and authority of Indian women. Redefining tribal sovereignty from a cultural worldview explores the possibility of a limitless authoritative power in the sentencing of both Indian and non-Indian men on tribal lands, which is exactly what Indian nations need to end sexual violence on tribal lands.

Chapter 2 serves as the foundation for understanding the overwhelming need to reform tribal justice systems and create new processes to respond to sexual assault. I discuss colonization in the context of conquest. Specifically, conquest of Indians in the U.S. was made possible using English law and violence. Then, I continue the discussion of conquest, the law and violence, using Patrick Wolfe’s concept of settler colonialism and the logic of elimination to create my own description of erasure. Next, I continue my discussion of erasure of Indian women using the concept of patriarchy. I explain that the English law supports patriarchy and patriarchal violence to suppress the roles and status of Indian women in their communities. Lastly, I introduce the concept of femicide to

illustrate the understanding that the current justice systems and laws in Indian Country contribute to the erasure of Indian women. The current justice systems and laws contribute to the erasure of Indian women by failing to prosecute sexual assault offenders, thereby contributing to the ongoing injustice and inequality of colonialism. Chapter 3 argues the erasure federal paternalism created through conquest is still guiding current Federal Indian policies, particularly, the Tribal Law and Order Act of 2010¹ and the Violence Against Women Act of 2013². Chapter 4 discusses that using cultural knowledge Indian nations can define sovereignty from a cultural foundation to reform tribal rape law and create sexual assault jurisprudence. In this chapter I introduce the Indigenous Woman's Justice Paradigm as a result of positioning tribal sovereignty in the analysis of tribal rape law reform and sexual assault jurisprudence (Deer 2005, 455). Chapter 5 is the conclusion and details my recommendations in short and long-term goals to prepare tribes to take on the responsibility of holding perpetrators accountable for their wrongdoings.

My research is guided by the following questions: How does colonization impact the wellness of American Indian women? How has colonization limited Indian nations' exercise of tribal jurisdiction over sexual violent crimes? Is it possible for Indian nations to regain control of criminal jurisdiction? How will regaining criminal jurisdiction strengthen tribal sovereignty and improve the wellness of Indian citizens who live on tribal lands? How can Indian women and Indian men contribute to rebuilding justice

¹ Tribal Law and Order Act of 2010, Pub-L 111-211, 124 Stat. 2261 (2010).

² Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013).

systems that advocate for accountability and responsibility of sexual violent crimes committed by either Indian or non-Indian men?

Theoretical Framework

A Diné Feminist Perspective Combined with the American Indian Studies Paradigm

Aronilth, Jr., a Diné philosopher and Diné man, explains that the significance of Diné women is their embodiment of strength and beauty: “A woman is beautiful and she stands for the beauty way. She is life and a tower of strength to a man” (Aronilth Jr 1992, 167). Diné women, along with other Indian women, are the most beautiful women in the world. My argument is obviously ethno-centric. By stating that Diné and Indian women are “the most beautiful women in the world” I am reclaiming a narrative that is not largely associated when discussing Indian women. Aronilth’s description is significant to mention because he expresses that women are sacred in their beauty. However, he also expresses that a woman’s beauty is not a signifier for docility, rather there is beauty in a woman’s authority. The larger motive of my thesis is to argue that Indian women can and do exist in powerful positions in their community and their dis-empowerment can be countered with narratives that attribute to their sacredness, strength, beauty, and authority.

Elizabeth Cook-Lynn writes that American Indian Studies developed out of a need to assert a “defense of land and indigenous rights” and to also “assert that Indians were not just the inheritors of trauma but were also the heirs to vast legacies of knowledge about this continent and the universe that had been ignored in the larger picture of European invasion and education” (Cook-Lynn 1997, 9). American Indian Studies as an *academic discipline* is influential for two reasons: first, AIS emphasizes

knowledge production that originates from an indigenous thought and framework, which premises land, community, culture, and relations; and second, AIS challenges the disciplines that use the “scientific method of objectivity” (Cook-Lynn 1997, 11). This is important because AIS is a space for Indian peoples to “reright” and “rewrite” (Killsback 2011, 86) early research that categorize Indian peoples as ‘uncivilized,’ ‘savage,’ ‘heathen,’ and ‘backward.’ As a Diné woman, American Indian Studies has taught me to write and believe from an Indigenous framework and focus on re-righting Indian women’s authority and position in Indian communities.

The canon that drives the American Indian Studies (AIS) program at Arizona State University is the AIS Paradigm, developed by Dr. James Riding In, a citizen of the Pawnee Nation. The AIS paradigm is a sacred text, exquisitely crafted, to contest centuries of forced assimilation and genocide and is an eloquent tribute to the indigenous peoples and cultures that have endured colonization. Also, equally important, the paradigm highlights process of colonization and its destruction of indigenous cultures, customs, languages, and spirituality. The AIS paradigm influences my research to demonstrate that colonization has negatively impacted the Navajo Nation, as well as the other Indian nations, with systematic federal Indian law and policy, which endorsed Indian assimilation and acculturation to Western ideologies. Although, Indian nations and peoples are affected by colonization, we can challenge the United States existence and its structures, as the U.S. has challenged Indigenous existence. The AIS Paradigm provides an outline or foundation to structure the challenges we become involved with. Fundamentally, the AIS Paradigm imagines a plausible future through an Indigenous lens.

Discussion

Wellness and jurisdiction are focal points throughout my thesis. The wellnesses of Indian women and their communities are threatened when sexual violent crimes occur. Moreover, the wellness of Indian women and communities is neglected when navigating the jurisdictional maze when violent crime is committed on tribal lands. The lack of prosecution for sexual violent crimes that occur on tribal lands suggests U.S. Attorney's concern with the wellness of Indian victims and communities is of low priority. The review of the literature suggests that while there has been paramount efforts made to regulate sexual violent crimes committed against Indian women on tribal lands, Indian nations still need solutions that empower victims, situate the community as a form of police force and restore the authority of cultural justice knowledge and practice are needed.

For too long the U.S. federal government has abused and wrongfully asserted their plenary power to determine proper justice and law enforcement systems in Indian Country. As Indian peoples and Indian nations, we have adapted our indigenesness and sovereignty in response to Supreme Court case law and Federal Indian Policy. Consequently, Indian nations and their governments are still limited in their authoritative powers. However, as my thesis argues, as Indian nations and people our cultural knowledge and practices are powerful mechanisms that we have not fully engaged with. Additionally, our homelands are our territory and we should demand accountability for the crimes people who find themselves within our boundaries. I begin this thesis with a good heart and hope that my research honors the fight to end violence against Indian women on tribal lands.

Literature Review

Common Trends in Literature

The various research concluded, identified and affirmed that the magnitude of violence committed against AI/AN women is significantly higher than women of another race: Bachman et al. reported that sexual assaults of AI/AN women are more violent than non-AI/AN women: AI/AN women are two times more likely to sustain injuries during their attack, which require medical attention (Bachman, et al. 2010, 211). AI/ANS are more likely to be attacked by their intimate partner than a stranger. Interestingly, in the case of sexual assault against AI/AN women the perpetrators are white (57%) (Bachman, et al. 2010, 212). The results also indicated that alcohol and drugs were a significant factor (68%) in the attacks against AI/AN women (Bachman, et al. 2010, 212). The results of Bohn's research confirmed, along with Bachman's, that American Indian women do indeed face higher rates of violence than other races of women (Bohn 2003, 336):

Twenty-six of the 30 women had been physically or sexually abused in their lifetime and two-thirds were abused by multiple perpetrators. Nearly half were abused as children, over half were sexually abused at some time in their lives, and over three-quarters had been physically abused by an intimate partner (Bohn 2003, 342-343).

Also, Bubar cites Bachman's study in regards to her findings about how violent crimes committed against Indian women are in comparison to white and black women (Bubar 2009, 56, 62). Conclusively, the results indicate that violence against Indian women is more violent, Indian women are at greater risk of being assaulted by either someone they know or a stranger, Indian women face greater risks of being attacked by non-Indian

men, and overall, violence impacts the livelihoods of Indian women. Therefore, Indian nations and tribal governments should take on the task of investigating and prosecuting sexual assault cases on tribal lands.

In addition to recognizing the magnitude of violence AIAN suffer, the various research noted the lack of prosecution of sex crimes committed on tribal lands and identified the problem arises from jurisdictional issues. Bachman et al. revealed that 49% of sexual assaults committed against AIAN women are reported to the police but only 17% of the assaults are prosecuted (Bachman, et al. 2010, 212). Bachman et el. suggests the lack of prosecution of sexual assault crimes is a result of the complicated tribal, state, and federal jurisdictional web (Bachman et al. 2010, 213). Similar to Bachman et al., Bubar identifies the growing epidemic of violence against Indian women by referencing the high crime and victimization rates of Indian women. Bubar also notes the lack of prosecution rates, especially crimes committed by non-Indian men (Bubar 2009, 60). The lack of federal prosecution of sexual assault crimes questions the competence of U.S. Attorneys, who are in charge of investigating and prosecuting crimes listed in the Major Crimes Act of 1885³.

Sexual Assault/ Rape Crimes in Indian Country

Surveying to Calculate Rates of Sexual Assault

The purpose of this subsection is to determine the usefulness of existing surveys on the issue of violence against American Indian women. Also, to evaluate the types of surveys used to calculate rates of sexual assault on Indian reservations and crimes involving Indian women.

³ Major Crimes Act, 23 Stat. 385 (1885).

Bachman et al. explains there are two purposes within her research she is examining; first they review the epidemiological research used to measure the magnitude of rape against AIAN women at both national and local levels and then they examine the National Crime Victimization Survey (NCVS). The study is focused on the empirical data of multiple surveys in an effort to calculate the rates of sexual assault committed against AIAN women because it is commonly reported that AIAN women are victimized at higher rates than other races of women (Bachman et al. 2010, 200).

Crossland, Palmer, and Brooks are framing their research based on the Violence Against Women Act of 2005, specifically the mandate that requires the National Institute of Justice to partner with the Office on Violence Against Women to conduct a “national baseline study on violence against American Indian and Alaska Native women living in tribal communities” (Crossland, Palmer, and Brooks 2013, 772). The purpose of the study is to survey the varying types of violence committed against AIAN women (Crossland, Palmer, and Brooks 2013, 200) and identify factors that put women at risk for victimization; specifically the tribal, state, and federal responses to violent crimes perpetuated against AIAN women and lastly, the authors propose recommendations to improve responses at all levels (Crossland, Palmer, and Brooks 2013, 212-4).

The 2013 study from Crossland, Palmer, and Brooks specifically examines the surveys used to collect data on violence to determine the weaknesses of the existing studies on violence against Indian women. I appreciate this article because the authors pinpointed several shortcoming of prior research studies. First, the authors claim research conducted in tribal communities cannot be approached in hopes of generalizing the information because of the diverse cultural, social, and political backgrounds of each

Indian nation. I agree that research cannot be generalized because I argue each Indian nation responds differently to crime using resources that are available and useful to them. Also, generalization does not assess the unmet needs of a specific community. Second, the authors identified that prior research was unclear as to whether crimes occurred on or off reservation. Third, the authors specifically focused on crimes that occurred on Indian lands and the information is collected from AIAN women who are enrolled members.

Evaluating Risk Factors of Sexual Victimization

Bohn specifically examines “physical and sexual lifetime abuse and relationships among abuse and substance abuse, depression, and suicide attempts among Native American women” (Bohn 2003, 339). This study differs from Bachman et al. in several ways: first, Bohn’s research focused on the relationship between child and adult sexual abuse to substance abuse, mental health problems, and suicide attempts; second, Bohn’s research followed a Dobash and Dobash methodology, which examines abuse in “historical, cultural, and social contexts in which violence against women occurs” (Bohn 2003, 339); and lastly, Bohn provided definitions for terms she often referred to (Bohn 2003, 340). Bohn’s research cannot be generalized (Bohn 2003, 344) because she chose a specific sample of thirty women who were pregnant and collaborated with a particular healthcare facility in an urban city the women visited. Bohn suggests that more research be produced that specifically focus on “violence against women and children and the relationships among abuse and negative health consequences such as depression, substance abuse, suicide attempts, and revictimization” (Bohn 2003, 344-5).

