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Dangerous Intersections: An Examination of Approaches to Sexual Violence Against Native Women

by

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Acknowledgments

I would like to dedicate my project to all Native survivors: without their stories, the work of dismantling these systems of oppression could not be done.

Prologue: Framing this Project

"I write, however, with a broken tool, a language which is sexist and discriminatory to the core"[1], writes Andrea Dworkin, introducing her influential book Woman Hating. I write here with many broken or mismatched tools, the most relevant being my own privileged position as a white student at an elite liberal arts university. As an American Studies major, I had basic exposure to colonial theory, race studies, feminist studies, and policy analysis before entering into this project, but limited personal or academic experience with Native studies. As I began to read about Native communities and sexual violence, I began to both appreciate the limited knowledge many of my peers and I have had about the issue and the complexities of initiatives to address it. I am, in many ways, a product of a liberal arts education – my course of study had rarely presented opportunities to explore Native studies, and my exposure was largely through race or feminist studies courses that utilized that same 'cultural inclusion' of the antiviolence movement. My exploration of approaches to sexual violence against Native women is a diversion from an otherwise generically

[1] Dworkin, Andrea. Woman Hating. (Dutton 1974) 26.

liberal American Studies education; this framework has greatly influenced the sources I've accessed and the questions I've asked throughout my work.

In many ways I see this project as an exploration of positionality itself- my own, the federal government's, the antiviolence movement's, and Native activist's- in addressing sexual violence in Native communities. I began this project asking 'as a white student, with little exposure of Native studies, what is there that I can do to actively and effectively explore this issue?'. And while my research (and countless student's before me) has indicated the best work, particularly on this issue, must come from the grassroots within a community, I think there is a space for the passion of a white, anticolonial, antiracist, antiviolence activist and student in supporting that work not by intervening in it but by acknowledging its value and bringing attention to it within the mainstream academic discourse. Thus I have not seen myself as in any position to make large assertions about what can be done about sexual violence in Native communities, but rather as utilizing my own privilege to study and bring exposure within my own community. On an individual level, the conversations I have had with fellow students, activists, and members of my larger social circle (occasionally racist, sexist white people with harsh discriminatory views against Native people) have made this project worthwhile to me because it has allowed me to gather a basic set of knowledge on the issue to inspire conversations within my own community.

This leads me to explore the tone and choice of sources that hold this project together. I have chosen to try to include the best known scholars, reports, and theories from the fields I look at, for a variety of reasons. First, because I am interested in the

accessibility of my project to anyone with a minimal level of familiarity with Native and/or feminist studies, the voices I've used tend to be those any new scholar to the field would access first, and in most cases the loudest and most influential scholars, organizations, or projects. At the same time, my interest in radical social justice initiatives and bringing awareness to these issues has drawn me to the texts of very passionate activist organizations, particularly those of INCITE! and publications of South End Press. Andrea Smith is a particularly dominant voice throughout my project given her role at the forefront of the activism my project addresses, and I worked hard to have the majority of the voices influencing my work be Native scholars and activists. The tone of their work as calls for justice has carried into my own goals of increasing awareness among an unfamiliar audience, often giving the project a polemical tone. Therefore, I have built my work off much of the language and perspectives of these Native activists, the majority of which challenges the 21st century United States government as a colonial state responsible for the oppression of Native peoples. As an academic work interested in raising awareness and creating a comprehensive background reader for activists unfamiliar with these issues, I find this appropriate to the goals and severity of the issue.

Introduction

Violence against women exists as a grave human rights abuse internationally, across cultures and languages, boundaries and colonialism. In the United States, boundaries are a particularly invisible locus of gender violence. These crimes are often silenced by histories and institutions- this is a resounding truth for Native American communities. Sexual and domestic violence has reached epidemic proportions for Native women, and the boundaries of Indian Country embody colonialism's modern political and legal manifestations. Colonialism and gender violence have a complicated and controversial relationship, particularly as played out in legal, political, and criminal justice systems. In my project, I seek to analyze this relationship as it is manifested in federal, non-profit, and Native initiatives to eliminate violence against Native women.

The first chapter explores the political philosophies and legal frameworks that model the relationship between Indian nations and the US government. Deeply entrenched racism and colonialism dominate this relationship, and I focus on four major policies that enable sexual violence against Native women by restricting access to safety and legal redress. The following three chapters analyze approaches to

challenging this sexual violence, with a particular focus on alternative justice programs. Chapter 2 focuses on these actions by the federal government in the form of reports, committees, funding, and legislation, while first analyzing in depth the Government Accountability Report of 1976 as a precedent for federal control over Native women's bodies and policies of accountability. These federal initiatives are intricately connected to a colonial state, and thus are limited in their ability to challenge larger systems of oppression and instead work to contain activist work within existing frameworks. The next chapter turns to non-profit work and the complexities of applying philosophies of the mainstream antiviolence movement to Native communities. For many reasons, including the alliance with the federal government for funding, 'multicultural' approaches to Native survivors, emphasis on the individual isolated from community in medical and legal responses, and reliance on the criminal justice system, the methods of the antiviolence movement serve to further marginalize Native survivors. As a possible solution, I explore the restorative justice movement's applicability to cases of sexual violence as an opportunity to challenge the deficiencies of the mainstream antiviolence movement and its reliance on state violence and the prison industrial complex. Finally, in Chapter 4 I look directly at Native feminist organizing and the implementation of restorative justice projects in Native communities. While Native grassroots activism best addresses the immediate needs of Native survivors, it relies on an independence from the colonial state and idealistic bonds of community that are unrealistic given the ubiquitous influence of oppressive institutions, particularly those discussed in Chapter 1. Therefore, a careful balance between reliance on the colonial state to provide

immediate resources for Native survivors and large-scale deconstruction of that state and its racist, sexist, colonial ideologies must be struck in order to challenge the high rates of sexual violence against Native American women in the United States.

In order to establish the severity of violence against Native American women, I have relied on the limited sources of statistics available. Statistics can dangerously normalize an issue, reducing it to easily comparable numbers for our own comfort and viewing pleasure, cutting away the debris of individual human experience and circumstance. When measuring the frequency of sexual violence, statistics are also notoriously inaccurate and misleading, relying heavily on the willingness of survivors to come forward. But statistics, flawed as they are, allow us to organize, control, and measure oppression. For Native American survivors of sexual violence, the shocking statistics published by the Department of Justice and Amnesty International in recent years have brought much needed international attention to the high rates and institutional enabling of sexual violence against Native women in the United States. "Indian women suffer two and a half times more domestic violence, three and a half times more sexual assaults, and 17 percent will be stalked – and I'm a victim of all three,"[2] announced Paula Musgrove, the executive director of the Spirits of Hope Coalition in Oklahoma, in a 2007 New York Times article. On Standing Rock Sioux Reservation in South Dakota, most women could not think of another woman they knew who had not been raped.[3] The extent to which such atrocities have become normalized is hard to comprehend.

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[2] Blumenthal, Kenneth. "For Indian Victims of Sexual Assault, a Tangled Legal Path" *New York Times* 27 April 2007.
[3] Amnesty International, "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA". (London 2007) 14.

The same widely read New York Times articles that Musgrove is quoted in refers to the statistics gathered by Amnesty International: that approximately 86% of these assaults are by non-Native men,[4] underlining the role racism plays in this crisis. Department of Justice data also reports that American Indian and Alaska Native women are 2.5 times more likely to endure sexual violence than the general population of women in the United States, and more than 1 in 3 Native women will be raped in her lifetime.[5] The Indian Crime Concept Paper, published November 7, 2007, reports that crime rates on remote reservations exceed 10 times the national average, and that alcohol plays a role in 80% of these crimes on tribal lands.[6] The same paper concludes saying, however, that there are very few crime statistics collected in Indian Country, and even fewer that are not from the past five years, making it difficult to spot trends.

Clearly, even without any anecdotal evidence, sexual violence against Native women is a huge issue that must be addressed. "In the context of mass war rape in the former Yugoslavia, Susan Brownmiller likens female bodies to territory. 'Rape of a doubly dehumanized object- as woman, as enemy- carries its own terrible logic. In one act of aggression, the collective spirit of women and of the nation is broken, leaving a reminder long after the troops depart.' Beverly Allen extends this analogy to the imperialist practice of colonization", writes Sylvanna Falcon in her essay "'National Security' and the Violation of Women: Militarized Border Rape at the US-

[4] Amnesty International 16.
[5] Amnesty International 14.
[6] "Indian Crime Concept Paper". Committee on Indian Affairs, United States Senate. November 7, 2007. Brian L Dorgan, North Dakota, Chairman. 4.

Mexican Border."[7] In the struggle between white colonizer and Native colonized in the United States, women's bodies have become that last natural frontier with which to dominate, regulate, and terrorize.

As I argue in Chapter 1 through analyzing the 1976 Government Accountability Report questioning federal practices of forced sterilization of Native women, methods of controlling women's bodies are also carefully structured linguistically and institutionally in government policy at the state and federal level. In this way, the traditional definition of colonialism as physical domination of territory has been expanded to include the territory of women's bodies and the health, safety, and sustainability of these dominated communities. Sexual violence against Native women, particularly in its interracial forms, is a very real manifestation of modern colonial oppression, while the institutional dismissal of Native women's rights is colonialism as played out in today's national laws and policies. "Sexual assault and violence against Native American women did not just drop from the sky. They are a process of history"[8] spoke Jacqueline Agtuca at the Alaska Native Women's Conference in Anchorage, 2005, referring to the deep history of sexual stereotypes colonial Americans imposed on Native women hundreds of years ago.

These laws and policies, and the modern relationship between the federal government and tribal government that is derived from them, directly influence high rates of sexual violence on reservations in the United States today. Tribal law enforcement is severely lacking in funding and resources to police reservations, and

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[7] Sylvanna Falcon, "National Security and the Violation of Women: Militarized Border Rape at the US-Mexico Border," Color of Violence: the incite! anthology, ed. INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 119-129. 120.
[8] Amnesty International 3.

state and federal responsibility to provide law enforcement is rarely met, a particularly large problem for very rural Native communities. Tribal and federal law enforcement in Indian Country are rarely trained to respond to sexual and domestic violence, and there are many reports of their inappropriate or racist behavior. Barriers to reporting, police brutality, and federal prosecutors declining to prosecute cases involving Native women have also taught perpetrators that they can get away with sexual crimes, and therefore become repeat offenders. At the same time, the Indian Health Services (IHS) is not adequately equipped for rape crisis response, to do sufficient evidence collection, and is frequently accused of acting on stereotypes of Native women as worthless, sexually available alcoholics. The IHS, despite its recent and strong history of forced sterilization of thousands of American Indian women, is still not audited.