Bubar examines in her article the institutions that work with American Indian women who are sexually assaulted and experience trauma, specifically she examines

social work and mental health (Bubar 2009, 56, 60-2). Bubar is specifically searching for answers that contribute to the high rate of assault on Native women and also, the lack of services and support available to Native women who are assaulted (Bubar 2009, 56). Bubar advocates for professionals who work with Indian women and children who are victims of sexual assault and abuse to “practice with cultural competence and respond to Native women within the context of their community” (Bubar 2009, 3). Bubar looks at the prevalence of rape crimes committed on the reservation from specific contexts: “(a) the historical legacy of human rights violations against Native peoples, (b) the impact of trust responsibility and Federal policies on tribal lands, and (c) issues pertaining to poverty and economic injustice” (Bubar 2009, 4). The most important piece of information for me was the compare and contrast of available and operative domestic shelters and rape crisis centers on and off reservations (Bubar 2009, 8- 9).

The Bubar and Thurman article offered a relatively different approach to understanding violence committed against Indian women in tribal communities (Bubar and Thurman 2004, 71-76) and their proposed solution of initiating a community readiness model was different (Bubar and Thurman 2004, 82-3). The scope was very broad and general because the authors discussed the legacy of colonization and its impact on Indian structures and systems (Bubar and Thurman 2004, 73-6).

Within the historical overview of colonization, Bubar and Thurman identified four factors that contribute to the high rates of violence of Indian women: 1) colonization and historical trauma as perpetuating violence against Indian peoples; 2) deterioration of traditional support systems; 3) adopting Western perspective in regards to women in tribal communities; and 4) the economic deprivation and impoverishment of tribal

communities (Bubar and Thurman 2004, 73). Bubar and Thurman emphasized a “tribal community context” and examining violence against Indian women through this context (Bubar and Thurman 2004, 71) to understand how U.S. colonization impacts the livelihoods, health and welfare, and status of Indian women.

The tribal community context observes “how Native women are empowered, protected, or oppressed in their respective homelands” (Bubar and Thurman 2004, 75). Bubar and Thurman identified five factors within the tribal community context that contributes to the rates of violence against women. Basically, the tribal community context identified the voices of women who experienced or observed violence is ignored by the tribal, state, and federal government. I appreciated Bubar and Thurman’s discussion of “tribal community context” (Bubar and Thurman 2004, 71) because the context involves the people within the community to participate and contribute to the discussion on violence against women.

Determining Barriers That Impact Rape Victims

Hamby examines law enforcement barriers that Indian women identify that impede their decision to report assaults (Hamby 2008, 90). Hamby gathered data for her research from the National Violence Against Women Survey and used a sample size of eighty-eight women (Hamby 2008, 92). The purpose of Hamby’s article is to determine how different races of women view law enforcement and influence their decision to report their assault (Hamby 2008, 92-6). Classic explanations for underreporting include social stigma within a small community (Hamby 2008, 96), a preconceived notion that police officers will not believe victims (Hamby 2008, 101), and a general assumption their reports will not result in a prosecution (Hamby 2008, 97-8). While Hamby does

discuss these various reasons, she pushes the discussion to include race (Hamby 2008, 93-6). Hamby's research concluded that American Indian women do not view law enforcement favorably (Hamby 2008,101). This article is imperative because qualitative or quantitative research explaining why victims do not report is needed.

Hamby also identified other factors that hindered Indian women's involvement with law enforcement. Other factors include isolated location, lack of "culturally congruent services" legal and health services immediately unavailable, fear of offender, social stigma from community, issues with prejudice and victim-blaming, and the complicated jurisdictional issues (Hamby 2008, 96). Interestingly, some women from small tribes were unwilling to prosecute tribally enrolled males because imprisoning a member would decrease membership (Hamby 2008, 98). The previous reason supports my search to incorporate traditional justice systems that hold offenders accountable for their wrongful actions while also correcting their behavior. Women who choose not to report for this reason should still have an alternative justice forum that addresses their unfortunate experience (Hamby 2008, 98, 100).

Hamby also suggests the creation for alternative tribal justice forums for victims who choose not to involve law enforcement (Hamby 2008, 98). Restorative and reparative justice forums, such as peacemaking, are common alternatives and the structure largely depends on the tribes' cultural influences and health. Hamby emphasizes the victim-centered feature of tribal justice justice forums as favorable and attributes these types of forums to "meeting the needs of victims and community members and may offer a useful resource to some women seeking justice for their sexual victimization" (Hamby 2008, 99). Overall, the goal of Hamby's article is to promote improvements to

change Indian women's negative perceptions of law enforcement to improve reporting of sexual violence (Hamby 2008, 100).

The creation of reparative justice forums has been explored by various legal scholars with varying viewpoints. Austin, a former Navajo Nation Supreme Court Justice, asserts the creation of restorative justice forums supports the incorporation of Indian customary law to apply to modern issues and crimes (Austin 2011, 353). Austin claims tribal court judges should not exclude Indian customary law from their court decisions in the assumption that only Western forms of law dictate tribal court decision making (Austin 2011, 361). He explains that customary law, like sovereignty, is an inherent authority founded in cultural knowledge, which “contains doctrines, principles, and postulates that permit the use of customs and traditions in dispute resolution and community problem solving” (Austin 2011, 361). Austin suggests for Indian nations to include a formal written authority in tribal codes or constitutions that permits the use of customary law or apply customs and traditions in legal systems (Austin 2011, 367-8). In the context of asserting tribal sovereignty, applying customary law in contemporary spheres allows for Indian nations to determine what laws will govern their decisions and which laws they view as legitimate (Austin 2011, 373). However, not all scholars are accepting of restorative justice forums.

Sarah Deer offers an opposing viewpoint of using restorative justice forums for sexual assault crimes. Deer identifies several limitations with peacemaking or restorative justice practices and procedures in regards to sex crimes (Deer 2009, 153). Deer claims in her analysis that sex offenders are protected from scrutiny as authorities are not contacted and opens up the possibility the offender may continue to inflict harm on the victim or

seek other victims (Deer 2009, 156). Moreover, she notes peacemaking lacks enforcement to thwart further abuse (Deer 2009, 157). Deer notes that criminal behavior can be excused as a “family conflict” (Deer 2009, 156) and thus, lessening the weight of offender accountability. Deer claims peacemaking is “counter-intuitive” as sexual violence is not a traditional behavior. Overall, Deer is unsatisfied with peacemaking forums because victim safety is vulnerable; victims may feel coerced into forgiving the assailant as a means of maintaining good relationship; excuses criminal behavior and does not assure criminal behavior will not reoccur; and issues with recidivism (Deer 2009, 157-61). However, Deer does recognize a need for the incorporation of traditional justice practices and procedures (Deer 2009, 162). One of her suggestions requests for tribal governments to re-examine contemporary criminal jurisprudence (Deer 2009, 162), which ultimately requires social change (Deer 2009, 152, 160, 162-163). Deer envisions social change in the context of holding non-Indian men accountable to the same standards as Indian men (Deer 2009, 163). Also, she envisions the re-instilling of kinship and family into the legal process because she recognizes a need for a support system for victims during the legal process (Deer 2009, 163).

Maier’s study is not exclusive to Indian Country or American Indians but is credible as it offers a new perspective in understanding women’s reluctance to or cooperation with police officers or medical personnel. Maier’s study takes into account rape victim advocates’ perceptions of the revictimization of rape victims by law enforcement and medical systems (Maier 2008, 787). Maier approached her research using a qualitative research methodology. She conducted fifty-eight individual interviews with rape victim advocates but narrowed her scope to forty-seven advocates (Maier 2008,

792). Her decision was determined on if the advocates came into direct contact with police officers and medical personnel(Maier 2008, 792). Maier selected her interviewees from four different states in the East coast and from six different rape crisis centers where the advocates worked (Maier 2008, 792).

So far within my research I have not come across research on tribal rape victim advocates and their involvement with victims and the process to enforce justice, legal, and health services. Maier asserts that untrained medical personnel and police officers contribute to the revictimization of rape victims and ultimately, traumatize victims further (Maier 2008, 805). Medical personnel and police officers contribute to revictimization in the context of their attitude towards rape victims and their viewpoints of what constitutes “real” rape (Maier 2008, 788-9, 803). According to rape advocates identified an insensitivity towards rape victims during police questioning (Maier 2008, 793) and during the medical evaluation that involved evidence collecting for rape kits (Maier 2008, 801). I particularly appreciated Maier’s discussion on the importance of Sexual Assault Nurse Examiners (SANE) and noted that when SANE practitioners were involved there was a favorable outcome among victims, medical staff, and police officers (Maier 2008, 790-791, 796, 801-2).

This article shed a positive light on SANE practitioners and the evaluation could be used to advocate or appropriate more funding in the training, certification, and hiring for SANE practitioners on Indian nations. Although, the article was not specific to Indian women and tribal communities, the discussions correlate with claims made by Hamby in the context of underreporting to police and distrust of medical institutions (Hamby 2008, 101); the study can be included in Bubar and Thurman’s tribal community context (Bubar

and Thurman 2004, 71); and lastly, Bubar could conduct a study from the viewpoint of social workers and public health practitioners (Bubar 2009, 56, 60-62). My point is to generate a versatile assessment from the viewpoint of everyone involved with sexual assault and violent crimes.

Femicide

Using internalized oppression as a concept to understand Indian male violence against Indian women, it can be argued that Indian male aggression manifested from colonial practices of forced assimilation. Internalized oppression, also described as internalized colonization, is the hatred of self and poisons an individual's understanding of their identity as an Indian person (Poupart 2003, 90). Lisa Poupart examines internalized oppression in the context of domestic violence or familial violence (Poupart 2003, 93). IPV is an issue for Indian communities. According to the USDOJ three out of five Indian women will have been "assaulted by their spouse or intimate partners" (United States Department of Justice 2011). I contend that IPV is social ill that is a manifestation of internalized oppression and colonization. IPV is a form of femicide that I believe has manifested from colonialism.

In her article Singer argues the murder of Indian women by Indian men is linked to the "original genocide, conquest, and colonization of American Indians by Europeans and their descendants" (Singer 1992). Radford and Russell's research on femicide is paramount to my understanding and application of femicide in the American Indian context. *Femicide: The Politics of Woman Killing* is useful to my research because the anthology centralizes on the issue of femicide in hopes of generating analytical application of the term in the United States, United Kingdom and India: "This anthology

represents an attempt to fill this void by bringing together and making more accessible writings on femicide and by presenting new material on this subject” (Radford and Russell 1992, xi). *Femicide in Global Perspective* is the second book that is entirely dedicated to femicide. Russell and Harmes attempt to promote the use of femicide instead of homicide: “We hope that these articles will demonstrate the usefulness of the concept as well as the prevalence and severity of femicide, its global dimensions, and the urgent need to put it on the action agenda” (Russell 2001, 4). In either book the editors and contributing authors contribute to literature of femicide as the misogynist killing of females in various social, political, legal and cultural contexts.

Conclusion

The issue of sexual violence committed against Indian women in Indian Country is complex, especially in regards to criminal jurisdiction. Logically, Indian nations and their governments should exercise criminal jurisdiction because of the magnitude of sexual assault cases. However, historic and current Federal Indian laws and policy have a profound impact on the management of criminal jurisdiction, law enforcement, and justice systems operating in Indian Country. The next chapter explains the colonial legacy of management and federal paternalism that restricts Indian nations from protecting and deterring sexual predators from violating Indian women on their lands.

CHAPTER 2

THE PROCESS OF VIOLENCE: SEXUAL VIOLENCE AGAINST AMERICAN INDIAN WOMEN ON TRIBAL LANDS

Violence in American Indian communities has reached epidemic rates on tribal lands across Indian Country. Hamby, Nielsen, Luna-Firebaugh, and Cardani reveal different theories for the continued rise of violent crime, which has included, insufficient funding to staff an adequate number of tribal police officers (Luna-Firebaugh 2009, 140-141), lack of or poor infrastructure (Nielsen 2009, 10-12), inadequate law enforcement training (Luna-Firebaugh 2007, 60-61), community distrust of tribal law enforcement and other colonial institutions (Hamby 2009, 64-65), and the confusion of which government (tribal, state, or federal) has jurisdiction (Cardani 2009, 114). Together, they illustrate the colonial impacts on American Indian tribal infrastructure, law enforcement, and jurisdictional power and authority, which all contribute to the regulation of crime. In addition, Deer, Yazzie, Zion, and Austin explain that crime continues to rise because tribal law enforcement practices lack a cultural component to their handling of criminals and addressing of crime in the community (Deer 2009, 153; Yazzie 1994, 177-180; Zion 2002, 566,569; Austin 2011, 353). Moreover, Poupart and Brave Heart and DeBruyn describe that modern day violent crimes (such as child and elderly abuse, homicide, domestic violence, and sexual assault) that are committed in Indian communities are linked to historical trauma as a result of colonization (Poupart 2003, 88; Brave Heart and DeBruyn 1998, 56). Bringing these ideas together the research shows that the current colonial systems of “management” (Harris 2004, 174) are inadequate and have led to improper mechanisms of regulating crime in Indian Country. I believe a major reason for

the continued rise in violent crime lies with U.S. paternalism and historic impacts to American Indian sovereignty through federal Indian policies and Supreme Court case laws. The legal framework that creates federal paternalism in Indian Country has profound impacts on Indian women who are sexually assaulted by non-Indian men on tribal lands.

In this chapter, I argue that the current high rate of violence against American Indian women is a direct result of colonization and settler colonialism. Traumatic events associated with colonization and settler colonialism, such as displacement from homelands, forced relocations for education in foreign and often abusive environments, and having Indian rights defined by a foreign and biased legal system, affected Indian peoples. As a result, many Indian peoples have internalized the legacies of pain and oppression (Poupart 2003, 87; Brave Heart and DeBruyn 1998, 66). Western ideologies based on the civilized/savage binary (Williams 2005, 34-5; Harris 2004, 165) and structures of settler colonialism (Wolfe 2006, 390; Harris 2004, 174) and patriarchy (Arvin, Tuck, and Morrill 2013, 12) contradict and erase Indigenous cultural values of reciprocity, responsibility, and accountability in Indian communities. These cultural values continue to have relevance and applicability today.

The colonizer's process forced patriarchy into Indian cultures, thus influencing American Indian cultural values and social systems. Patriarchy is the crux of inequality between men and women in the larger Western, male-dominated society, and assimilated a similar system in Indian societies. Due to various sanctioned assimilationist U.S. policies to adopt a Euro-American lifestyle and forced participation in a patriarchal capitalist economy (Poupart 2002, 87), Indian peoples have adopted patriarchal views

and practices as “traditional” (Denetdale 2006, 9), such as the use of male violence to secure male positions of power and the subordination of females (Poupart 2003, 91), as is found in most patriarchal societies. In this chapter I utilize the concept of femicide, which is an extreme form of male violence against women, specifically in the context of sexual assault against Indian women committed by both Indian and non-Indian men on tribal lands. Despite the law, femicide crimes are not given the legal attention needed (Radford and Russell 1992, xiii) because the exertion of male violence is an accepted social norm in a patriarchal social system (Arvin, Tuck, and Morrill 2013, 13).

Femicide and sexual violence committed against Indian women intersect in several ways. First, heteropatriarchy and heteropaternalism (Arvin, Tuck, and Morrill 2013, 15) impose structures that organize the power structures of male domination and female subordination that affect women, Indian women, and Indian nations. Heteropatriarchal and heteropaternalism develop power structures between males and females that impact Indian females because the structures destroy Indigenous egalitarian relationships and various gender identities. Heteropatriarchy and heteropaternalism limit the scope of Indian women’s involvement in their community and minimize their contributions in comparison to men. For instance, prior to colonization Indian women had more authority in land management but the Dawes Act did not recognize Indian women as authoritative figures or heads of households. The Dawes Act thus belittled Indian women and redefined their status and roles by recognizing and placing Indian men as the only authoritative figures in Indian communities (Lajimodiere 2011, 59). Second, violence against women is a product of patriarchal social arrangements in Western societies, and the U.S. imposed Western ideals of civilized society values on Indian

peoples. Patriarchal social arrangements have disrupted the status and contributions of Indian women by restricting them to fulfill Western gender roles premised on the male/female binary and unequal/complementary status. Since patriarchal social arrangements are not inherent systems of Indian societies, femicide helps to critique and reverse these systems. Third, the American law and legal system does next to nothing to account for the deaths or physical violent crimes committed against women in general and Indian women on tribal lands. The U.S. laws and policies that regulate and define tribal jurisdiction place Indian women in a vulnerable position to be violated and grant their attackers impunity from their crimes. Fourth, feminist initiatives align with Indigenous/Native feminist and American Indian Studies decolonization initiatives for male accountability of violent crimes committed against women. For these reasons I am using femicide, the ultimate type of physical violence that explicitly ends lives of women, as a viable concept to relate violence against women in an American Indian context. The high rates of sexual violence against Indian females are a result of the conquest of Indian peoples in the United States. The focus of this chapter is to expose the ways Indian women are impacted by colonization and patriarchy.

Colonization and American Indians

Colonization is a process of conquest to gain access to land, labor, and resources (Grande 2004, 19). In the context of the Indigenous peoples in the North America, Europeans, later Euro-Americans, colonized Indigenous peoples, by disrupting their livelihoods, societies, systems, and stealing their ancestral land bases. I argue in this chapter the English common law (Harris 2004, 176-8) and violence, specifically rape (Deer 2005, 150), were tools of colonization used to gain access to Indian land and to

sanction a campaign to civilize Indian peoples. The law and violence highlight specific processes of colonization. For instance, the law created a legal language that discriminates and defines Indian peoples as inept and in need of federal guardianship (Williams 2005, 48-9), thereby justifying U.S. paternalism and Congressional plenary power of Indian land, resources, and affairs. Violence was used in various forms to harm Indians. For example, the U.S. Army led several military campaigns against Indians, such as the Cherokee Trail of Tears, Navajo Long Walk, and Wounded Knee Massacre, to name a few, to physically remove Indians from their lands and homes. Additionally, Indian children, now adults, reported experiencing various types of violence while attending boarding schools, such as physical, sexual, mental, emotional, and spiritual violence. The conquest of Indian lands and peoples happened through the law and violence. The Federal Indian laws and policies that currently define the legal relationship between the U.S. federal government and Indian peoples and distinguish the jurisdictional boundaries in Indian Country resulted from the laws created during the conquest of the United States. The legal language that permits federal paternalism in Indian Country profoundly impacts Indian women who are sexually assaulted by non-Indian or Indian men on tribal lands.

The English law was used in several contexts to disrupt Indian people's ways of life and institute European Christian civilization ideologies onto Indians. The English law disrupted Indian people's ways of life by creating a legal language and justifications that permitted European colonizers access to Indian land, while forbidding Indians access to their land and resources. European colonizers used the English law to justify the dispossession of land from Indians (Harris 2004, 177). Harris discusses colonialism in

regards to a geographical dispossession of the colonized other (Harris 2004, 167-170). “Terra nullius” is the foundational premise to claim land using the doctrine of discovery (Smith 2005, 56), from a settler colonial perspective, as an unused or unclaimed commodity and its purpose is for capital exploitation (Wolfe 2006, 394) and an open site for white settlement and expansion. White settlers in the U.S. used the European legal concept of “terra nullius” upon discovery or invasion to claim rights and authority over Indigenous land (Williams, 2005, 51) (Smith 2005, 56). The doctrine of discovery was used in the Marshall Trilogy to define the rights of Indians in the U.S. and establish a model of U.S. paternalism over Indians and Indian affairs in Indian Country (Williams 2005, 55).

The cases are significant to understanding the limitations of tribal sentencing authority and tribal criminal jurisdiction in Indian Country. The Marshall Trilogy defined the rights of Indians in the U.S., thereby developing a legal language of management (Harris 2004, 174), which includes “people, nature, and space” (Harris 2004, 174). The Marshall Trilogy, named for Chief Justice John Marshall are the three U.S. Supreme Court cases, *Johnson v. McIntosh* (1823)⁴, *Cherokee Nation v. Georgia* (1831)⁵, and *Worcester v. Georgia* (1832)⁶ and the foundation of federal Indian law. The Marshall Trilogy institutionalized and legalized the U.S. paternalism toward Indian nations and launched the language of Indian inferiority in its decisions (Williams 2005, 48) and created the federal trust relationship. Historic and current federal Indian policies and laws

⁴ *Johnson v. McIntosh*, 21 U.S. 543 (1823).

⁵ *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831).

⁶ *Worcester v. Georgia*, 31 U.S. 515 (1832).

used to describe the rights of Indians and power and authority of Indian nations are defined by the Marshall Trilogy. The prejudiced view of Indians as subordinate withstands Indian nation's inherent power and authority to decide just punishment against individuals who commit crimes in their community.

Beginning with *Johnson v. McIntosh*⁷ in 1823, Justice Marshall decided the doctrine of discovery gave ultimate land title to the United States. After all it was the Europeans who “discovered” the Americas:

On the discovery of this immense continent, the great nations of Europe were eager to appropriate to themselves so much of it as they could respectively acquire. Its vast extent offered an ample field to the ambition and enterprise of all.

The Johnson decision basically regarded Indian title to land as illegitimate because under the scrutiny of European eyes, Indians were a “racially inferior group of people who were living as savages at the time of the coming of the white man to America” (Williams 2005, xviii). Indians as uncivilized aids the idea that Indians are manageable by a superior race; therefore justifying their removal and placement onto reservations. The decision made in *Johnson v. McIntosh* supports the management of Indians by taking away their rights to land and impeding on their ways of life. The ideal of management is important to understanding how Indians are positioned in the scheme of colonial management or federal paternalism.

The second and third cases of the Marshall Trilogy are commonly recognized as the Cherokee cases, which illustrates that reservations are a designated spaces for Indians to exist but colonial laws still apply (Harris 2004, 178-9). The second case of the

⁷ *Johnson v. McIntosh*, 21 U.S. 543 (1823).

Marshall Trilogy is *Cherokee Nation v. Georgia*⁸ of 1831. In this particular case the Cherokee Nation brought suit against the state of Georgia to impede Georgia from extending their state laws over Cherokees and to hinder further white expansion onto Cherokee territories. Justice Marshall decided the issue of the case was whether the Cherokees could file suit against a State of the Union. Using the discovery doctrine he decided the Cherokee Nation and other Indian Nations were to be politically recognized as “domestic dependent nations”, not foreign nations as described in the U.S. Constitution (Williams 2005, 60, 62). Furthermore, the *Cherokee Nation* also introduced the “trust doctrine” which Justice Marshall outlined as being the guardian-ward relationship: “they are in a state of pupillage. Their relation to the United States resembles that of a ward to his guardian” (Williams 2005, 61). This court case decided Indian sovereignty was secondary to the U.S. and therefore, Indian nations could not govern without federal supervision. Furthermore, the “trust doctrine” allows for the U.S. government to decide what they think is beneficial for Indian nations. *Cherokee Nation v. Georgia*⁹ created a political relationship between Indian nations and the United States that is unequal in power and authority. Moreover, Indian nations are legally defined as inept in managing their own affairs. Because Indian nations are defined as dependent nations, their laws, systems, and institutions are viewed as illegitimate. Again, this case contributes to the colonial ideal of management that there are those that need to be managed by a superior (Ross and Gould 2006, 4).

⁸ Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

⁹ Cherokee Nation v. Georgia, 30 U.S. 1 (1831).