Tribal governments have a unique relationship with federal and state law enforcement, which will be explored further in Chapter 1, and are legally limited in the extent to which they can police Indian Country. There are significant gaps in resources tribal law enforcement officers have access to as well. Tribal law enforcement is frequently the first to respond to crimes, yet is not given access to national databases to determine whether or not a suspect has a prior criminal record,[9] while the Bureau of Indian Affairs (BIA) funding meets only 30% of the needs for tribal law enforcement.[10] Those tribal governments that are large enough to have tribal court systems – a little over half of the federally recognized tribes in the United

[9] Indian Crime Concept Paper 3.
[10] Indian Crime Concept Paper 3.

States,[11] or 275- have an over $400 million dollar backlog in tribal jails, meaning they are frequently forced to release offenders without punishment.[12] One of the few effective tools of tribal governments now is a tribal protection order, which must be given 'full faith and credit' by state police under the 2005 Violence Against Women Act – but many officers report being unaware of this and/or these orders are rarely enforced. There is also a severe absence of Native women willing to report sexual violence to the police: For example, in Oklahoma[13] a support worker reported that of her 77 active cases of domestic or sexual assault against Native women, only 3 were reported to the police. An interview with an Alaska Native support worker as reported by Amnesty International recounted a story of a woman who went to report her rape and was sent away with painkillers and some money to go to a non-Native shelter as 'another drunk Native woman'. "This is why Native women don't report. It's creating a breeding ground for sexual predators."[14]

There are over 550 federally recognized American Indian and Alaska Native tribes in the United States.[15] Each has jurisdiction over its members and maintains a relationship with the federal government. The marginalization of American Indians is compounded by the steady erosion of tribal authority in recent years. The legal and political structures in place that regulate the reach of tribal governments have rendered it exceptionally difficult for American Indian survivors of sexual violence to access justice. This severe lack in funding was recently addressed by Congress with a

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[11] Duthu, N. Bruce. "Broken Justice in Indian Country". *New York Times OP-Ed.* 10 August 2008.
[12] Indian Crime Concept Paper 3.
[13] The state with the 12th highest incidence of forcible rapes in the country, a statistic largely attributed to its high percentage of Native residents.
[14] Amnesty International 13.
[15] This does not include tribes that do not meet federal standards and Native Hawaiians

$750 million grant to increase law enforcement in Indian Country, but according to well-known Native scholar Bruce Duthu, "financial aid will not be enough to stop sexual violence against Indian women. Tribal courts have grown in sophistication over the past 30 years, and they take seriously the work of administering justice. Congress must support their efforts by closing legal gaps that allow violent criminals to roam Indian Country unchecked".[16]

Institutional structures in place immediately influence the severity of violence against women in Native communities. Policies such as the Major Crimes Act (1885) and the Indian Civil Rights Act (1968) have put limits on the justice tribal governments can dispense to Native perpetrators, while federal policies have withdrawn jurisdiction of tribal nations over non-Natives, even those who commit crimes on reservations against tribal members. The Supreme Court case *Oliphant v. Suquamish* (1978) and Public Law 280 (1953) have required tribal courts to relinquish all jurisdiction over non-Natives, thus creating a heavy reliance on state and federal law enforcement to prosecute. These failures of the system to do so are violations of vital international human rights law and United States Constitutional guarantees. Not only has colonialism imported sexual violence both onto and into Indian country, it has dominated all access to justice systems. The following anecdote featured in the Amnesty International Report 'Maze of Injustice' displays well how broken the system is: "It's only about a mile from town to the bridge. Once they cross the bridge [to the Standing Rock Sioux Reservation], there's not much we can do….We've actually had people stop after they've crossed and laugh at us. We

[16] Duthu "Broken Justice".

couldn't do anything,"[17] reported the Walwourth County Sherriff Duane Mohr in The Rapid City Journal December 21, 2005.

Dehumanizing stereotypes of Native women have played a large role in federal policy. The federal justice system has rarely seen American Indian women as worthy of protection, as seen clearly by the nonconsensual sterilization of thousands of Native women between 1972 and 1976 by the federal government. While the DOJ reports the vast majority of cases are interracial, most sexual assaults for other racial groups are by members of the same racial category. For example, 89% of rapes of African Americans were by African Americans[18] as reported to the DOJ. There is also evidence that rapes against Native women tend to be more violent – 50% of rapes reported to Amnesty International were declared violent, while the national average is 30%.[19] Approximately 25% of the reported crimes were perpetrated by partners[20]- nationally, the DOJ reports that only 16.7% of sexual assaults are committed by strangers implying that either Native women are *much* less likely to report partner abuse (a possibility, given histories of police brutality and Native solidarity) or there is a much higher percentage of interracial rape committed against Native women by strangers, family members, acquaintances, or former partners. All these factors suggest Native women are being sought out, both as a racial group and politically unique citizens of a tribe, by violent perpetrators, a crisis significantly influenced by colonial legal and political infrastructure.

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[17] Amnesty International 50.
[18] Amnesty International 17.
[19] Amnesty International 18.
[20] Amnesty International 19.

Comparatively, the situation facing Native survivors and their advocates in the United States exists in a different set of political and racial circumstances than for other women of color because of the unique responsibilities held by tribal and non-tribal courts that create potential for gaps and insufficiencies. This is partially because of the unilaterally imposed 'trust relationship' between the two sovereigns that the United States will provide a certain level of social services in exchange for partial legal control over Indian nations. As the United States denies tribal governments control over aspects of their own governments and communities, they are also refusing to fill in these gaps themselves. Rape statistics on reservations, in particular, are extremely inaccurate due to lack of reporting by both survivors and officials. In addition, the Bureau of Justice Statistics found that between 2001 and 2005 "for average annual rate of nonfatal intimate partner violence, the highest rate was for American Indian and Alaskan Native females at 11.1. The lowest rate was for white males at 0.8, followed by black males and Asian and Pacific Islander females at 1.4. The rates for the remaining three categories ranged from 4.0 for white females, to 5.3 for American Indian and Alaskan Native males."[21]

Defining Native Feminism

To criticize the state or federal government for its lack of response to sexual violence against Native women is also to assume a level of reliance on the state to react to this activism and outcry, granting it a level of power over the bodies of Native women that is in fact a deeply entrenched part of the problem. This proposes a

[21] Bureau of Justice Statistics, "Intimate Partner Violence in the US" 12 April 2009. http://www.ojp.usdoj.gov/bjs/intimate/victims.htm#racea

struggle for accountability on the national and international levels- if the colonial governments in place must be held responsible for their actions, a way must be found to enforce this accountability, enact change, and not increase reliance on the colonial state itself. This becomes less possible the further away from the grassroots level work is done, because the more entangled actions must be with the existing state or federal infrastructure. This underlying assumption – that change at the grassroots level is least corrupt but also subject to local whims and inefficiencies- is important to looking at challenges to the current state of sexual violence against Native women.

As international attention has shifted to the United States' treatment of indigenous peoples, increased federal attention to the rights of Native women in the form of reports, grants, task forces, and law enforcement raises questions about how genuine or effective these federal (read: historically colonial) initiatives can be. At the same time, the models and tools used by the mainstream antiviolence movement ineffectively provide resources for Native women, and arguably all women, for a variety of reasons. The non-profit sector in the United States today, a place the general public and federal government rely on for organized social justice work, is significantly disconnected from Native communities because of its general alliance with the federal government and criminal justice system.

Finally, Native justice work either as Native women's resource centers or restorative justice initiatives bypass some of the questions alliance with the government create and also more immediately meet Native survivor's needs. Problems of sustainability of large-scale effectiveness are also raised by these projects, however. The alliance between mainstream antiviolence organizations with

the federal government and colonialism was particularly harsh for Native women, and this convergence of systems of domination has caused many intervention strategies to fail. In the past couple decades, dozens of Native-run shelters and resource centers have begun their work centering their programs on the experiences of Native women at the local, community level. While many of these shelters are federally funded, they also receive tribal funding – at this point, the joint effort is a step in the right direction. At the same time, more proactive challenges to the institutional racism and colonialism of the legal and criminal justice systems are less common.

Native run shelters often operate from budgets made up of a combination of federal, state, tribal, and private donations. However, funding is very limited and becoming stretched more thinly as states have recently been looking for simpler ways to meet the needs of Native survivors. For example, the Emmonack Women's Shelter I will talk about in Chapter 3 lost its funding from the state of Alaska in 2005 and is still struggling to find an alternative source of funding. In the interest of making more culturally appropriate services available to Native women, there have been 16 tribal coalitions formed working against sexual and domestic violence across the US. The coalitions are frequently focused on bringing together Sexual Assault Response Teams[22] of prosecutors, law enforcement, support workers, and nurses trained in sexual assault exams for a region, or lobbying at the regional, state, or national level for Native survivor's rights. Sacred Circle and Clan Star are two national level organizations that 'provide national leadership and policy guidance for Native

[22] Sexual Assault Response, or SART, Teams are multidisciplinary interagencies of individuals that work collaboratively with a community to offer specialized sexual violence intervention services, usually put together by or in collaboration with federal agencies. SART teams are intended to be unique to each community.

women's organizations and shelters'.[23] The work of Native activists is immensely powerful, yet challenging.

The intersections of sexism and racism are generally dismissed within the mainstream antiviolence movement, despite their intricate applicability to the lives of Native women and other women of color. Kimberle Crenshaw writes, "where systems of race, gender, and class domination converge, as they do in the experiences of battered women of color, intervention strategies based solely on the experiences of women who do not share the same class or race backgrounds will be of limited help to women who because of race and class face different obstacles".[24] Her analysis of intersectionality and the antiviolence movement is key to understanding situations of Native women in addressing sexual violence today, and also in comprehending Native feminism and its approaches to these issues. In her 1991 essay "Mapping the Margins", Crenshaw outlines how antiracist and antisexist/antiviolence work for women of color is often at tension and prioritized one over the other- "because of their intersectional identity as both women *and* of color within discourses that are shaped to respond to one *or* the other, women of color are marginalized within both."[25] For Native activists, this tension is often created in the gaps between tribal and female sovereignty.

As Andrea Smith writes, "It has been through sexual violence and through the imposition of European gender relationships on Native communities that Europeans were able to colonize native people in the first place. If we maintain these patriarchal

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[23] Amnesty International 86.
[24] Kimberle Crenshaw. "Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color". (Stanford Law Review 1991) 1246.
[25] Crenshaw 1244.

gender systems in place, we are then unable to decolonize and filly assert our sovereignty".[26] Many Native scholars attribute the rapid rise in sexual violence since European contact to a loss of tradition and cultural confusion, the erosion of tradition gender roles, or the internalization of sexism; most set the stage of talking about sexual violence against Native women. Mihesuah reminds us, "most tribes were egalitarian, that is, Native women did have religious, political and economic power – not more than men, but at least equal to men's. Women's and men's roles may have been different, but neither was less important than the other".[27] This narrative is repeated in most Native women's writings about the modern state of sexual violence in Native communities as a way to linearly articulate the relationship between colonialism and sexual violence. However, "the reliance on a collective understanding of an egalitarian precolonial history has hindered contemporary analyses of gender subordination and heterosexism[28]", writes Kauanui. Parallel to assuming feminism is an imperial imposition, Smith and Kauanui argue instead that male patriarchal dominance is a source of colonial oppression[29], pushing beyond critiques of colonialism into 'felt theory', as Dian Millions calls it. All three scholars encourage looking into what colonialism means in discourses of citizenship and existence as a way to incorporate it more relevantly into Native activism.

This has led to tension among Native women in defining feminism and its role in activism- while some call feminism an imperialist notion indicating assimilation,

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[26] Andrea Smith. "Native American Feminism, Sovereignty, and Social Change." (*Feminist Studies* 2005) 9.
[27] Mihesuah, Devon Abbott. Indigenous American Women: Decolonization, Empowerment, and Activism. (University of Nebraska Press, 2003) 42.
[28] Smith, Andrea and Kēhaulani Kauanui. "Native Feminisms Engage American Studies." (*American Quarterly* 2008) 248.
[29] Smith and Kauanui 242.

others say placing tribal sovereignty before female sovereignty is buying the 'colonialism excuse' for male spousal abuse. Lorelei DeCora, one of the founders of WARN,[30] writes American Indian women must be *American Indian* first and *women* second,[31] a refrain heard similarly in other civil rights movements and speaking directly to Crenshaw's concerns for women of color more generally. DeCora and Madonna Thunder Hawk, another early member of WARN, argue tribal sovereignty must be the larger fight because Native people are dying – when this battle begins to be won, sexual discrimination can be addressed.

Luana Ross, Andrea Smith, Renya Ramirez, and Winona LaDuke are a few of the most public voices of self-declared Native feminists challenging the primacy of tribal sovereignty interests over the safety of Native women. Winona LaDuke asks Native communities not to "cheapen sovereignty"[32] by denying individual for group rights, or protecting Native perpetrators or the community from outside intervention at the danger of survivors. These women bring together gender, race and tribal nation with colonialism and argue attacks on Native women are attacks on sovereignty.[33] To challenge sexual violence in Native communities, Ramirez suggests sovereignty must be reconceptualized around a Native woman's perspective,[34] because currently, sexism is not a primary factor in the organizing of indigenous women. At the center of this work, she argues, Native feminists must differentiate themselves from the antiviolence work of mainstream feminists by unpacking the core of how colonialism

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[30] Women of All Red Nations, the women's activist group of AIM (American Indian Movement), a radical organization fighting for indigenous sovereignty and rights in the 1970's
[31] Smith "Native American Feminism" 2.
[32] Smith "Native American Feminism" 7.
[33] Smith Conquest 138.
[34] Renya Ramirez. "Race, Tribal Nation, and Gender: A Native Feminist Approach to Belonging" (*Meridians: Feminism, Race, Transnationalism* 2007) 8.

is at the center of today's gender norms and gender violence. Finally, both Smith and Ramirez strive to define sovereignty in non-Western terms, Ramirez calling it a "western notion"[35] and Smith saying it includes an inherent connectedness with the earth[36] that must be part of sovereignty and antiviolence projects. Smith calls for a nation differentiated from the nation-state, built on principles of community and responsibility.

Wilma Mankiller is well known for saying "I want to be remembered for emphasizing the fact that we have indigenous solutions to our problems",[37] and in some ways this mediates between these camps of Native women activists. Anti-colonialism, justice, and the safety of Native women are common goals, and in this way their larger philosophies do not significantly play into antiviolence work. But as of today, still very little is written on Native feminist theory. Kauanui and Smith write that "much of the work written on gender within native studies tends to focus simply on critiquing feminism as inherently 'white' without actually looking at the specifics of feminist theory as it could potentially inform Native studies. In other words, the discussion has tended to be dominated by approaches such as 'Native women's voices' and the question of 'Native women and feminism' rather than Native feminist theory".[38] Native feminism and the intricacies of colonialism strongly shape Native antiviolence work, particularly as tribal and female sovereignty remain at tension. Mankiller's approach of finding indigenous solutions to the problem of violence

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[35] Ramirez 9.
[36] Smith "Native American Feminism" 17.
[37] Victoria Ybanez, "Domestic Violence: An Introduction to the Social and Legal Issues for Native Women" Sharing Our Stories of Survival: Native Women Surviving Violence ed. Sarah Deer et al. (Lanham, MD: Altamira Press, 2008) 49-67. 63.
[38] Smith and Kauanui 243.

against women for some may be ignoring the greater intricacies of colonialism and settling on precolonial idealism. But it also is a gateway to a universal Native sovereignty that can more clearly address the needs of Native women and communities simultaneously.

Defining Justice

Most conversations about sexual violence imagine ‘justice' as a universal standard of redress. This project, and many others shedding light on sexual violence in communities of color, gain much of their strength by looking at the relative oppression of that particular group to ideal standards that, in fact, no community accesses in today's system. The process of defining 'justice' is framed as though the audience of the mainstream antiviolence movement - white, middle class, heterosexual women- always accesses redress for sexual violence in the form of complete cooperation by law enforcement, the legal system, and access to resources that activists for marginalized communities criticize their own limited access to. This ideal standard of 'justice' the government is criticized for falling short on in fact does not exist - if it did, the society of rape culture as we know it would exist instead as a sort of ethnic cleansing of communities of color and sexual minorities. Instead, one definition of justice is the position to hold governments and perpetrators accountable for their actions, with a common ethical standard of accountability. With this comes acknowledgement that the tools of the government to meet the needs of survivors are inadequate for all communities, but in the interest of portraying the severity of such

infringements on human dignity there are solid, reliable, egalitarian systems of 'redress' in place.

When talking about 'justice' for indigenous survivors of sexual violence in the United States, government accountability and redress by incarceration is the generally accepted standard. The common ethic, particularly as used by organizations closely associated with systems of government (US or international organizations, such as Amnesty International) is to hold the United States government accountable for allowing access to the same system of redress for survivors of all identities. Beyond this general discourse however, particularly as acknowledgement of colonialism enters the conversation, antiviolence activists begin to challenge these systems themselves. The definition of justice begins to transform - instead of redress involving incarceration of the perpetrator, theories of restorative justice and questioning the criminal justice system develop.

At the same time, this makes room for questioning the community goals for restorative justice or community peacekeeping initiatives. If the aim of the antiviolence movement is to end sexual violence, what efforts bring us closer to this goal on an individual, community, and national level? Judith Butler speaks of a need "to distinguish, provisionally, between individual and collective responsibility. But then we need to situate individual responsibility in light of its collective conditions",[39] a problem similar to that of Native activists in reconciling tribal and female sovereignty. Collective conditions, however, must still exist on an individual level and the circumstances of race, age, citizenship, ability, class, history, and sexual

[39] Judith Butler, "Explanation and Exoneration, or What We Can Hear" Precarious Life: the powers of mourning and violence (London: Verso, 2004) 65.

and gender identity (among others) that situate a person. The closest definition of justice, following this logic, seems to be what most benefits the survivor not only on an individual level but as a member of the community. An answer to this, in many situations, is difficult and far from perfect, however.

Beyond this theory of justice I hope to apply through my project are questions about defining the criminality of sexual violence and how feminists have worked to establish this violence as an acknowledged violation of human rights. Catharine MacKinnon, for example, holds the legal system accountable for confirming the humanity of a person, and in this way argues that dismissing the severity of sexual violence makes women 'less than human'. "When nothing is done, the treatment, and social status accordingly, confirm and create who one is. Legally, one is less than human when one's violations do not violate the human rights that are recognized...human rights can be observed to be a response to atrocity denied. Before atrocities are recognized as such, they are authoritatively regarded as either too extraordinary to be believable or too ordinary to be atrocious...the given status of certain people is seen as tautologous with, even justified by, the deprivations of their human rights".[40]

This relates well to Susan Brownmiller's argument in 1975 that rape had hitherto been defined by men rather than women and that men use, and all men benefit from the use of, rape as a means of perpetuating male dominance through keeping all women in a state of fear. If we rely on the law to define rape, as McKinnon does, we are also subject to Brownmiller's criticism of allowing rape to be

[40] MacKinnon, Catharine A. A women human?: and other international dialogues (Cambridge, MA 2006) 3.

defined by men. For Native women, this evokes the question of whether to lobby for legal change (allowing white men to define their own worth and dignity legally) or promoting restorative justice and peacemaking initiatives within their own communities best serve a role of redress.

Philosophies behind human rights and equality frameworks vary widely. Debra Bergoffen examines how the International Criminal Tribunal of the former Yugoslavia (ICTY)'s conviction of three Bosnian Serb soldiers for 'crimes against humanity' in February of 2001 put a new international value standard to women's sexual integrity and dignity- "The ICTY verdict put a new value - that of a woman's right to sexual integrity- into circulation".[41] The court's rationale for the decision provides interesting insight into international law and human rights standard however. First, the court reasoned that 'men of substance do not abuse women', an idea that while condemning rape and sexual slavery of Muslim women by Bosnian Serbs does nothing to challenge the patriarchy, just as many Native activists have argued that incarcerating more American Indian men reinforces colonialism. The second reason, however, linked a woman's dignity to "their fundamental right of sexual determination", saying that harm to a woman's dignity does not require evidence of violence and is in that case a crime, but is comparable to torture in cases where severe mental or physical violence is used. If the ICTY in 2001 established a new standard of international criminality of rape, the institutional dismissal of Native women's rights to access resources and prosecute crimes by the United States government is actually enabling torture on a massive scale.