The final case of the Marshall Trilogy and second of the Cherokee cases is *Worcester v. Georgia*¹⁰ of 1832. Again, the state of Georgia tries to exercise state laws within the Cherokee Nation territories. William Worcester and Samuel Butler were two New England Protestant missionaries residing within Cherokee territory and according to the state they violated Georgia law “prohibiting anyone from entering Cherokee territory without a license from the state” (Williams 2005, 63). The issue of the case was whether individual state law had superiority over federal laws within Indian territories. Again, Justice Marshall used the doctrine of discovery to deliver the opinion of the court. With the *Worcester* case Justice Marshall decided the U.S. federal law was superior to state law. Furthermore, the decision recognized “the federal government’s colonial supremacy and control of Indian affairs under the Constitution and laws of the United States” (Williams 2005, 65). This case is detrimental to American Indian sovereignty and law because the federal government overshadows tribal sovereignty with their paternalism, meaning that only the federal government has the right to manage Indian nations and peoples.

The Marshall Trilogy created a dangerous framework that ultimately altered Indian rights and independence and limited Indian nation’s governmental power and authority of its laws and institutions. The guardian/ward political relationship relegates Indian nations to an inferior sovereign status that permits the U.S. to assume a paternalistic role to manage the land, resources, affairs, and members of Indian nations. Indian nations are marginalized under colonial management. The Marshall Trilogy provided the U.S. with a rights-destroying model (Williams 2005, 49) to create federal

¹⁰ *Worcester v. Georgia*, 31 U.S. 515 (1832).

Indian laws and policies that support settler colonialism and the eradication of Indian nation's sovereignty.

Settler Colonialism and American Indians

Settler colonialism is a continuous process of conquest. First and foremost, settler colonialism is a land-based project (Wolfe 2006, 388), meaning that settler colonialism is a physical process of claiming and settling Indigenous land by eliminating Indigenous presence. Therefore, settler colonialism is a structured and continuous development, through a process of establishing settler permanence. Whereas, colonialism is about colonial access and control of land, resources, and labor, settler colonialism is about forming residency and settler livelihoods that will force physical and social changes to occur. The changes caused by settler colonialism disrupt Indigenous livelihoods and create vulnerabilities in the social fabric of Indigenous societies and systems. The issue of violence against Indian women is a result of the erasure of Indigenous systems and institutions to regulate crime on tribal lands.

Settler permanence is reliant on the removal and eradication of Indigenous peoples. Wolfe uses a "logic of elimination" to explain the "negative and positive dimensions" (Wolfe 2006, 388) of elimination. The negative and positive dimensions of elimination provide a framework for understanding how settler colonialism is best understood as a deliberate structure. As stated earlier, settler colonialism is a physical process. So, negative and positive dimensions can best be understood in the context of what is being destroyed and what is being constructed to replace what was destroyed. In the context of violence against Indian females, the positive and negative dimensions of elimination can be seen in the erasure of the Indigenous laws and justice systems that

protected Indian females were destroyed and replaced with foreign laws and justice systems. For example, Smith illustrates one story where in Kiowa society a rapist was subdued and his punishment was each woman lifted her skirt and sat on his face. Apparently, he later died from humiliation and his diminished status (Smith 2005, 19). Deer also reported that in her own Muscogee Nation the historic tribal rape laws reflected the decisions of its women:

And be it farther enacted if any person or persons should undertake to force a woman and did it by force, *it shall be left to woman* what punishment she should satisfied with to whip or pay *what she say it be law* (emphasis in original text) (Deer 2005, 464).

Through conquest, Indigenous laws and justice systems that featured women or influenced by women were eliminated.

Using the tools of conquest, colonial laws and violence, new systems and institutions erase and replace Indigenous laws and justice systems. The same beliefs of Indian inferiority founded in the Marshall Trilogy can be found in subsequent Federal Indian laws and policies. For example, the U.S. Code of Indian Offenses¹¹ (hereafter referred to as the Code) was implemented to support the U.S. campaign of civilizing Indians and the U.S. Courts of Indian Offenses were established to enforce the Code and punish disobeying Indians. The Code was a U.S. law that outlawed Indians from practicing their cultures, customs, spirituality, and beliefs from 1860 to 1934. In particular, the Code banned Indians from practicing certain dances (sun-dance, war-dance, and scalp-dance), plural marriages, use of medicine men, death customs, such as

¹¹ Office of Indian Affairs, Dep't of the Interior, Rules Governing the Court of Indian Offenses (1883), available at <http://rclinton.files.wordpress.com/2007/11/code-of-indian-offenses.pdf>

burning or destroying the deceased's belongings, and marriage customs, such as offering gifts to a woman's family in hopes of marrying her. U.S. Indian Agents banned the various practices because they were identified as practices that hindered Indians from becoming civilized. As a law the Code employed the logic of elimination and legally sanctioned the elimination of Indian culture and beliefs to replace with Euro-American, Christian values and customs. Moreover, the Code allowed violence, in the form of wrongful imprisonment and withholding of rations, which can be argued as starvation, as just punishment against Indians caught practicing their culture and customs. The U.S. Government and the Bureau of Indian Affairs vigorously enforced the Code of Indian Offenses¹² on all Indian reservations.

The Courts of Indian Offenses (hereafter referred to as the Courts) erased and replaced Indigenous justice systems and laws. The first courts to operate throughout Indian Country were the Courts and its sole purpose was to support the deculturation and acculturation of Indians to Euro-American ideals of civilization. Specifically, Indians were to obey U.S. laws, particularly the Code, and follow due process in a U.S. court system: the Courts were organized as a tribunal. The Judges of the Courts were appointed Indian officers of the tribal police. Both the Code and Courts are examples of erasure that gravely impacted the authority and control of Indigenous justice systems and laws practiced on tribal lands. Moreover, the origins of the current justice systems operating on tribal lands were developed to harm Indian nations and convert Indians to Euro-Christian ideals and were part of the U.S. civilization campaign.

¹² Office of Indian Affairs, Dep't of the Interior, Rules Governing the Court of Indian Offenses (1883), available at <http://rclinton.files.wordpress.com/2007/11/code-of-indian-offenses.pdf>

Patriarchy and American Indian Women

Patriarchy also incorporates the logic of elimination in that patriarchy structures a social arrangement that privileges male authority. Hunnicutt's definition of patriarchy helps to understand the relationship between patriarchy and violence against women. Patriarchy as a theoretical concept explains the social arrangements that are influenced by gender and dominance: "...it means social arrangements that privilege males, where men as a group dominate women as a group, both structurally and ideologically –hierarchical arrangements that manifest in varieties across history and social space" (Hunnicutt 2009, 5). Patriarchy is eliminatory in that patriarchy distinguished Indian females' status as secondary to Indian males and consequently, diminished their power and authority in law and justice systems.

Patriarchy influences law, more importantly rape law. Property law helps the colonial project in that law grants property rights (Harris 2004, 171) to men. For example, the Dawes Act distinguished men as the head of household and granted Indian men allotted acres of land. The Dawes Act erased Indian female authority and stewardship of land (Lajimodiere 2011, 59), thereby classifying Indian females a secondary status to Indian males. Moreover, the Dawes Act is a clear example of how the law supported the colonial project in granting white settlers' property rights to Indian lands, liquidating Indian rights to land to open up more land for white settlement, and destroying Indian societies:

...settlers' property rights depended on the law, first the right to exclude, then to alter, sell, will, and so on...So imbricated was law and the culture of legality in colonialism that some theorists consider them –perhaps too possessively – constitutive of colonialism itself (Harris 2004, 177).

Property law is significant to discuss because of its influence in Anglo-American rape law, where females were regarded as the property of males (Deer 2009, 154). Classifying females as the property eliminates their humanity and objectifies females as a possession, something that can be owned.

The English common law and courts grant husbands the authority to use physical violence against his wife. According to this despicable piece of legislation, the wife is regarded as the husband's "property":

The laws of England and their interpretation by the courts encouraged physical punishment of wives as deriving from a husband's responsibility for his wife's actions. In common law a man had the right "to give his wife moderate correction...by domestic chastisement' just as he could his children or apprentices. Common law also recognized his right to restrain his wife physically "to prevent her going into society of which he disapproves, or otherwise disobeying his rightful authority" (emphasis in original text) (Cobbe 1992, 46).

The English laws that legally sanctioned wife abuse were part and parcel of the same man-made laws that sanctioned the forceful removal of Indians. The law supports the colonial project by creating a framework of owners and possessions: land and females.

Patriarchy is eliminatory by replacing an Indigenous structure of equality between males and females with that of the Western male/female gender binary, that upholds a sociostructure that oppressive towards women (Taylor and Jasinski 2011, 354).

Patriarchy creates a structure of inequalities between women and men because patriarchal ideologies are reliant on the "male/female binary" that claims the male gender is "strong, capable, wise, and composed and the female gender is perceived as weak, incompetent, naïve, and confused" (Arvin, Tuck, and Morrill 2013, 13). The male/female binary develops a gendered power hierarchy that distinguishes males as dominate to females.

American colonizers applied patriarchal ideologies in their Indian civilization campaign to remove Indian females from public spheres and belittled Indian females' importance and contributions in society:

In the centuries since the first attempts at colonization in the early 1500s, the invaders have exerted every effort to remove Indian women from every position of authority, to obliterate all records pertaining to gynocratic social systems, and to ensure that no American and American Indians would remember that gynocracy was the primary social order of Indian America prior to 1800 (Gunn Allen 1992, 3).

The male/female binary impacts the due-process in that the justice system is premised on Anglo-American model that recognizes male-dominancy (Deer 2009, 162). The patriarchal ideologies that uphold structures of male authority are part and parcel of the same structures that normalize the use of violence to disempower women.

Violence against women is a product of patriarchal societal arrangements (Dobash and Dobash 1981, 565, 572) (Hunnicut 2009, 6). Dobash and Dobash's early research showed that violence against women was a product of societies that emphasized a patriarchal order where gender roles were restricted to a male/female binary and the nuclear family was considered private space, a space that the state could not intervene in because the state would infringe on patriarchal authority (Dobash and Dobash 1981, 571, 573). Patriarchal terrorism, a type of patriarchal violence, is the use of physical violence to maintain male authority over "his" partner (Johnson 1995, 287). However, a patriarchal order is not created or maintained by simply using physical violence to subjugate women to a subordinate social status. Hunnicutt explains that exercising physical violence against women does not inherently construct a patriarchal society and that maintenance of a patriarchal order or society is not wholly dependent on the exertion

of physical violence against women to position women in an inferior social status (Hunnicuttt 2009, 8). Instead, patriarchal ideologies and practices can maintain themselves in the complicit behaviors of both men and women:

Violence against women, therefore, is a result of the subordinate position women occupy in the social structure, and this subordination is the cultural legacy of the traditional family. In other words, violence against women is one manifestation of a system of male dominance that has existed historically and across cultures (Taylor and Jasinski 2011, 343).

Patriarchy coupled with the principles of ownership in rape law, which is founded in English property law, creates a legal system that tolerates male dominancy and endangers females to male violence.

Femicide

Femicide research and activism is part of a larger political strategy to draw attention to crimes of sexual violence against women and hold men who commit femicide accountable for their violent murderous crimes of women. This political concept is important because those who use it hope to draw attention to the inadequate legal responses, or lack of, to femicidal crimes (Radford 1992, 6) especially as a dangerous practice of male dominancy that permits the practice of male violence against women. Specifically, the main focus of femicide is that the law does not equally protect females from male violence; creating a false belief that females are expendable and their bodies violable. Thus, the legal system as a social institution has contributed to the marginalization of women by denying them protection from male violence and/or disregarding “gender-based analyses” (Russell 2001, 38) in femicidal crimes.

The legal response to crimes of violence against women exposes contradictions in determining “justice” for the victim. Victimology in cases of violence against women claims that a woman’s violent experience is her own fault: “Victimology is a way of explaining crime that is popular within criminology. It holds that those victimized by crime are often responsible for it” (Radford 1992, 5). In a case of femicide that occurred in England, the victim was blamed for her own death on grounds of “diminished responsibility” and “provocation,” which supports the ideals of victimology; thereby excusing male violence. Moreover, “diminished responsibility” and “provocation” defined a legal framework to blame women for their experiences and manage women.