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[41] Debra B. Bergoffen, "From Genocide to Justice: Women's Bodies as a Legal Writing Pad". *Feminist Studies* v. 32 no. 1 (Spring 2006) 11-37. 15.

The same logic behind the ICTY decision is present in CEDAW's (Convention on the Elimination of all forms of Discrimination Against Women) preamble, as Brownmiller points out: "The CEDAW preamble, by distinction, rejects sexism principally not as false and inherently without basis but as a barrier to the exercise of other rights, hence derivative, and an inefficient use of human resources. As significant an advance as CEDAW is, opposition to discrimination based on sex is, on this preambular level of principle, framed as a moral judgment of value. Sexism remains clothed, sexual politics underground".[42] This logic relates well to that of the US federal government in approaching sexual violence against Native women - there is beginning to be an acknowledgement that sexual violence is bad, and a problem, but no comprehensive analysis of the role colonialism or racism actively plays.

The Amnesty International framework of justice acknowledges the inherent dignity and worth of every human being as it is defined through a variety of ratified international human rights treaties. Amnesty goes on to list the violated rights of Native women to be "the right not be tortured or ill treated, the right to attain the highest standard of mental and physical health, the right to liberty and the security of person"[43] and that sexual and gender based violence is a form of discrimination, simultaneously severe in combination with the discrimination on the basis of indigenous identity as well. International law, Amnesty reports, requires governments to use due diligence in working to have all people within their boundaries held to these same human rights. There is no doubt that the United States has failed to be accountable for Native women - however, if we are to separate out gender and racial

[42] Brownmiller 11.
[43] Amnesty International Report, 22

discrimination in the way Amnesty does, some would argue no women in the United States have the 'security of person' or 'highest standard of mental or physical health' within our current society and health care system.

At the same time, this lack of 'due diligence' by the US cannot take the blame away from the perpetrators, Native or non-Native. Kristen Bumiller speaks at the end of her book In an Abusive State: How Neoliberalism Appropriated the Feminist Movement about reconceptualizing sexual violence activism in the human rights framework. "When the discourse of rights is conceived of as contingent, fluid, and grounded in the deliberation of diverse individuals and groups rather than from universal principles…when citizens take hold of their rights to sovereignty, it opens up the potential for individuals and groups to withdraw from forms of authority invested in the instrumental use of violence",[44] she writes, arguing that this human rights framework also evades reliance on central authority to enforce these rights. The questions of where these rights come from remains unanswered, but applying this framework to Native antiviolence activism allows for further withdrawal of reliance on state violence and authority by Native survivors, support workers, and activists. Her philosophy and definition of human rights also encourages finding new, community based ways to access justice beyond the federal criminal justice system.

In taking this time to question and establish 'justice', there exists a more personal, effective side to articulating what the needs of Native women are. The Color of Violence anthology includes a chapter by CARA (Communities Against Rape and Abuse) called "Taking Risks: Implementing Grassroots Community Accountability Strategies" that introduces "a list of ten guidelines – our

[44] Bumiller 150.

accountability principles – that we have found important and useful to consider" when working "with diverse groups who have experienced sexual violence within their communities to better understand the nature of sexual violence and rape culture, nurture community values that are inconsistent with rape and abuse, and develop community-based strategies for safety, support, and accountability".[45]

The ideals are as follows: to recognize the humanity of everyone involved, prioritize the self-determination of the survivor, identify a simultaneous plan for safety and support for the survivor as well as others in the community, carefully consider the potential consequences of your strategy, organize collectively, make sure everyone in the accountability-seeking group is on the same page with their political analysis of sexual violence, be clear and specific about what your group wants from the aggressor in terms of accountability, let the aggressor know your analysis and your demands, consider help from the aggressor's community, and prepare the be engaged in the process for the long haul.[46] The ideals focus on the method of achieving justice by an organization, but these priorities, particularly prioritizing the self-determination of the survivor, subsequently relate to an outline of resources that are necessary to provide a survivor to make these organizing strategies possible. These resources should include cultural competency beyond inclusion but that centers, not marginalizes, the survivor's experiences; access to appropriate and similarly culturally competent health care; the opportunity to seek redress through a justice system, whether restorative, federal, or otherwise; consideration of factors in

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[45] Communities Against Rape and Abuse, "Taking Risks: Implementing Grassroots Community Accountability Strategies" Color of Violence: the incite! anthology ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 250-266. 250.
[46] Communities Against Rape and Abuse, 251-254.

the survivor's life beyond the immediate experience of sexual assault, such as finances, children, geography and mobility, belief systems, and citizenship; immediate access to safety by the means preferred by the survivors, such as relocation, a protection order, or law enforcement. While clearly other needs exist, these ideas should be central to antiviolence initiatives, particularly those serving Native communities.

Chapter 1
The Legal System as Enabler

At eighteen, I settled in Portland, got a couple jobs with my BIA school typing training, got an efficiency apartment, and made a couple of friends. It seemed life wasn't too bad, but demons in my head wouldn't let me sleep or sit still, and I missed the mountains and skies of my homeland, and so I finally worked my way back to Alaska. I settled in Fairbanks and within months was so brutalized by a white man that belonged to some militia group that I spent the summer hiding in someone's cabin out of sheer and total fear.

This sixty-year-old heavyset white man I met because my car ran out of gas said he had a bad heart, was alone, and needed help, and so, naively seeing this as an opportunity, I moved into his home and worked off rent by cleaning and cooking, as well as working during the week at the Native community center in Fairbanks. There, I heard stories of Native women murdered and dumped along the roadside and no one arrested for it. I listened to families cry, hopeless for justice. One night, the heavyset white man came into my room and raped me. He fell asleep in his room afterwards, and I crept into his room with a gun and held it to his head. I stood there and, with a profound realization, put the gun away, and stole away into the night,

running down the road in my bare feet, carrying my boots. If I killed that white man, I would be hung for it or worse. I was a Native in a white man's house. I ran hard…

Their [my old boarding home parents'] *fears were justified as it would turn out - I was unaware at the time that this same white man had raped six other Native women under similar conditions. The family was just as concerned about, as I was terrified of, the militia group that he belonged to as well. To add insult to injury, the police had thought to arrest me, at his request, for breaking and entering into his house. I felt attacked on all fronts and terribly alone.* [47]

Diane Benson, an Alaska Native and politician, wrote a memoir of her history of sexual abuse "Violence Across the Lifecycle". She was the Green Party candidate for governor of Alaska in 2002 and the Democratic nominee for US Congress in 2006. This small section of her story portrays the sense of distrust and legal invisibility most Native women have against the United States legal system. The United States federal government, both directly and indirectly, has severely limited the potential for Indian nations to protect Native women against sexual violence. Institutional racism against American Indians exists on a large scale and plays out in policies, the actions of federal employees, and unspoken rules. As these systems remain in place, federal offices are simultaneously working to address sexual violence against Native women with a range of approaches. This chapter will spend time examining the legal structures in place that both facilitate sexual violence against Native women and govern federal, non-profit, and Native activist efforts.

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[47] Diane E. Benson, "Violence Across the Lifecycle" Sharing our Stories of Survival: Native Women Surviving Violence. Edited by Sarah Deer et al (Lanham, MD: Altamira Press 2008) 131-147. 143.

Tribal governments have become increasingly limited in their jurisdictional powers by the federal government. They cannot prosecute non-Indians, have been denied exclusive jurisdiction over "major crimes" such as rape and must rely on the federal or state government to take action, and the concurrent jurisdictional powers they have in such instances are limited to a fine of $5,000 or a year of incarceration. For many Native survivors, a tribal protection order is the only option because it is the greatest tangible protection tribal governments are able to provide against non-Native perpetrators. Given that the vast majority of cases reported non-Native perpetrators, tribal governments are forced to rely on federal and state governments for adequate redress and safety for Native survivors, and these needs are nowhere near being met. [48] Federal and state governments are dismissing, ignoring, and even exacerbating tribal interests in protecting Native women by so strictly restricting their actions and ability to respond appropriately.

The Question of Two Sovereigns

American Indians share a political relationship with the federal government that politicizes their racial identity in ways that differentiate them from other racial groups in the United States.[49] This relationship shapes the larger framework of federal Indian policy, and explains the philosophical relationship between Indian nations and the US government. David Wilkins, a Professor of American Indian Studies, Political Science, Law, and American Studies at the University of Minnesota, lays out in a number of his works the relationship between federal Indian policy,

[48] Amnesty International 16.
[49] David E. Wilkins, American Indian Politics and the American Political System (Lanham, Maryland: Rowman and Littlefield Publishers, Inc. 2nd Edition, 2007) 45.

constitutional law, and philosophy since European contact. He explains his relationship is formalized by a series of political doctrines that function as deeply entrenched, fundamentally racist philosophies of the United States government and its federal Indian policy. Tribal sovereignty is the central question of these doctrines, and is defined as a philosophy of independence, with a uniquely cultural and spiritual dimension of maintaining traditional cohesion and control over one's own affairs.[50] Tribal sovereignty does not necessarily include aims of self-government or nationalism. The doctrine of discovery, extraconstitutionality of tribes, the trust doctrine, plenary power, and the conception of "domestic dependent nations" all come together to contradict and enforce tribal sovereignty.

The doctrine of discovery was allegedly passed down to the United States from European nations' presumed legal title to Indian-occupied lands. Steven Newcomb's article in Indian Country Today entitled "Justice from Whose Perspective?" explains the doctrine of discovery by first reminding the reader that when Columbus landed, he erected gallows to symbolize justice- "to announce the imposition of Christendom's 'justice system' and to convey a message: If you Indians do not obey the lordship of those of us who now presume to be in control of this land and your lives, then you will be punished".[51] Newcomb ties this theory of justice to early Christian claims over non-Christian lands with the doctrine of discovery, articulated in the 1823 case *Johnson v. McIntosh* and Marshall's assertion that documents of colonial America determined a "right to take possession" of the land as

[50] Wilkins, American Indian Politics 51.
[51] Steven Newcomb. "Newcomb: Justice from Whose Perspective?" Indian Country Today. 13 June 2008.

land previously unknown to Christian people.[52] This theory, as Newcomb and other scholars have written about extensively, remains the basis of the federal government's philosophy toward tribal lands- now obscured by language of sovereignty and property, but essentially revolving around the theory that Christian, American justice systems are always superior to the uncivilized notions of the indigenous peoples of the region. The vast restrictions on tribal courts and the reliance a survivor must have on the law enforcement of the state or federal government are manifestations of this colonial philosophy today. But because this philosophy is simultaneously racist and dismissive of Native rights, survivors of sexual violence find themselves in a black hole of structural oppressions that work to prevent legal redress, particularly against non-Native perpetrators. [53]

American Indian social structures "are nations in the most fundamental sense of the word".[54] The relationship between indigenous tribal governments and the federal government is defined as "extraconstitutional" because tribal rights are not protected by or derived from the US Constitution. The relationship is one between two sovereigns, as tribes are treaty-recognized and, in theory, their sovereignty should be fully protected under the Constitution's rubric.[55] As Wilkins explains, "a large number, over five hundred, of these important contractual arrangements form the baseline parameters of the political relationship between tribes and the United States and are still legally valid, though there enforceability has always been problematic."[56] Though the relationship between tribes and the federal government may be

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[52] Newcomb, "Justice from Whose Perspective?"
[53] Smith, Conquest Intro.
[54] Wilkins, American Indian Politics 45.
[55] Wilkins, American Indian Politics 45.
[56] Wilkins, American Indian Politics 48.

extraconstitutional, the Indian Civil Rights Act forced tribal governments to incorporate the majority of the US Constitution into their own tribal constitutions. This reflects a larger imposition of Western justice and value systems on tribal governments, prioritizing certain rights language and philosophies of the individual that may conflict or be contradictory to traditional tribal belief systems. This is particularly important considering the dependence antiviolence work must have on the U.S. criminal justice systems.

Before the arrival of Europeans in the Americas, it is unlikely Indians held a "conception of that racial character which today is characterized as 'Indian'. People generally recognized their neighbors as co-owners of the lands given to them by the Great Spirit and saw themselves sharing a basic status within creation as a life form".[57] During the formative years of the republic that was to become the United States, the first manifestations of what came to be called a 'trust relationship' with Indian tribes was begun. At this point, policymakers pledged to honor treaties made with tribes but also to assume a protectorate role for Native societies and lands. As the republic grew in strength, Congress began to exert this power over Indian nations in the late nineteenth century by imposing various unilateral policies, such as the General Allotment Act of 1887, that assumed Indians to be incompetent in managing their lands and divided it up for them. The rapid shift from treaties between sovereigns to unilateral policies imposed by the growing United States correlates directly to the level and type of violence inflicted against Native peoples, while the later shift to assimilationist policies correlates to state violence in the form of sterilization, boarding schools, and sexual violence.

[57] Wilkins, American Indian Politics 17.

Additionally, the trust doctrine between Native peoples and the federal government differentiates indigenous peoples from other ethnic or racial groups.[58] This is based on the fact that given the extraconstitutional status of tribes, no protections exist for Indians against the federal government, and thus the U.S. is pledged to protect tribal sovereignty and property unless they receive tribal consent.[59] This means the federal government technically needs tribal consent before making legal or political decisions that would infringe on the rights of tribes to function independently – in practice, however, the Major Crimes Act, PL 280, the Indian Civil Rights Act, and *Oliphant* were among hundreds of other US political decisions that received no consent from tribal governments.

As a loophole, Congressional "plenary" power, or exclusive and complete power, was allegedly vested in Congress by the "commerce clause" of the Constitution as the sole authority to "regulate Commerce with foreign Nations, and among the several States, *and with the Indian tribes*".[60] The choice to vest this power in the legislative branch, rather than the states, is interesting and sheds some light on the questions of jurisdiction raised by PL 280, which will be covered later in this chapter. Wilkins also argues plenary means *preemptive,* an idea closely tied to the decision in *United States v. Kagama* (1886) of plenary as *unlimited,* or *absolute*. The latter definition, as seen in *Kagama*, is most controversial and "means that the Congress has vested in itself, without a constitutional mooring, virtually boundless governmental authority and jurisdiction over tribal nations, their lands, and their

[58] Wilkins, American Indian Politics 49.
[59] Wilkins, American Indian Politics 49.
[60] Wilkins, American Indian Politics 49.

resources",[61] an interpretation also discussed in the 2004 Supreme Court decision *United States v. Lara*. This sort of definition takes advantage of the trust relationship, many argue, and the perceived flexibility of this boundary by Congress is the reasoning behind most of the current infrastructure that allows sexual violence to occur on such a wide scale. Finally, the idea of "domestic dependent nations" arose from the Marshall model conceiving tribes both as "distinct, independent communities" and subject to federal control in internal affairs, or as wards of the state. This phrase ties together well the philosophies just laid out, and particularly the paternalism used to manipulate and control tribes since European contact. [62]

The Bureau of Indian Affairs is the federal committee, housed in the Department of the Interior (alongside the National Parks, raising serious questions of institutional fit), designated as an advocate for Native affairs. For many, it has gained the reputation of incompetence and mismanagement of tribal issues, and has historically been engaged in a series of detrimental programs instituted by the federal government, including forced confinement to reservations, allotment and forced assimilation, and termination in the 1940's-1960's. [63] The Department of the Interior today still leases out tribal lands, usually for extracting resources, and turns that money over to the BIA, which is responsible for depositing it in the US Treasury. From the Treasury, checks should be sent out to individual and tribal trust funds held by tribal members and Indian nations. Due to mismanagement, it is estimated by some sources that $137.5 billion has been lost since 1887. As an 'advocate' for

[61] Wilkins, American Indian Politics 49.
[62] Wilkins, American Indian Politics 61.
[63] Wilkins, American Indian Politics 61.

Native peoples, the BIA has been an unreliable and corrupt voice to the federal government in many circumstances.

Legal Barriers to Prosecution

Over the course of the relationship between the United States and Indian nations, four legal actions have severely impacted the inability of Native survivors to access justice through the federal or state court systems – the Major Crimes Act of 1885, Public Law 280 of 1953, the Indian Civil Rights Act of 1968, and the Supreme Court decision *Oliphant v. Suquamish* of 1978. These four moments in federal policy stand as pillars amidst a maze of decisions and inaction that make up the legal framework Native survivors encounter today and shape efforts to address the problem. Given the unique relationship between tribal, federal, and state governments, which we explore in depth later, these laws have worked to withdraw jurisdiction of tribal governments over members and place it instead in the reluctant hands of state and federal officials, an obligation that is not being met and thus leaving drastic holes in jurisdiction and access to basic human rights.

The Major Crimes Act of 1885 granted the federal government *concurrent* jurisdiction over what they determined to be "serious crimes" committed in Indian Country. This included murder, manslaughter, burglary, larceny, assault with intent to kill, arson, and most importantly for our purposes, rape. While tribal governments retained their own level of jurisdiction (limited most extensively by the Indian Civil Rights Act in 1968), the widespread conception has been that the Act prohibited any

action on serious crimes by tribal governments, a fact that has been connected with fewer major *and* minor crimes being pursued through the justice system.[64]

The movement towards this act was triggered in 1882 when Brule medicine man Crow Dog killed Spotted Tail, the leader of the band and a chief who had been compliant with the United States.[65] Traditional Sioux custom led relatives of both men to arrange for compensation for the death of Spotted Tail, and both sides settled that the gifts were just and solved the problems created by his death. Meanwhile, the federal attorney for the Dakota Territory at the time was aghast with the lax way he considered this murder dealt with, and soon charged Crow Dog with murder under the federal government. In 1883, when the case *Ex Parte Crow Dog* reached the Supreme Court, his conviction was reversed unanimously under the terms that an 1868 treaty reserved the right of Sioux to punish tribal members who had committed serious crimes[66] (today preserved with the so-called concurrent jurisdiction). The alleged "great public outcry", alongside fierce BIA lobbying actions, led Congress to pass the Seven Major Crimes Act withdrawing major criminal jurisdiction from Indian tribes.

This story is also significant given current attention on 'traditional' community healing and justice work, which remains moderated closely by the federal government.

The passage of the act was accompanied by a new, aggressive attitude in federal Indian policy that worked with the act to quickly erode tribal customs.[67] Many of these customs, today being dubbed "restorative justice", are being revived by activists

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[64] Amnesty International 40.
[65] Vine Deloria Jr. and Clifford M. Lytle. The Nations Within: The Past and Future of American Indian Sovereignty. (University of Texas Press, Austin. 1984) 4.
[66] Deloria 201.
[67] Deloria 5.

looking to specifically address cycles of addiction and sexual violence on reservations. The act became one of two major federal statutes governing the primary apportionment of criminal jurisdiction in Indian Country, along with the Indian Country Crimes Act.[68] The Major Crimes Act also made no provision for state jurisdiction- the federal government must prosecute these major crimes, specifically, the FBI. While Public Law 280 in 1953 changed this for some frustrated states, this conception of power largely remains today.

Today, different sets of issues come with jurisdiction for Public Law 280 states and those under federal jurisdiction. While PL 280 states have lacked funding and motivation to provide law enforcement to Native communities, states still under federal jurisdiction must rely on the FBI to prosecute any 'major crimes' committed on the reservation by and against tribal members. In cases of sexual violence, this has a direct impact on the quality and number of investigations that are actually undertaken by federal authorities. For many reasons, explored in depth by the Amnesty International Report, the extent to which cases involving Native survivors of sexual violence are dropped before they even reach a federal court is difficult to measure, given the United States Attorney's Office does not compile this information.[69] Also, the FBI definition of rape that is being applied in these cases falls short of international regulations,[70] yet must be relied upon by tribal governments that are not in PL 280 states. The ongoing police violence occurring in

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[68] The 1994 Indian Country Crimes Act expanded well beyond the seven major crimes initially subject to criminal jurisdiction to include areas concerning guns, violent juveniles, drugs, and domestic violence (as opposed to exclusively sexual assault, or rape). The FBI also has jurisdiction over any criminal activity directly related to gaming and investigates civil rights violations, environmental crimes, public corruption, and government fraud of Indian nations.
[69] Amnesty International 21.
[70] Amnesty International 43.

Indian Country, along with the well known absence of response to sexual violence cases by the federal government, the restrictions placed by the Major Crimes Act have created a large barrier preventing Native woman from accessing justice in the federal court systems.