“Diminished responsibility” and “provocation” are two English legal arguments used to defend men who commit femicide. Moreover, “diminished responsibility” and “provocation” are woman-blaming strategies founded on the ideology of victimology.

The English law of “diminished responsibility” states in the Homicide Act of 1957:

...that the defense must show that the accused was “suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind, or any inherent causes or induced by disease or injury) as might substantially impair his mental responsibility for his acts and omissions, in doing or being a party to the killing (Radford 1992, 231).

The legal argument of “diminished responsibility” does next to nothing to account for the injustice committed against the victim and the victim’s loved ones. “Provocation” is another English legal façade excusing male perpetrators who murder women. Also, included in the English Homicide Act of 1957, “provocation” means:

...some acts or series of acts done by the deceased which would cause in any reasonable person, and did cause in the accused, a sudden and temporary loss or self-control, rendering him so subject to passion as to make him not for the moment master of his mind. The sufficiency of the provocation shall be left to the determination of the jury, which shall take into account everything both said and

done according to the effect which, in their opinion, it would have on a *reasonable man* (emphasis in original text) (Radford 1992, 230).

The English laws of “diminished responsibility” and “provocation” provide legal sanctions for men to commit femicide. In other words, “diminished responsibility” and “provocation” allow violent men to commit murder with impunity.

The Relationship between Femicide and Sexual Violence of American Indian Women on Tribal Lands

Criminal jurisdiction should not be as complicated as it is in Indian Country. The criminal jurisdiction within Indian Country depends on various factors: the type of crime committed, the location of the crime committed, who committed the crime (Indian or non-Indian), and who is the victim (Indian or non-Indian). The federal government has jurisdiction over all major crimes committed in Indian Country but in some instances tribes share concurrent jurisdiction (Deer 2004, 20). Additionally, the federal government has jurisdiction over crimes where either the victim or the perpetrator is an Indian and the other party is non-Indian. Tribes retain their jurisdiction in cases where both the perpetrator and victim are Indian, excluding crimes listed in the Major Crimes Act of 1885 (Cardani 2009, 129). Assessing which sovereign has jurisdiction or does not have jurisdiction has complications.

Since most violent crimes committed against women fall under federal jurisdiction, they are under the purview of a confusing jurisdictional maze, inconsistent investigations, and lack of tribal prosecutorial control. Indian women who are sexually assaulted are subjected to arduous legal processes that are outside the reservation, which weaken support systems for the survivor and contribute to the feelings of powerlessness

that survivors often describe experiencing (Hamby 2009, 64-65). Federal Indian law has created a very complex and confusing tribal jurisdictional scheme that complicates prosecution and investigation of sexual violence crimes. Tribal governments are restricted by Federal Indian law in their authoritative power to have exclusive criminal jurisdiction and prosecute criminals, whether they are Indian or non-Indian, when they commit crimes on tribal lands.

Through the process of colonization the U.S. government forced Indian nations to acculturate to Western concepts of *law* and *justice*. The Major Crimes Act (MCA) of 1885¹³, the Indian Civil Rights Act (ICRA)¹⁴, and *Oliphant v. Suquamish Indian Tribe* (1978)¹⁵ are the main legal deterrents for Indian nations to have complete control of punishment criminals who commit heinous crimes against Indian women. These various case laws and acts prevent Indian nations from asserting their full authority over violent crimes and more importantly, defining and determining their own forms of punishments and the due process.

The Major Crime Act¹⁶ (hereafter referred to as MCA) grants the federal government exclusive jurisdiction over major crimes committed by Indians in Indian Country regardless whether the victim is Indian:

Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury (as defined in section 1365 of this title), an assault against an individual

¹³ Major Crimes Act, 23 Stat. 385 (1885).

¹⁴ Indian Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 77 (1968).

¹⁵ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

¹⁶ Major Crimes Act, 23 Stat. 385 (1885).

who has not attained the age of 16 years, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country, shall be subject to the same law and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States (Major Crimes Act 2014).

Due to MCA Indian nations do not retain exclusive jurisdiction when an Indian woman is murdered and moreover, Indian nations compromise their tribal sovereignty and reliant on Euro-American concepts of justice.

The Indian Civil Rights Act¹⁷ (hereafter referred to as ICRA) violates and erodes sovereignty by infringing on the power of tribal courts and traditional law by imposing Euro-American values and laws onto tribal communities, such as due process of law and equal protection under the law (Deloria Jr and Lytle 1983, 174-175, 177, 229-230):

On finding that many tribal constitutions lacked civil rights provisions and that basic rights, especially the right to due process, were commonly violated, the chair of the subcommittee, Senator Sam Ervin Jr., shifted the subcommittee's efforts to drafting legislation. (emphasis in original) (Indian Civil Rights Act of 1968 2015).

Ultimately, ICRA excludes tribal courts from having jurisdiction over severe crimes by outlining restrictive sentences and penalties:

No Indian tribe in exercising powers of self-government shall-...require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction at any one offense any penalty or punishment greater than imprisonment for a term of one year and [1] a fine of \$5,000, or both (Indian Civil Rights Act of 1968 2015).

As intrusive as ICRA is, it does not compare to the damages of the infamous *Oliphant* case.

¹⁷ Indian Civil Rights Act of 1968, Pub. L. 90-284, 82 Stat. 77 (1968).

Lastly, U.S. Supreme Court case, *Oliphant v. Suquamish Indian Tribe* (1978)¹⁸ silences the violent victimization of Indian women. The *Oliphant* decision held that tribes do not have inherent criminal jurisdiction over non-Indians unless specifically authorized by Congress (Deloria Jr and Lytle 1983, 180-181). Robert A. Williams, Jr. asserts that *Oliphant* “perpetuates the Marshall model’s overarching principle of white racial supremacy” founded in the doctrine of discovery: “According to *Oliphant*, Indian tribes had been divested of this particular sovereign power of self-government by their “incorporation” into the United States by operation of the doctrine of discovery” (Williams 2005, 98). Ultimately, *Oliphant* suppresses the inherent right of Indian nations to protect their citizens from attacks by non-Indians and cedes their sovereign exercise to prosecute non-Indian criminals to the federal government. These various legal documents render American Indian women vulnerable to violence and various types of abuse on tribal lands.

Conclusion

This chapter shows the ways colonization and patriarchy lead to femicide and violence against Indian females, and the laws impede criminal prosecution of sexual violent crimes committed on tribal lands. More specifically, this chapter focused on the process of colonization and the structures of patriarchy. Due to colonization Indian nations have limited authoritative powers over violent crimes that occur on tribal lands, such as exercising criminal jurisdiction over non-Indians who sexually assault Indian women, and determining the types of sentencing and/or fines of the perpetrator. Using the concepts of femicide I show that women are disempowered in patriarchal social

¹⁸ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978).

arrangements and that their experiences of male violence are silenced or justified by the nation-state's legal system. Patriarchy and patriarchal social arrangements have impacted the status of Indian women in Indian communities. In the next chapter I discuss how the ongoing colonial legacy of management and federal paternalism influence the Tribal Law and Order Act of 2010 and Violence Against Women Act Reauthorization of 2013. Although these two Acts are fairly recent, they still govern Indian nations to exercise tribal sovereignty in a specific and definitive protocol.

CHAPTER 3

TRIBAL LAW AND ORDER ACT OF 2010 AND VIOLENCE AGAINST WOMEN ACT REAUTHORIZATION OF 2013 AS A CONTINUATION OF COLONIAL LEGACY OF MANAGEMENT AND FEDERAL PATERNALISM ON TRIBAL LANDS

This chapter continues the discussion about the colonial management of Indian nations and peoples and the use of colonial laws to define Indian sovereignty and determine the extent to which Indian sovereignty can be asserted. The current justice systems are inadequate in terms of investigating, processing, and prosecuting criminals in Indian Country. Specifically, assaults against Indian women are not being addressed with the urgency that is needed to deter future assaults on tribal lands. Although Indian nations are considered sovereign nations, U.S. laws and policies influence Indian sovereignty and governance, specifically in the context of prosecution on tribal lands and outlining tribal jurisdiction. As discussed in the previous chapter conquest of Indian nations is an ongoing process. The logic of elimination, which I described as erasure, and the legal language of federal paternalism are mechanisms of conquest that appear in current federal Indian laws and policies. In this chapter I will demonstrate how the Tribal Law and Order Act of 2010 and the Violence Against Women Act of 2013 permit federal paternalism and the management of Indian nations and peoples.

The Tribal Law and Order Act of 2010¹⁹ (hereafter referred to as TLOA) and the Violence Against Women Act of 2013²⁰ (hereafter referred to as VAWA) are two

¹⁹ Tribal Law and Order Act of 2010, Pub-L 111-211, 124 Stat. 2261 (2010).

²⁰ Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013).

specific Acts being heralded as game changers for tribal criminal jurisdiction in Indian Country because each Act amends ICRA in specific areas. Although the Acts recognize Indian sovereignty and the need for Indian law enforcement and justice systems to act on crime in their own community, the Acts still manage Indian sovereignty. For instance, the TLOA increases tribal sentencing from one to three years, but in some serious cases three years may not be satisfactory (Hart 2010, 179). Additionally, the TLOA provides more funding for federal prosecution and agencies that deal with sexual assault crimes (Hart 2010, 139), but does not ensure an increase in federal prosecution of sexual assault cases that occur in Indian Country (Cardick 2012, 564). The VAWA is the first federal policy that permits Indian law enforcement and justice systems to exert sovereignty over non-Indians, but only in domestic violence cases where it is proven an extended relationship existed prior to the crime²¹. Although the Acts are regarded as progressive, in terms of amending ICRA, they will not solve sexual violence on tribal lands because the Acts, like its predecessors, operate within the limits of the federal standards. I will discuss how the TLOA and VAWA of 2013 are current policies that continue the colonial legacy of management.

Tribal Law and Order Act of 2010

The TLOA was created in response to an increase in violent crime, in particular gang violence and domestic violence, in Indian Country (Hart 2010, 140) and was signed into law by President Barrack Obama in July 2010 (Owens 2012, 500; Hermes 2013, 675). The law recognized that the federal government has a trust responsibility to fulfill to Indian nations and therefore, the law aimed to improve coordination between tribal and

²¹ Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013).

federal law enforcement and address the high rates of violence Indian women experience (Hart 2010, 141). Most notably, the TLOA amends the Indian Civil Rights Act's tribal sentencing from one to three years. Regardless, the TLOA is another federal mandate that allocates permission for Indian nations to exert their sovereignty but only within a definitive protocol.

Similar to precedent federal Indian laws and policies, like the Indian Civil Rights Act and the Major Crimes Act, the TLOA forces U.S. legal standards onto Indian nations and their tribal justice systems. For example, tribal rape policies and protocols will have to follow the Department of Justice standards (Cardick 2012, 569) and tribal justice systems will have to limit their use of "stacking" charges: "stacking" refers to "when courts issue consecutive prison sentences for the multiple felony convictions that are part of one criminal act" (Hermes 2013, 690). Regardless if tribes choose to implement TLOA, Indian justice systems are limited in their ability to stack charges for offenses to only nine years (Hermes 2013, 690). In the context of limiting stacking sentencing, the federal government sets the standard of tribal sentencing.

Indian nations have to comply with the TLOA demands to exercise their increased sentencing authority (Hermes 2013, 690). Tribal governments have to provide several services as "procedural protections of criminal defendants" (Fortin 2013, 88), such as counsel and a licensed attorney for indigent defendants (Fortin 2013, 91). Other changes include; licensed tribal judges, criminal law and court rules must be available to the public, tribal courts must maintain audio recordings of criminal proceedings, and prisoners who are sentenced more than a year in prison must be held at a state or federally approved facility (Hermes 2013, 688). The requirements that the TLOA

demands are drastic and costly changes (Fortin 2013, 91) that some Indian nations may not be able to fund.