Public Law 280 was passed along with a resolution of termination, or complete assimilation of tribes. The law, as passed in 1953, transferred federal criminal jurisdiction to a number of states over all offences involving Native Americans in Indian Country. Previously, no states could exercise criminal jurisdiction over tribal members, and similar to the Major Crimes Act, both tribal and state authorities now have concurrent jurisdiction over tribal lands. California, Minnesota, Nebraska, Oregon, and Alaska (though Alaska's 'Indian Country' exists very differently) were provided full criminal jurisdiction, while Arizona, Florida, Idaho, Iowa, Montana, Nevada, the Dakotas, Utah, and Washington were permitted to acquire jurisdiction if they wished – it is telling, however, that only Florida has full PL 280 authority today. The long and short term consequences of this law divided state, federal, and tribal jurisdiction into three distinct, conflicting structures of power that remain in tension today. Many responded that the law was a direct affront to tribal sovereignty because while (some) of the states were given the option to assume and relinquish powers, no power was granted to or consented by the Native peoples influenced by the decision.

Not long after, Congress failed to provide additional funds to PL 280 states in order to support this dramatic rise in jurisdiction and need for law enforcement-simultaneously, the Bureau of Indian Affairs reduced funding to tribal governments

and law enforcement as a result of this shift in jurisdiction, deepening the already negative consequences of PL 280 on reservations. [71] The false argument that state jurisdiction actually increased the level of law enforcement on tribal lands was also used by the BIA later on to deny the necessity of federal funding for justice programs. And while Native people saw the wording of the law as a direct interference on tribal governments, states agreed that they could not take over jurisdiction without either federal subsidy *or* the right to tax tribal lands. As Congress failed to provide funding for the PL 280 states, it also refused to give states the power to tax reservations- as a consequence, many simply refused to provide law enforcement on reservations, leaving tribal nations helpless and without recourse.[72] The circumstances on these reservations turned dire as state governments – their new 'wards'- turned a blind, unsubsidized eye next to the federal government's lack of sympathy and ownership of responsibility.

A major Supreme Court case decision questioning state civil jurisdiction over reservations was *California v. Cabazon Band of Mission Indians* in 1987. This case was decided after *Oliphant v. Suquamish*'s decision in 1978 that tribal governments do not maintain any authority over non-tribal members. *Cabazon*, on the other hand, tested first the policy whether state's laws prohibit gambling or permit it to some regulatory control – the former being a criminal and the latter a civil matter.[73] The Supreme Court determined that the state of California only regulated, rather than prohibited, gambling and therefore the band's small operation could not be touched

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[71] Amnesty International 40.
[72] Deloria 207.
[73] Frank Pommersheim Braid of Feathers: American Indian Law and Contemporary Tribal Life (University of California Press, Berkeley. 1995) 179.

by the state, as that would constitute civil jurisdiction *not* congressionally enacted.[74] The decision found "compelling federal and tribal interests" as an independent bar to state or local regulation of tribal gaming, granting the degree of flexibility that allows FBI intervention over any criminal activity attached to gaming on Native lands.[75]

The trend seen after PL 280 is one of clarification of tribal sovereignty in relation to the states. However, given the response to the passage of PL 280 by states themselves, this is less of an issue than determining where exactly responsibility does lie for issues on reservations. To address sexual violence on reservations, states and the federal government must be held responsible for the jurisdiction these decisions *do* place on them, and that a lack of law enforcement and funding towards justice on reservations is perpetuating violence and criminal activity. The consequences of PL 280 went further than the legal and political. On the ground in Indian Country, it has created an excuse for ignorance of jurisdiction by complicating questions of authority, a sense that state law enforcement is under a burden they cannot bear and are resentful of, and that Indian Country (despite the Major Crimes Act and limits on tribal prosecution of major crimes) is the responsibility of neither state nor federal governments. Jurisdiction over reservations is something no one wants, and in combination with limitations on tribal sovereignty sends the message that Native Americans are not worthy of full respect or protection under the law – a conclusion with dire consequences for survivors of sexual violence.

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[74] Pommersheim 180.
[75] Pommerhsheim 180.

The Indian Civil Rights Act, or the ICRA, came in 1968 at a time when tribes were gaining more leeway as corporations and less as governments.[76] The ICRA required tribal governments to uphold specific constitutional norms for reservation residents, but the Bill of Rights and the 14th Amendment were not included because of their 'preexisting sovereign status'. The ICRA was passed in response to the birth of the AIM (American Indian Movement) in 1968– before this, tribes' extraconsitutional status had not subject tribal governments to constitutional restraints.[77] The Indian Civil Rights Act was seen as a major intrusion on the independence of tribes, and was not intended to protect tribes or tribal members from intrusion by the federal government – instead the intention was to restrict the actions of tribal governments and make them more like tools of the United States government.

Another main intention of the ICRA was to restrict tribal governments under the same rubric applicable to state and federal governments; this was quickly challenged by Theodore Mitchell against the D.N.A. (Dinebeiina Nahiilna Be Agaditahe) non-profit legal organization in Navajo Nation, organized around the laws of Arizona. This first test of the ICRA came when the tribal government, fed up with the conflict between Mitchell and the D.N.A., attempted to exercise the power to exclude as was written into the Treaty of 1868. The nation possessed this power to exclude individual non-Navajos from tribal lands, and the philosophy is closely tied another traditional practice of banning perpetrators of major crimes from tribal lands. When the non-Navajo, Mitchell, brought the case to court it was deemed this practice

[76] Wilkins American Indian Politics 143.
[77] Wilkins American Indian Politics 144.

was appropriate, but how it was implemented was beyond the scope of tribal powers, given Mitchell's rights to due process and speech had been violated.[78] Essentially, tribal traditions of maintaining law and order were now required to fall under the ICRA, thus imposing a rubric of Westernized justice onto traditional systems.

The ICRA, along with the IRA (Indian Reorganization Act), has led to similarities between tribal governments that have slowly begun to homogenize the wide range of structures and practices making up Native justice systems.[79] Only approximately 20 traditional courts exist that "administer unwritten customary law and follow little formal procedure".[80] These are commonly made up of a council of mediators and conflict resolvers, and based on a communal ethics system and emphasis on integrity and privilege access to privileges.[81] Most courts today, however, were established in the early 1880's around the passage of the Major Crimes Act, and called CFR, or Code of Federal Regulations, courts. According to Wilkins, "their primary purpose was to promote acculturation of Indians by educating them in Euro-American legal and cultural values and norms".[82] Once functional on nearly 2/3 of reservations, many were phased out into more constitutionally based tribal courts – in many cases however, these written documents were either by non-Natives or strongly influenced by the documents of the federal government. The significant portion of the US Constitution imposed on tribal governments through the ICRA is present here, as is the possibility to challenge tribal court decisions in federal courts. This clearly established hierarchy of jurisdiction impedes directly on

[78] Wilkins American Indian Politics 144.
[79] Wilkins American Indian Politics 146.
[80] Wilkins American Indian Politics 153.
[81] Wilkins American Indian Politics 153.
[82] Wilkins American Indian Politics 154.

conceptions of tribal sovereignty, and is in the trend of many Acts and court decisions pertaining to the jurisdiction of tribal courts – tribes could not possibly be sophisticated or civilized enough to make fully informed distributions of justice.

As we discuss the goal of tribal sovereignty, however, complaints about its exercise by tribal members cannot simultaneously be ignored. Many are critical of the administrative capabilities and organizational structures of some tribes – "tribal government officials are routinely criticized as being incompetent, ineffective, weak, wasteful and inefficient. In some cases they may even be corrupt and criminal…for many American Indian tribes, there is a very good possibility of a mismatch between their formal governments and the standards of political legitimacy found in their cultures".[83] Ideally, restructuring of the federal and state systems would allow tribal authorities the space to navigate and reestablish ineffective structures and practices.

Finally, the Indian Civil Rights Act, as its name suggests, seemed to grant more freedom of speech to tribal journalists at its passage in 1968. However, the experience of many working for tribally owned media has been "free-press guarantees provide little or no protection because tribal governments view their newspaper staffs as employees wholly answerable to tribal governments".[84] This raises the question of how awareness can be raised about sexual violence on reservations within communities themselves, given that such statements are innately critical of certain tribal members and weak tribal law enforcement, despite the wholly appropriate guilt placed on federal policies and law discussed here.

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[83] Wilkins American Indian Politics 162.
[84] Wilkins American Indian Politics 253.

The Supreme Court case *Oliphant v. Suquamish* is frequently cited to have the strongest impact on negating the civil rights of Native survivors of sexual violence. The case ruled that tribal courts could not exercise criminal jurisdiction over non-Indian US citizens, effectively stripping tribal governments of the power to prosecute crimes committed by non-Indian perpetrators on tribal land. The Amnesty International Report brought attention to a fact that many Native activists and scholars have been angered by in the past 30 years – that this clearly denies victims of sexual violence due process and equal protection of the law, particularly given the high rates of interracial violence. [85] Even further, such jurisdictional distinctions based on the race or ethnicity of the accused violates international law and US constitutional guarantees.[86] The ruling of *Oliphant*, other court cases, and government policies rely heavily on the unique political relationship between Native American tribal governments and the federal government to sidestep accusations of racism. Given the already limited jurisdiction of tribal governments, survivors of rape now *must* rely on the federal or state government to prosecute the crime, unless the perpetrator was a member of the same tribe, and in which case the tribal government only has the power to impose a 1-year sentence of fine of $5,000. State and federal authorities often do not prosecute those cases of sexual violence that fall on tribal land over which the have exclusive jurisdiction, and there are numerous reports that cite this lack of law enforcement is actually encouraging non-Indian individuals to pursue criminal activities in Indian Country.[87] Simultaneously, tribal police have limited powers of arrest over non-Indian suspects in some states, and maintain the

[85] Amnesty International 41.
[86] Amnesty International 41.
[87] Amnesty International 41.

power to detain non-Indian suspects before transferring them to state or federal authorities, but this fact is not widely known or acknowledged by tribal, federal, or state authorities.[88]

In the Supreme Court decision, the majority opinion cited that "upon incorporation into the territory of the United States, the Indian tribes thereby come under the territorial sovereignty of the United States and their exercise of separate power is constrained so as not to conflict with the interests of this overriding sovereignty".[89] The court reasoned that inherent tribal powers could be divested both *explicitly* and *implicitly* if found to be "inconsistent with their status"[90] as domestic dependent nations, denying that before Oliphant, the only inherent tribal powers that Congress declared surrendered by "incorporation" were the powers to freely transact property and to engage in foreign relations, both consequences of the Marshall model.

As Bruce Duthu explores in depth, the opinion of Justice Rehnquist is not ashamed to perpetuate an interest in preserving the white supremacy of the Marshall model, to draw from the doctrine of discovery as serving to 'protect' the sovereign interests of the United States, and privilege the "unwanted intrusions on their personal liberty" of whites over Native Americans.[91] Rehnquist calls the decision part of the "framework limitations", as a consequence of 'incorporation', that represented the sort of "overarching and necessary limits imposed by the national government to carry out the colonial project of the 'New World'".[92] According to the decision, made

[88] Amnesty International 41.
[89] Bruce N. Duthu. American Indians and the Law. (Viking: New York. 2008) 20.
[90] Duthu 20.
[91] Duthu 21.
[92] Duthu 20.

almost a quarter of a century after *Brown v. Board of Education*, the court will continue to treat Indians as an inferior race in present day America.

The struggle between Congress and the Supreme Court over major policy decisions is articulated in the Court's statements that tribes "necessarily gave up their power to try non-Indian citizens of the United States except in a manner acceptable by Congress".[93] But the confusion and lack of consistency doesn't end there, as *Oliphant*'s decision contrasts directly an earlier decision in 1959 where the Court found it immaterial that the creditor was non-Indian – "He was on the reservation, and the transaction with an Indian took place there…the cases in this Court have consistently guarded the authority of Indian governments over reservations…If this power is to be taken away from them, Congress is to do it".[94] Clearly, the Court ignored the precedent and thrust itself into a policy-making role once exclusively reserved for the legislative branch.[95] The major distinction between the cases – that the former dealt with civil and *Oliphant* criminal jurisdiction- was mediated by the 1981 case *Montana v. United States* that extended *Oliphant*'s logic to the civil and regulatory authority, which became known as the 'implicit divestiture rule'.

In 1990, *Duro v. Reina* was decided, claiming that tribes lack inherent sovereign authority to prosecute nonmember Indians and extending the *Oliphant* decision from non-Indians to non-tribal members. The logic behind this decision was that because the defendant could not serve on a tribal jury, vote in reservations, or run for tribal office, they could be classified as having the same legal status as a non-Native. The rights language in the decision is ironic given widespread anger at

[93] Duthu 21.
[94] Duthu 22.
[95] Duthu 23.

Oliphant – "while Congress has special powers to legislate with respect to Indians…Indians like all citizens are entitled to unwarranted intrusions on their persona liberty".[96] Supporters of tribal sovereignty organized quickly in an effort to counter the effects of Duro. In response, Congress, in agreement that *Duro* left a "jurisdictional void on reservations",[97] amended the Indian Civil Rights Act in 1991 to include the provision that tribal powers of self-government included "the inherent power of Indian tribes, hereby recognized and affirmed, to exercise criminal jurisdiction over all Indians", becoming known as the *Duro*-fix legislation.

Recently, in 2004, the Court upheld the *Duro*-fix in *United States v. Lara*; the *Lara* opinion determined that the Supreme Court is still divided on fundamental elements of federal Indian law. Justice Thomas called federal Indian policy "schizophrenic"[98] and criticized the fundamental contradictions between Congress's plenary power and the concept of inherent tribal sovereignty. Ironically, this criticism from within the Supreme Court is closer than many dare to tread into suggesting a massive overhaul of federal Indian policy. Instead, federal employees and activists alike are contained by the current legal framework and short-term vision of the state.

These four major points in federal Indian policy clearly and conspicuously restrict safety and options available to survivors of sexual violence. Not only do they restrict, and in some ways prohibit, Native survivors from accessing redress under the United States justice model, but they also send a clear message that crime against Native women is not taken seriously, and neither is the authority of their tribal governments. The United States government, by reinforcing and supporting these

[96] Duthu 21.
[97] Duthu 26.
[98] Duthu 49.

policies, is enabling perpetrators to violate the sexual sovereignty of Native peoples while helping to create a climate of dismissal and devaluation of human rights. Finally, a widely read article published in *Indian Country Today* dispensed the following advice to Indian nations:

> "The Indian plays much the same role in our American society that the Jews played in Germany. Like the miner's canary, the Indian marks the shirts from fresh air to poison gas in our political atmosphere: and out treatment of Indians, even more than our treatment of other minorities, reflects the rise and fall in our democratic faith…So what are Indian nations to do? Avoid being the canary. Stay out of the Supreme Court. Taking Indian cases to the Supreme Court has been prima facie malpractice for the last twenty years. Indian nations should particularly stay away from state/tribal conflicts, and, if they are unavoidable, settle them…the only time an Indian nation should take a state to court is if the federal government is strongly and soundly on the Indian nation's side…cases force a decision- they put the tribe in the coal mine. Bringing a case to the courts means that someone else is doing the deciding….Indian nations should get out of the sovereignty talk, get out of the rights talk, and get out of the constitutional talk, because it is not going to work before the current Supreme Court. Litigation is only one weapon in the arsenal of tribal sovereignty- it should not be a tribal way of life. The best way for the canary to survive is to stay out of the mine".[99]

[99] Steven Paul McSloy, "A Bird's Eye View of American Indian Law and Its Future: 26 Sept 2003" America is Indian Country: Opinions and Perspectives from Indian Country Today Ed. Jose Barreiro and Tim Johnson (Golden, CO: Fulcrum Publishing, 2005) 83-87. 83.

Chapter 2
Federal Antiviolence Efforts

With increased frequency, federal response in the form of programs, reports, and committees have begun to address its role in stopping violence against Native women. The Government Accountability Report of 1976 is an early example establishing the controlled tone of the government in the interest of containing issues of Native women's rights. As an example, the GAO Report outlines well how Native women's bodies are viewed even by the government's apparently benevolent actions, and the narrow scope by which their rights are understood. Other more recent initiatives are similarly addressed within a tight framework of maintaining the current status quo and political structures. These initiatives, such as the Task Force on Violence Against American Indian and Alaska Native Women, Indian Crime Concept Paper, and the Violence Against Women Act, focus narrowly on smaller structural issues while dismissing larger questions of institutional racism, colonialism, and dismantling stereotypes of Native women. While the work is incredibly valuable and necessary in the short term, it serves to reinforce these larger frameworks of oppression and ensure the continued existence of sexual violence in the long term.

GAO Report

While the legal structures examined above conspicuously limit the rights of American Indians, other actions by the federal government are not so clean cut. The GAO report, published by the Government Accountability Office in 1976, carefully reports on horrendous transgressions of the federal government's nonconsensual sterilization of thousands of Native women. The Office, as formally part of the government itself, works hard to balance reporting of its own atrocities with downplaying and sidestepping its severity in the report. This delicate balance plays out clearly here and reveals the intricate relationship the federal government has had with Native women's bodies, their rights, and the role of benevolent colonizer. The report is a prime example of how Native bodies are approached by the federal government as subjects to the state, defined by their sexuality, and how narrowly focused investigations into the rights of Native women have been in order to avoid larger questions.

The report is addressed to South Dakota Senator James Abourezk, a Democrat and the first Arab-American to serve in the Senate. At the time, Abourezk was also the Chair of the Senate Select Committee on Indian Affairs and the American Indian Policy Review Commission, and had requested the investigation into the activities of the Indian Health Service, or IHS. The IHS, called the Public Health Service until 1958, is a division of the Department of Health, Education, and Welfare (HEW) which formed the Division of Indian Health in 1955.[100] The report focused centrally on medical research involving American Indian subjects, research done on the control

[100] Jane Lawrence "The Indian Health Service and the Sterilization of Native American Women" (*The American Indian Quarterly* 24.3 (2000) 400-419) 400.

of trachoma, and the permanent sterilization of Indians at IHS and contact facilities in the Aberdeen, Albuquerque, Oklahoma City, and Phoenix areas during the fiscal years 1973-1976.[101]

Sovereignty struggles in the 21st century have frequently been played out on Native women's bodies, and reproductive health care is one way women have been manipulated in this power struggle. Rights central to reproduction, such as access to contraception, abortion, information, and resources, are controlled not only legally but economically through the structure of the United States healthcare system and Indian Health Services. In this way Native women are forced to be subject to the state, as are their bodies as vehicles of virility and procreation, sustainability and resistance. Sovereignty struggles between tribal and federal governments frame the question of Native reproductive rights differently than for other women of color, addressing their unique political status as domestic dependent nations once subject to a policy of genocide and a racial group largely exclusive to North America and its political system. This GAO report is one of many federal government documents that embody this power struggle over bodies in its choice of language, rhetoric, and truths. Throughout the report there is an unacknowledged pressure of rights language and international human rights standards motivating the investigation, giving it an obligatory tone. Justice and sexual violence in Indian Country follow a similar rubric of control over Native women's bodies, and the publishing of the GAO report is a manifestation of these broader systems of power.

The GAO report itself addresses sterilization practices- consensual and nonconsensual- of the Indian Health Service as funded by the federal government,

[101] GAO Report 4.

alongside other healthcare practices. Many of these practices began in 1965, when the federal government, and therefore IHS, began providing family planning services particularly targeted at American Indian women because of their relatively high birth rates.[102] Within the historical rhetoric of the time, it is clear that the high rates of sterilization in Indian Country were heavily racialized. The War on Poverty greatly increased the number of women of color on welfare, and simultaneously wielded ideas of the 'greater social good' against the reproductive rights of millions of women of color through the United States.

The racism innate to the aims of 'greater social good' was not only abstractly dominating American social thought but the intentions of many social service administrators. In 1973, the Health Research Group conducted a survey that revealed,

> 'the majority of physicians were white, Euro-American males who believed that they were helping society by limiting the number of births in low-income, minority families. They assumed that they were enabling the government to cut funding for Medicaid and welfare programs while lessening their own personal tax burden to support the programs. Physicians also increased their own personal income by performing hysterectomies and tubal ligations instead of prescribing alternative methods of birth control. Some of them did not believe that American Indian and other minority women had the intelligence to use other methods of birth control effectively and that there were already too many minority individuals causing problems in the nation, including the Black Panthers and the American Indian Movement. Others wanted to gain experience to specialize in obstetrics and gynecology and used minority women as the means to get that experience at government expense. Medical personnel also believed they were helping these women because limiting the number of children they could have would help minority families to become more financially secure in their own right while also lessening the welfare burden.'[103]

[102] Lawrence 402.
[103] Lawrence 410.

Sterilization was therefore seen to benefit *all* races economically, politically, and psychologically because non-white children were burdens on all members of society. By 1976, at the release of the report, some voices of resistance were evoking eugenics and genocide in response to the massive increase in sterilizations of women of color since 1965. To compound the reliance on the IHS by Native women, many traditional childbirth and reproductive practices, such as midwifery, were prohibited for American Indians in the 1950's and 60's.[104] Just as limits and constrictions have been placed on tribal courts and traditional justice, so has healthcare for Native women been forced to rely on the federal government, and consequently the reproductive health and capabilities of entire nations.