The required changes and standards could actually cause financial setbacks for Indian nations. The added costs to implement the TLOA requirements and enact the changes to tribal law may not be a worthwhile investment for an extra two-year sentencing authority (Hermes 2013, 693), especially since the TLOA does not provide specific funding to tribes for the mandatory requirements (Cardick 2012, 571; Fortin 2013, 98). For instance, tribes must provide for indigent counseling but the funding initiatives to provide for the added costs is minimal in comparison to funding for crime prevention and law enforcement under TLOA (Fortin 2013, 97). Funding for crime prevention and law enforcement include grants for the following: research and education in drug enforcement, hiring and training of law enforcement officers, jail development, delinquency prevention, and improving information sharing among law enforcement agencies (Fortin 2013, 97). Additionally the TLOA does not provide more funding for tribal police force (Owens 2012, 518). Indian nations and their tribal law enforcement agencies are already underfunded and their tribal resources stretched thin to police Indian Country: “Tribal law enforcement agencies generally only have between fifty-five and seventy-five percent of the resources available to non-Indian communities. About \$83 is spent per resident in Indian Country on law enforcement, while the national average is closer to \$130 per resident” (Hart 2010, 161). Since the TLOA does not provide for additional funding the tribal police to operate efficiently to respond to crimes, it can be argued that the response to sexual assaults will remain relatively the same: uninvestigated

(Owens 2012, 518). Overall, the TLOA does not increase base funding, meaning tribal law enforcement and justice systems will still face some sort of financial hardship.

The creators of TLOA may have had noble intentions of alleviating tension between tribal, federal, and state governments but in actuality, the TLOA contributes to the already strained relationship among Indian governments, state governments, and federal governments in determining who has criminal jurisdiction in Indian Country (Cardick 2012, 568). As discussed earlier in the Introduction Chapter, rape cases that involve Indian women on tribal lands are particularly worrisome and devastating for several reasons. First, Indian women are raped at higher rates than other non-Indian women. Second, when Indian women are raped, their experiences are often more violent, more likely to involve the use of a weapon, require medical attention, and Indian women are more likely to die from their injuries. Third, Indian women are more often assaulted by non-Indian men (Cardick 2012, 574). The TLOA does not create meaningful provisions to help in the increased prosecution of rapists or other dangerous criminals.

On the federal level the TLOA does not provide an adequate solution to the lack of prosecution of rape or sexual assault cases on tribal lands. One of the issues with jurisdiction in Indian Country was the lack of federal prosecution of crimes listed in the Major Crimes Act, specifically sexual assault. Research revealed that a mere 17% of the 49% reported sexual assault cases by AIAN women were federally prosecuted (Bachman et al. 2010, 212). The TLOA was lauded as solving this issue but in actuality, the law does not require federal prosecutors to prosecute more rape or sexual assault cases in Indian Country (Owens 2012, 520). TLOA simply requires for the US Attorney's Office to notify tribal prosecutors if and when federal prosecutors decline to prosecute under

MCA (Cardick 2012, 564; Hart 2010, 167), which certainly does not help in the prosecution of non-Indian rapists.

The TLOA ignores the fundamental issue of no tribal jurisdiction over non-Indians who commit crimes on tribal lands. The TLOA ignores *Oliphant* (Cardick 2012, 569; Hermes 2013, 697; Hart 2010, 178) and does not address the significant issue of non-Indians committing crimes on tribal lands. Reportedly 70% of sexual assault offenders are non-Indian men, specifically white men (Bachman et al. 2010, 212). The preventive provision in the TLOA focuses more on punishing Indian men who commit rape but does not put into action any provisions to stop or deter non-Indian men from committing sexual assault against Indian women on tribal lands (Cardick 2012, 569; Owens 2012, 518). Instead, the law, like its predecessors, maintains the *Oliphant* loophole for non-Indians to escape persecution in Indian Country.

Again on the state level, the TLOA complicates the issue of jurisdiction in Public Law 280 states (hereafter referred to as PL 280). Simply stated, PL 280 grants state governments' exclusive jurisdiction on tribal lands, regardless of the Indian or non-Indian status of the victim or perpetrator (Archambeault 2009, 192-193). PL 280 has existing challenges in the states that use the law because the federal government does not grant additional funds for state law enforcement to police, investigate, or enforce laws on tribal lands (Champagne and Goldberg 2012, 4). Therefore, Indian communities in PL 280 states are often ignored or under-policed (Champagne and Goldberg 2012; Luna-Firebaugh 2007). Should Indian nations choose to implement TLOA, the tribal governments have the option to opt for concurrent jurisdiction on crimes listed in the MCA with either the state or federal government or both (Cardick 2012, 566, 572; Owens

2012, 519). Should sexual assault occur on tribal lands determining who (Indian, state, or federal government) has responsibility to investigate and prosecute criminals.

Additionally, the law is presented as a fix-all solution that does not take into consideration the cultural and social differences of the 565 federally recognized Indian nations. The lack of training and sensitivity of various Indian cultures contributes to the distrust Indian citizens already have towards the federal government and its agencies (Hamby 2008; Tippeconnic Fox 2009). Federal agents and prosecutors are not from the community and therefore, they are not aware or sensitive to the cultural and social norms of the Indian communities they serve (Cardick 2012, 559-561). To eliminate the cultural barrier that impacts investigation and prosecution of rape and sexual assault cases, tribal authorities, not federal authorities, should take charge of the investigation and prosecution on tribal lands (Hermes 2013, 688). Also, as reported earlier, a mere 17% of 49% reported assaults are prosecuted (Bachman et al. 2010, 212). Should tribal law enforcement and prosecutors take responsibility of criminal investigations, prosecution of sexual assault crimes could increase. However, that sort of change to the MCA would require for the federal agents to withdraw their power and authority in Indian Country, which is a task that could be met with criticism.

Violence Against Women Act

The passage of the 1994 Violence Against Women Act (VAWA) was a landmark mandate for women in the United States. VAWA was first presented in 1990 by Senator Joseph Biden due to an urgency to provide aid to domestic violence victims (Meyer-Emerick 2001, 1). The 1994 was originally enacted as “Title IV of the Violent Control

and Law Enforcement Act (P.L. 103-322)²².” The purpose of the 1994 law was to change law enforcement practices, improve the criminal justice system, and increase access to shelters and services for victims (Rosenthal 2013, 4). VAWA is a “collection of funding, initiatives, and actions designed to improve criminal justice and community-based responses to violence against women, including sexual assault” (Introduction to the Violence Against Women Act n.d.).

Since 1994, congress has reauthorized VAWA three times. In 2000 President William J. Clinton signed into law the Victims of Trafficking and Violence Protection Act of 2000 (P.L. 106-386) (Laney 2010) for the purpose to combat trafficking in persons, especially into the sex trade, slavery, and involuntary servitude.²³ The Violence Against Women and Department of Justice Reauthorization Act of 2005²⁴ was signed into law by President George W. Bush on January 5, 2006 (Laney 2010). The law sanctions various “programs for domestic and dating violence, sexual assault, and stalking” (Laney 2010, 3). VAWA did not recognize or mention the magnitude of violence Indian women experience in their revisions at all. Until VAWA 2005 there was not a direct provision to address the severity of violence in Indian communities nor was there any provision to encourage the collaboration of governments to handle violent crimes in Indian Country. VAWA 2005 was influential in that it pushed for the Attorney General to create a Task Force dedicated specifically to implementing changes that will benefit Indian nations. While the VAWA has contributed significantly to the awareness

²² Violence Against Women Act of 1994, Pub. L. 103—322, 108 Stat. 1902(1994)

²³ Violence Against Women Act 2000, P.L. 106-386; 114 Stat. 1491

²⁴ Violence Against Women Act 2005, P.L. 109-162; 119 Stat. 2960

of sexually violent crimes committed against Indian women by providing funding initiatives and opportunity for research and collaboration between governments (federal, state, and tribal), the law is limited in that it fails to recognize tribal government's inherent authority to provide safety and protection of their citizens.

Violence Against Women Reauthorization Act of 2013

The latest VAWA Reauthorization of 2013 was controversial (Sayler 2014, 6) and highly anticipated for in Indian Country. On March 7, 2013 President Barack Obama signed into law the latest reauthorization and for the first time the law acknowledges Indian nations' inherent power to exercise criminal jurisdiction over non-Indians who commit domestic violence crimes against their Indian partners on tribal lands or violate protection orders in Indian Country (Violence Against Women Act (VAWA) Reauthorization 2013 n.d.). Reports show that Indian women experience higher rates of domestic violence or intimate partner violence: NCAI reports 39% of Indian women will experience domestic violence or intimate partner violence in her lifetime (NCAI Policy Research Center: National Congress of American Indians 2013, 3). Since *Oliphant* states non-Indians are not subject to prosecution by Indian nations and their justice systems, Indian justice systems and laws did not apply to non-Indians involved in relationships with Indian women.

Undoubtedly, Indian nations and their justice systems should not be prevented from exercising jurisdiction over non-Indians. Statistical analysis highlights the fact that inter-racial relationships exist in Indian communities and most often non-Indian perpetrators reside on tribal lands with their Indian partners: In 2010, 59% of Indian women were in relationships with non- Indians and 46% of people living on reservations

were non-Indian (NCAI Policy Research Center: National Congress of American Indians 2013, 5-6). However *Oliphant* states non-Indians are not subject to prosecution by Indian nations and their justice systems. Therefore, Indian justice systems and laws did not apply to non-Indians involved in relationships with Indian women. Due to the statistics reflecting inter-racial relationships and the alarming rates of domestic violence involving Indian women on tribal lands, VAWA 2013 does allow for Indian governments' to exert jurisdiction over non-Indians in the context of "special domestic violence criminal jurisdiction" allows.

The VAWA 2013 amends the Indian Civil Rights Act by adding the "special domestic violence criminal jurisdiction" (hereafter referred to as SDVCJ) clause. The SDVCJ clause is the tribal assertion of authority to prosecute non-Indian in instances of domestic violence and dating violence that occurs on tribal lands, and when they violate protections orders in Indian Country (VAWA 2013 Implementation Update: Special Domestic Violence Criminal Jurisdiction 2015, 2). Still, Indian justice systems can only exercise SDVCJ under the following conditions: the victim is Indian, the crime was committed within the jurisdiction of a participating tribe, and the non-Indian defendant has sufficient ties to the participating tribe, which include being a resident, employed, or a spouse, intimate partner, or dating partner of tribal member of the participating tribe (VAWA 2013 Implementation Update: Special Domestic Violence Criminal Jurisdiction 2015, 2). As previous federal Indian policies designed under colonial law, tribes can only exert SDVCJ if it meets certain definitive conditions.

"Participating tribes" are authorized to enforce SDVCJ after tribes meet certain conditions to ensure the rights of the non-Indian defendant are granted. The "participating

tribe” must provide the non-Indian defendant with rights as outlined in ICRA, defense counsel in cases where the defendant is sentenced to jail, trial by jury drawn from fair cross section, and other U.S. Constitutional rights (Urbina and Tatum 2014, 4). Like precedent federal Indian policies and laws, the VAWA 2013 is made to arrange the authoritative powers of tribal sovereignty to prioritize U.S. rights of non-Indians and accommodate the safety and protection of Indian citizens.

The SDVCJ in VAWA 2013 gives the illusion of inherent tribal sovereignty, in the context of prosecution of non-Indians. In other words, VAWA 2013 operates in the same duality as ICRA in that Indian nations are able to prosecute but only after specific U.S. sanctioned standards, procedures, and provisions are in order prior to exercising tribal sovereignty. As Saylor perfectly stated, VAWA 2013 is an attempt to “correct the mistakes of Oliphant through an expansion of the bounds of inherent tribal sovereignty” (Saylor 2014, 8).

Conclusion

As demonstrated Acts of colonial management and federal paternalism is not a practice of the tragic past. Indian nations and their governments cannot fully ensure the investigation and prosecution of sexual assault cases and protection of victims as long as the authoritative powers of tribal sovereignty is administered by U.S. jurisprudence. The next chapter attempts to do three things to step away from colonial management and federal paternalism in the hopes of having authority over sexual assault crimes; 1) restructure sovereignty from an Indigenous worldview; 2) create a conceptual framework of an Indigenous Woman’s Justice Paradigm that positions sovereignty in rape law and

sexual assault jurisprudence; and 3) imagine what the Indigenous Woman's Justice Paradigm in action in Indian communities.

CHAPTER 4

IMAGINING DECOLONIZATION: CREATING OUR OWN INDIGENOUS JUSTICE SYSTEMS

The issue of violence against Indian women developed from the ongoing process of conquest and erasure (Arvin et al. 2013, 18). As I have discussed in Chapter 2, colonialism was a process of conquest made possible with English law and violence and settler colonialism as a structured event aimed to eliminate Indigenous presence and replace with settler permanence, which I explained as erasure. The settler colonial institutions (justice systems and courts) which currently operate in Indian Country, are settled structures, meaning those institutions are the predominant forms of authority and regulation. Moreover, that conquest and erasure have created a relationship between the federal government and Indian nations based on colonial management and resulted in federal paternalism.

Federal and state justice systems impose their jurisdiction on tribal lands and ultimately, prevent tribal law enforcement and justice systems to regulate crime and protect its citizens. For instance, although sexual assault is a listed crime in the Major Crimes Act, which means federal government has exclusive jurisdiction, federal prosecutors often decline to investigate or prosecute sexual assault cases (Owens 2010, 499). Additionally, tribal governments cannot prosecute non-Indians due to *Oliphant* (Cardick 2012, 552; Deer 2005, 460). In addition, tribal governments are restricted in their punishment abilities because of ICRA (Cardick 2012, 552; Deer 2005, 460). Western legal/justice systems and law enforcement agencies maintain and enforce U.S. hegemony that continues the suppression of Indian nations from using their own

knowledge and systems. In my research, I recognize the complications and limitations of Western forms of justice operating and enforced in Indian Country (from Chapter 1), because of this I imagine a different means for delivering justice using Diné sovereignty, law and due process, and accountability. Due to the limited authoritative power of Indian nations defined by colonial management and federal paternalism, I believe Indigenous knowledge can develop a more efficient response to crimes on tribal lands.

Decolonization

Decolonization is a process to continue the survival of our Indigenous cultures, customs, spirituality, and land base and an active movement of resistance to ongoing colonialism. Dakota scholar, Waziyatawin Angela Wilson, and Sahnish/ Arikara and Hidatsa First Nations scholar, Michael Yellow Bird, define decolonization as “the intelligent, calculated, and active resistance to the forces of colonialism that perpetuate the subjugation and/or exploitation of our minds, bodies, and lands and it is engaged for the ultimate purpose of overturning the colonial structure and realizing Indigenous liberation” (Waziyatawin and Yellow Bird 2005, 2). In the context of my thesis, resistance is the cultural renewal of Diné knowledge on the systems used to correct violent crimes that occur in the community. Because we do not and may not fully know or understand how Indian communities reacted to violent crimes prior to colonization, we have to employ what we do know from cultural knowledge passed down as well as develop new knowledge and systems to meet the challenges today.

Decolonization work requires a long-term commitment (Laenui 2000, 157-158; Arvin et al. 2013, 19) because decolonization is a violent process, meaning people will resist and/or contend changes that unsettling causes (Laenui 2000, 157). Decolonization

is experienced differently and takes various forms because decolonization is about creating spaces to envision and begin transformation: "...create spaces in which decolonization can be deeply considered and experimented within the specific contexts of different places" (Arvin et al. 2013, 25). The tribal justice systems is the space in which I attempt to decolonize by creating a framework that will better respond to and regulate sexual assaults on Indian lands.

Cultural Renewal

Cultural renewal is part of the larger Indigenous decolonization efforts that are striving for social change while holding onto traditions: "I found that, ultimately, indigenous decolonization is about reclaiming traditions, in addition to moving forward in the complex social, political and economic realities colonization brought to our peoples and homelands" (Jacobs 2013, 6). Instead of using the term "cultural revitalization", I am using "cultural renewal." Cultural revitalization implies that culture does not have life and I do not agree with that perspective. Although U.S. laws and systems, like the U.S. Code and Courts of Indian Offenses, suppressed Indigenous culture, Indigenous culture did not die but adapted to survive. I am contextualizing renewal as a form of adaption in that renewal is the re-purposing of cultural truth in specific contexts and spaces. In this section, I am attempting to articulate cultural renewal in the context of Diné sovereignty and Indigeneity to move away from colonial management and federal paternalism.

My conceptual framework, although in developmental stages, looks to construct an Indigenous Woman's Justice Paradigm for an indigenous space that prioritizes accountability, responsibility, and reciprocity for sexual assault survivors. These three

specific concepts will contribute to the vision and mission of holding perpetrators accountable for committing violent crimes against Indian citizens on tribal lands using laws and justice procedures that belong to and administered by the community. The Indigenous Woman's Justice Paradigm (hereafter referred to as IWJP) is a conceptual framework that begins an outline for a different reality and justice systems in Indian Country.

Defining Sovereignty

American Indian nations need to assert their sovereignty and inherent right to exercise criminal jurisdiction over all crimes, specifically sexually violent crimes, within their boundaries to the encroaching federal and state governments. Tribal governments have the inherent right to assert and exercise their tribal sovereignty to provide better safety and protection of their citizens. Native legal scholars such as Sarah Deer, Raymond Austin, and Honorable Robert Yazzie assert that Indian nations are capable of using their cultural knowledge and customs to construct justice systems and procedures to prosecute criminals within their tribal jurisdiction. As sovereign nations, tribal governments can argue or work for the renewed use of cultural knowledge to develop justice systems that handle sexual violent crimes against Indian women.

The first task of cultural renewal is articulating sovereignty without the influence of U.S. laws and policies that maintain colonial management and permit federal paternalism in Indian Country. Sovereignty, like decolonization, has various interpretations but simply defined, tribal sovereignty is the inherent right of an Indian nation to self-govern, establish and enforce its own laws (Nielsen and Silverman 2009, 135). To create autonomous and separate Indian governments and justice spaces, our own

words and cultural concepts need to influence the authoritative powers of sovereignty (Alfred 2009, 134). Defining sovereignty is pivotal to the struggle for restored jurisdiction of sexually violent crimes because how we define sovereignty will influence the foundation of the systems we create to respond to sexual assault crimes. Therefore, Diné sovereignty should incorporate Diné normative beliefs and moral doctrines of good conduct (Yazzie 1997, 120). The culturally renewed concept of sovereignty will inform tribal rape law and develop sexual assault jurisprudence (Deer 2005, 455) from an Indigenous worldview.

Defining sovereignty from an Indigenous worldview is an empowering form of decolonization because we do not operate under colonial management and federal paternalism. More importantly, from an Indigenous worldview, Indian governments, justice systems, and communities have the opportunity to create tribal rape laws and sexual assault jurisprudence from their cultural knowledge. As stated earlier, we may never know the pre-colonial responses to rape, types of accepted punishment for rapists, or care and protective methods for victims, but we have to consider and experiment with decolonization and cultural renewal because the current justice system and process does not honor rape victims or deter rapists from violating again.

Using Diné concepts of sovereignty, jurisdiction, law, justice, and accountability, I explain a cultural framework founded in culture, language, and tradition can regulate or help heal sexual assault offenders. Although I am developing the IWJP using my own Diné cultural knowledge, it is my hope that other Indian nations and peoples can develop an IWJP using their cultural knowledge. Since each Indian nation has their own unique culture, specific community needs and differing socioeconomic backgrounds, such a

paradigm is the decision and responsibility of each nation to determine what their justice systems will be. The purpose of this section is to attempt to articulate Diné sovereignty using the cultural knowledge of Diné bibeeshaz'áanii or The Peoples Fundamental Law and normative beliefs.

Diné Sovereignty

During the creation of this world the Diyin Dine'e (Holy People) had given the Diné laws to live by, what ought to be done and what ought to be avoided (Yazzie 1994, 175). The laws that were given to us are known as Diné bibeeshaz'áanii (The Peoples Fundamental Law) (Jones 2012). The laws integrate sacred cultural teachings about Diné oral narratives of creation, prayer, ceremony, and language. The purpose of Diné law is to “produce and maintain right relations, right relationships, and desirable outcomes in Navajo society” (Austin 2009, 40). Diné beehazaanii are normative beliefs and moral doctrines of good conduct (Yazzie 1996, 120) that set the foundation of Diné bi'i'ool'iil (Navajo Life Way) (Elshamy 2011, 22).

Within the context of this thesis I am distinguishing naayéé', hózho' and hócxho, and k'é as the normative beliefs. In Diné bizaad (language) naayéé' refers to the cultural teachings of monsters, which originate from creation stories when actual monsters caused chaos on the Navajo Nation but eventually killed by the Twin Heroes. In respect of Diné tradition, I will not give specific detail about Diné creation stories and only provide relevant information because the winter season is the appropriate time to share and tell creation stories. Therefore, I will only discuss the ideology of naayéé' or monsters as it relates to my thesis. Basically, the ideology and teachings regarding naayéé' relate to obstacles to overcome (Yazzie 1997, 97). Hózho' and hócxho are Diné principles that

describe the dual conditions of order. Simplistically, *hózhó'* refers to congruity and *hócxho* refers to discord (Elshamy 2011, 20-21; Austin 2009, 55). I am using *hózhó'* and *hócxho* to illustrate the delicate order in which Diné relationships are structured and impacted. *K'é* is a Diné kinship system that teaches relationships are interdependent and contributes to the overall function of life (Yazzie 1996, 121; Yazzie 1994, 182; Nielsen 1999, 107; Zion 2002, 607). Therefore, the kinship system teaches there are responsibilities to uphold and respect. *Naayéé'*, *hózhó'* and *hócxho*, and *k'é* are the normative beliefs that assist the formation of Diné sovereignty. Both Diné *bibeehaz'áanii* and the normative beliefs will influence Diné sovereignty.

Diné *bibeehaz'áanii* outline the authoritative powers of specific laws. Diné sovereignty can reflect these various authoritative powers to incorporate in tribal rape law and sexual assault jurisprudence. Within Diné *bibeehaz'áanii* there are four sacred laws; Natural law, traditional or ceremonial law, customary law, and common law. Diné *beehaz'áanii* extends to all creations: plants, animals, air, and the earth to maintain *hózhó'*. *Hózhó'* is “where everything, tangible and intangible, is in its proper place and functioning well with everything else, such that the condition produced can be described as peace, harmony, and balance” (Austin 2009, 54). Natural law teaches that nature and natural resources are sacred and are life forms. Traditional or ceremonial law teaches that ceremony is vital to maintaining a balanced life and there exists procedures of proper conduct and procedure during ceremony. Customary law describes the various customs that need to be conducted during significant life stages of an individual; birth, puberty, marriage, and old age. Common law is rules that influence individual wellbeing; mental, emotional, physical, and spiritual. Common law is the roles and responsibilities of an

individual that will contribute to the overall function of the family and the larger community. The Diné can use Diné bibeehaz'áanii to create tribal rape law and sexual assault jurisprudence.

Using the cultural concepts of Diné bibeehaz'áanii, the authoritative powers of Diné sovereignty in the context of the development of tribal rape law and sexual assault jurisprudence will do the following: With respect to Natural Law all life forms are considered sacred. Unlike Euro-American rape law, which is rooted in English property law used to justify Indigenous land theft and settlers permanence, humans are not possessions. Therefore, humans and their bodily integrity are neither violable nor expendable. With respect to Ceremonial Law victims and others affected by the assaulted will be allocated the time and resources necessary for healing. With respect to Customary Law addressing and handling trauma caused by sexual assault will be considered priority to ensure the continuation of the victim's life cycle. With respect to Common Law victim responsibility, perpetrator accountability, and reciprocity are cultural mechanisms to deter future or repeated sexual assaults in our homes, communities, and nation.

Conclusion

Imagining the Indigenous Woman's Justice Paradigm in Action

Imagining or dreaming is important to the decolonization process because imagining creates a space of possibility to develop a "new social order" (Laenui 2000, 155). Laenui discusses imagination in the context of the fourth stage of decolonization, which he describes as "dreaming" (Laenui 2000, 152). The concluding section is an imagery of the Indigenous Woman's Justice Paradigm in action.

First, the paradigm does not ignore low prosecution rates. Instead, the paradigm highlights the low prosecution rates, especially of non-Indians, and affirms tribal authority by reframing prosecution. Instead of promoting prosecution, the paradigm seeks to enforce victim responsibility and perpetrator accountability. From a Diné worldview a person has inherent commitments, responsibilities, and relations to maintain through k'é (Nielsen 1999). Therefore, we all have a duty to protect and guide each other. Using the concept of k'é, we can conceptualize external institutions, agencies, communities, and individuals as family. Therefore, we create a larger system of accountability. Family accountability is principal in discipline because they make sure the wrongdoer is making nalyeeh (compensation) with the aggrieved and most importantly, they are in control of the rehabilitation of the wrongdoer to make sure another dysfunction does not happen (Nielsen 1999). The elimination of violence is only possible if we all contribute to its elimination.

Second, the paradigm recognizes there is a lack of support and protection of victims. For instance, victims feel there is a lack of privacy about their incident in close-knit communities (Hamby 2009, 67; Tippeconnic Fox 2009, 50). In addition, due to the social stigma of sexual violence in Indian Country, citizens of Indian nations may deny that sexual violence exists in their community (Gebhardt and Woody 2012, 240). Moreover, there is a lack of immediate and local shelters, safe houses, or other victim services in Indian communities (Hamby 2009, 66-68; Deer 2004, 18). Raising community awareness about the prevalence of sexual assault on tribal lands can be an effort towards elimination of violence. Educating members about the legal system, availability of victim services and programs on the reservation, and victim advocacy are types of community

awareness that are plausible actions that work towards correcting imbalances, which is the effects of violent crimes, and creating a safer community that correlates with Diné cultural values of k'é.

Third, the paradigm recognizes that in Indian communities there is a prolonged police response to crime and thus jeopardizing the victim's wellbeing and safety (Hamby 2009, 65; Tippeconnic Fox 2009, 50). Certain challenges hinder immediate police response. For example, the Navajo Nation is largely rural and most communities are not near a police or emergency department. Furthermore, there is a lack of street names, which complicate physical home address locations for responding police officers. The paradigm encourages the use of local government institutions as immediate safe houses for victims.

Fourth, the paradigm calls for both women and men leaders who will work together to confront and raise awareness on violence against Indian women. Importantly, the paradigm emphasizes the need for men who do not commit violence against women to confront the men who do commit violence against women. Indian men who do not commit violence need to be the leaders and correct the attitudes/behaviors of men who do commit violence. Fundamentally, the men who do not commit violence will be both protectors and allies to women in the community. The partnership between women and men will be a sacred partnership and collaboration to end violence against Indian women on tribal lands.

Fifth, the paradigm will raise awareness about male violence in the community. The paradigm recognizes that only addressing the victim's needs does not create a whole solution. Indian men who commit violence need to be corrected and taught that violence

against women will not be tolerated but also, that he can part of the social change that upholds the respect and honoring of Indian women. By no means, does the paradigm excuse sexual assault as an interpersonal conflict or less than a criminal offense. As advocates of social change, both Indian women and men are needed to work together to achieve wellness through emphasizing accountability and responsibility for wrong doing committed against their relatives in their community. Last and most important, the paradigm empowers Indian women to take charge in solution making, which should center on the needs, protection and safety, and respect of Indian women.

Indian nations must act on their understanding and imagination of a different reality; a reality that is not dependent on the nation-state and challenges the authority of settler institutions and management. Unsettling settler colonialism (Smith 2010, 42), or questioning the legitimacy of settler colonialism, is a process of decolonization. This chapter was an attempt to begin that decolonization process using cultural knowledge to demonstrate the Indian nations can step away from colonial management and federal paternalism. However, immediately separating from federal and state justice systems is not a probable solution. Realistically, establishing tribal independence from federal and state imposition is not going to be an enduring transition. The last chapter identifies short and long-term goals to prepare Indian nations for the task of ending violence against Indian women on tribal lands.

CHAPTER 5

CONCLUSION: ESTABLISHING A FOUNDATION FOR SOCIAL CHANGE

Ending sexual violence against American Indian women is important decolonization work. The normalization of violence against Indian women needs to become abnormal. The concluding section is my recommendations that work towards changing the statistics regarding the health and welfare of Indian women. My recommendations will hopefully help in creating tribal justice systems that function better to respond to violence and help victims survive sexual violence.

Recommendations

In order to step outside of federal paternalistic policies, it is important for Indian nations to build and organize a collaborative justice system that is efficient and founded on culture and a culturally renewed sovereignty within the community. While prosecuting perpetrators of sexual assault crimes is a huge responsibility and takes time, victims deserve a justice system that is efficient in the handling of the crime and prosecution. A reasonable reservation justice system needs a strong collaboration between tribal agencies to work towards victim support and perpetrator accountability. I see the development of a stronger collaboration between tribal agencies happening in two stages: 1) the near future and 2) the far future, which depend on how soon Indian nations and communities can complete my recommended short-term and long-term goals.

Short-Term Goals

The short-term goal is to strengthen the collaboration among tribal agencies that work with sexual assault victims and perpetrators for purposes of decreasing underreporting (Deer 2013, 376) and more importantly, re-establishing community trust

with tribal agencies. Indian women generally do not report their crimes because the lack of prosecution has become an expected outcome (Hamby 2008, 97-8). General distrust of law enforcement and medical institutions was one of the barriers that prevented victims from reporting their assaults (Hamby 2008, 101). In the context of k'é, tribal agencies can reflect an external family. Structuring tribal agencies as an external family can possibly change the negative perceptions of institutions. However, tribal agencies are going to have to do their part in contributing to that effort. I propose to change the negative community assessment, tribal agencies work to improve their services and victim advocacy by offering culturally competent (Bubar 2009, 3) training to non-member Indians and non-Indians, incorporate a coordinated community response system (Mending the Sacred Hoop Technical Assistance Project: Office of Violence Against Women, U.S. Department Of Justice 2010, 9), and plan to an initiate a community readiness model (Bubar and Thurman 2004, 75-77, 82).

Cultural Competence

The tribe's history, social conditions, cultural strength and colonization are important considerations for proposed solutions to stop sexual violence against Indian women in communities. In order to incorporate or institutionalize culture or cultural understandings into agencies, a cultural competence program must be taught to non-tribal member employees. Cultural competence is "a set of congruent practice skills, behaviors, attitudes, and policies that come together in a system, agency, or among professionals and enables that system, agency or those professionals to work effectively in cross-cultural situations" (Bubar 2009, 63). Not only does cultural competence provide various agency employees with a foundational understanding of cultural norms, but can develop a

cultural foundation for various relationships and collaborations between agencies, perpetrators, victims, and community members.

Coordinated Community Response

Tribal agencies need to evaluate and strengthen their own systems for better coordination, collaboration, and response to violence within tribal communities. In order to better coordinate, collaborate, and respond to violence in tribal communities, tribal agencies must assess at how well and equipped they are to help victims of violent crimes and to hold perpetrators accountable. The Mending the Sacred Hoop identifies the following thirteen principles in addressing and handling violence in tribal communities:

Keep battered women at the forefront of your work; Know the peoples and the work they perform; Learn about the policies and procedures of each agency; Form small working communities to create new methods of implementing procedures and policies; Avoid taking on too many projects at a time; Propose realistic and tangible changes that fit people's work; Convince leaders and policy makers to try new ideas; Test out ideas and make adjustments; Organize trainings for practitioners on new procedures and policies; Monitor practitioner's compliance with new procedures; Work with administrators and department heads to reach high compliance; Document the impact of those changes on case outcomes and women's safety; and Institutionalize a cohesive response (Mending the Sacred Hoop Technical Assistance Project: Office of Violence Against Women, U.S. Department Of Justice 2010, 20).

A Coordinated Community Response (CCR) provides a framework to respond to crimes in tribal communities. A CCR is a “monitoring and tracking system that establishes women's safety by focusing on batterers and their activity” (Mending the Sacred Hoop Technical Assistance Project: Office of Violence Against Women, U.S. Department Of Justice 2010, 5), which can function as a tribally controlled data collection system.

Although, the CCR specifically focuses on creating a system that responds to domestic violence in tribal communities, I believe the system can extend to include rape and sexual

assault by developing a separate category of reported crimes of sexual violence. The CCR is significant as it offers tribes the opportunity to be in control of reports and surveys about the epidemic of sexual violence (Deer 2013, 376).

Community Readiness Model

Determining community readiness to intervene on a problem in the community is integral for the success of any new idea. A community readiness model begins the development of a plan for intervention and planning for an intervention with the resources, people, culture, and community in mind. There are nine stages of readiness in the model:

No Awareness, which suggests that the behavior is normative and accepted; Denial/Resistance involves the belief that the problem does not exist or that change is impossible; Vague Awareness involves recognition of the problem, but no motivation for action; Preplanning indicates recognition of a problem and agreement that something needs to be done; Preparation involves active planning; Initiation involves implementation of a program; Stabilization indicates that one or two programs are operation and are stable; Confirmation/Expansion suggest recognition of limitations and attempts to improve existing programs; High Level of Community Ownership is marked by sophistication, cross-training of professions, and expansion of the model to other community issues (Bubar and Thurman 2004, 82).

The nine stages of the community readiness model are helpful in evaluating where a community is at in terms of being aware of a problem in their community and the community's preparedness for change (Bubar and Thurman 2004, 82). I envision tribal agencies using the community readiness model as a way to bridge communication between agencies and Indian citizens. More importantly, building the internal and external relationship or in other words creating a familial foundation to work towards

long-term goal of investigating and prosecuting sexual assault crimes that occur on tribal lands.

Long-Term Goals

A decolonizing praxis is empowered by the traditions, customs, beliefs, and ceremonies of community, land, and culture. Breaking a reliance on federal and state governments means an alternate tribal justice system. Obviously, developing alternate tribal justice system requires commitment because ending sexual violence against Indian women is not an over-night task. The process will be arduous and will require the support of the community. Community support is imperative because the alternate tribal justice systems will operate in the community and be based from their culture. Therefore, the strategies need to reflect the principles of culture, community, and sovereignty found in the Indigenous Woman's Justice Paradigm.

Developing Community Based Justice Systems using the Indigenous Woman's Justice Paradigm

The long-term goal I envision is the establishment of community based justice systems, or as Deer refers to them, tribal rape courts (Deer 2009, 165). Deer explains these tribal rape courts as spaces “dedicated solely to sexual assault crimes with specialized prosecutors and judges trained to provide victim-centered justice,” which she postulates will result in quicker responses and higher prosecution rates (Deer 2009, 165). As reported earlier in the thesis, federal prosecutors do not do an adequate job of ensuring rapists are sentenced for their heinous crimes. Another significant issue concerning federal prosecution is the fact that most federal prosecutors live far from the community (Cardick 2012, 559-561). Therefore, tribal law enforcement and prosecutors offer the best

response to sexual assault incidences (Cardick 2012, 562-563). Although an increase in prosecution does not solely solve the issue of sexual violence on tribal lands, prosecution of sexual assaults should be the exclusive duty of Indian nations and their justice systems (Cardick 2012, 570; Hermes 2013, 695).

Concluding Thoughts

Colonization has changed everything within tribal communities: health issues, physical and sexual assaults, poverty, substance abuse and addiction, economic disparity, suppressed spirituality, land base size, education, and social relationships. A pre-colonial existence seems like a farfetched idea. Still I like to envision that someday sexual violence against American Indian women will either be a rare occurrence or non-existent. I envision for my People, the Diné, to coexist in a state of harmony that excludes sexual violence against Diné people. I want Diné girls and women to know they are safe within their homes, community and nation. Visualizing is the beginning process of decolonization, followed by believing. I believe our communities can recover from the diseases of colonization but of course healing requires time and effort. Healing needs the participation of the entire community from a cultural foundation. I hope that my thesis has contributed in the efforts of decolonization and the ongoing movement in ending sexual violence against Indian women on tribal lands because all Indian women are sacred and the most beautiful women on this Earth.

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