The War on Poverty, as revealed in the responses to the survey summarized above, played a major role in social and medical approaches to the sterilization and reproduction of women of color.[105] The War on Poverty was 'declared' by President Lyndon B. Johnson in 1964 in response to a national poverty level of 19%. While the legislation provided a huge increase in support for social welfare programs in the following years, it also opened the door for major criticism of the welfare state and by 1976, ideas about personal responsibility and social Darwinism began to be revived. Reservations were greatly influenced by this fluctuation in policy and varied support of social welfare programs because of their geographic and economic vulnerability and reliance on federal programs. The increase in size of the

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[104] Chris Graef. "Native Profiles: A Discussion with Charon Asetoyer". (News from Indian Country Hayward, Wis: Jan, 8, 2008. Vol. 22, Iss. 1; pg 8, 1 pgs).
[105] Lawrence 410.

welfare state created a dynamic in which "the state exercises power by creating the structural conditions in which women are dependent or require protections for both their material and psychological needs. Yet the language justifying this protection often masks the state's role in creating this category of dependent subjects".[106] While Kristen Bumiller wrote this in reference to the expansion of social services relating to sexual and domestic violence, it is equally applicable to the IHS control of Native women's sexual health and reproductive rights.

There is significance in the fact that the legal precedents determining consent and sterilization are framed in terms of disability and crime. This speaks to how the legal system sees Native women's (and other women of color's) bodies. Their bodies are seen as deviations from the norm in a way similar to those with disabilities are, showing both race and ability evoked questions of capacity to consent; while extreme discrimination against people with physical and mental disabilities existed at the time- and remains today – state control played out in institutionalization, while for women of color, the imposition of dependence on the state controlled their bodies. Just as criminals could not be trusted, neither did the state consider women of color (and to a lesser degree, all women) capable of understanding what was best for them. For Native women, the development of consent case law in the Supreme Court illustrated the myriad of stereotypes against them.

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[106] Kristen Bumiller. In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence. (Duke University Press, 2008) 97.

The GAO report and the rapid increase in sterilizations of Native women came at a time of political upheaval and resistance. For this reason, the report set the tone for federal awareness of human rights violations against Native women through the 20th century. In 1972, the newly founded American Indian Movement (AIM) occupied the Bureau of Indian Affairs Headquarters in DC and initiated decades of organized resistance. This resistance simultaneously fueled white social fears of dangerous, radical Native organizing and granted AIM leverage to demand changes, bringing attention to the high rates of sterilization, the questionable process of informed consent, and pushing the 1976 passage of the Indian Health Care Improvement Act by giving tribes the right to manage or control IHS programs- many have since started their own facilities. The struggle for tribal sovereignty, at this point in history, was fresh to contemporary media and adopting a more radical approach to demands and rights to services by the federal government. The IHS, as one of the largest treaty-defined services the federal government is obligated to provide Native communities, was the locus of many of these public demands. In 1978, a group of Native women broke off from AIM to form the Women of all Red Nations (WARN) in the interest establishing a differentiated, female approach to the work of AIM. While the groups focused on some different Native issues, and frequently took different approaches, the distinction made between tribal and female sovereignty was powerful. WARN stated that "the real issue behind sterilization is that we are losing our sovereignty",[107] that it was part of the larger colonial plan for the US to control

[107] Lawrence 411.

all Native land, and criticizing that tribes with a great number of sterilizations were losing respect because they 'could not protect their women'.[108]

While the GAO had discussed the investigation and findings of the report with the IHS, the IHS both refused to immediately comment on the report publicly and tacitly agreed with the report's observations and recommendations.[109] This same defensive, quiet sense of guilt permeates actions to address sexual violence today. The GAO statistics revealed 3,406 sterilization procedures performed on Native women in the focus regions between 1973 and 1976.[110] In 1974, the IHS was ordered to stop sterilizing people under 21 or who qualified as mentally incompetent, and specify informed consent procedures- a number of the recorded violations were of these changed policies, mostly by IHS physicians claiming they 'did not understand' the changes. [111] However, before 1975 *most* locations were not in compliance with IHS regulations of obtaining informed consent. The report goes on to read "we reviewed the consent forms for 113 voluntary sterilizations which were performed in the Aberdeen, Oklahoma City, and Phoenix IHS areas between April 1 and September 30, 1975. In no case did the documented consents, which IHS provided us, fully comply with HEW regulations".[112]

Much of the report is taken up with defining how informed consent should be documented and was not, and little thought or time is committed to *why* informed consent was not properly received other than a pervasive 'benefit of the doubt' towards IHS intentions. Approaches to sexual violence today similarly ignore deeper

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[108] Lawrence 411.
[109] GAO Report 1.
[110] GAO Report 3.
[111] GAO Report 4.
[112] GAO Report 39.

racial issues- ie that the majority of reported cases are interracial – and instead focus on the numbers of law enforcement available, or effectiveness of evidence collection kits. The GAO had even requested full information from the IHS on the sterilizations performed in these years, but "as of August 1976, however, IHS was unable to supply us with complete and statistically reliable data on (1) whether the sterilizations were voluntary or therapeutic and (2) the ages of the patients".[113] Finally, the "GAO agreed with the Senator's office not to interview patients 'to determine if they were adequately informed before consenting to sterilization procedures. We believe such an effort would not be productive because recently published research noted a high level of inaccuracy in the recollection of patients 4 to 6 months after giving informed consent".[114] Essentially, the GAO chose not to contact patients or interview anyone other than IHS physicians because, in general, people might not remember giving informed consent.

This absolute dismissal of the voices of Native survivors is atrocious and remains characteristic of government work today. The consequences of sterilization on the life of any person who chooses to do it, particularly of child-bearing age, are likely to be drastic and highly personal. The line between whether or not the woman wants to have children again/ever is solid and consequential, and the thoughts leading up to the decision will most likely never be forgotten. And while perhaps someone may not recall the wording of the oral presentation of the contract itself, they will recall what they understood as the consequences of the decision. But again, the report defends, "we did not interview sterilized patients to determine if they were adequately

[113] GAO Report 25.
[114] GAO Report 4.

informed about the risks, discomforts, and irreversibility of the procedure because, as noted on page 8, we believe that such efforts would not have been productive".[115] The paternalism of this logic is not only rife with stereotypes about the intellectual ability of Native women and right to control their own bodies, but seems to conspicuously be an effort by the GAO not to investigate something for which they know the results would reflect very poorly on the US government.

The report is carefully organized and worded to avoid saying this: in the two years investigated, 3,406 sterilizations were done in the facilities investigated and not a single Native woman gave proper, legal informed consent. The degree to which informed consent is lacking is not explored, and is in fact avoided by the report itself. It is *assumed* that the recordkeeping was merely haphazard, and the possibility that these could be thousands of cases of forced sterilization is entirely dismissed, along with the question of the racial politics of the Indian Health Service. Blatant paternalism prevents the patients from speaking out – or for that matter, discovering they were sterilized by the nature of the questions the IHS would be forced to ask them.

Clearly, this report was progressive and powerful in many ways. The Indian Health Service by 1976 badly needed national attention for its practices, as Senator James Abourezk requested, having been a member of the House of Representatives for South Dakota through the rise of the American Indian Movement and the standoff at Wounded Knee in 1973. The challenge came only three years after the occupation of Bureau of Indian Affairs Headquarters in DC and, because the report was done the GAO as an office of the federal government, represented an internalization and

[115] GAO Report 30.

recognition of the demands made. But it also represents the absolute power of the federal government, in this situation, to dismiss and only pay lip service to issues it finds undeserving of attention or concern. The Indian Health Service, functioning as it does in extremely remote, isolated parts of the country, was essentially given a slap on the wrist to be more careful when using its own discretion of which policies are to be valued and which are not. By recognizing the absence of informed consent and overextension of power by the IHS, while at the same time dismissing and falsely constructing much of the information gleaned from the investigation, the GAO report strongly and publicly reinforces the power of the federal government over all aspects of Native people's lives, including the ability of women's bodies to reproduce and sustain.

The *News from Indian Country* article "A Discussion with Charon Asetoyer" writes directly that "sterilization abuse was uncovered when AIM absconded with BIA documents during their 1972 occupation of the building in Washington, DC. The files revealed that 42 percent of Indian women had been sterilization".[116] Most sources have agreed on saying 25% of Native women were sterilized at the hands of the IHS in the 1970's.[117] The numbers presented by the GAO report have been adamantly challenged by Native activists since their release, and no one knows exactly where they fall. In contrast to the 3,406 sterilizations within the specific regions covered by the GAO investigation, Lehman Brightman (Lakota) has estimated that approximately 40 percent of Native women and 10 percent of Native men were sterilized during the 1970's, making the total number of Indian women

[116] Graef
[117] Bruce E. Johansen. "Reprise/Forced Sterilizations: Sterilization of Native American Women" (University of Nebraska, Omaha. Sept 1998).

sterilized in that decade between 60,000 and 70,000.[118] The campaign has been declared central to the eugenics movement by some, funded 100 percent by the US government, coinciding neatly with the Family Planning Act of 1970 that made sterilization of poor women subsidized at 90 percent.[119] During these years, the eugenics movement gained steam in its aims to control and dominate the bodies of low-income women of color, and estimates show Native women were affected and violated at exorbitant rates given their vulnerability to the federal government through the structuring and accessibility of the IHS.

In many ways, the approach taken by the GAO Report and the history of sterilization of Native women is the state violence corollary to the sexual violence in Indian Country today. Colonial legal structures impact and dominate Native women's bodies in the same ways federal dismissal of consent and policies of the War on Poverty did – consent is nowhere to be found. Consent by Native women is something the federal government, under moral pressure, began to symbolically acknowledge with the publication of the GAO Report itself, or other more recent projects and reports years later, but remains irrelevant and secondary to larger sovereignty struggles and frameworks. The history of sterilization is useful in looking at federal approaches to sexual violence in Indian Country because it provides a very clear example of the consequences of institutional negligence and racism, and how deeply entrenched these qualities are in federal policies, law, and ethic systems.

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[118] Johansen
[119] Johansen

Federal Antiviolence Initiatives

Sexual violence against Native women, its interracial nature, and the institutional enabling of it are key variables in the larger structures of colonialism in the United States. To adjust the American legal system to promote justice for Native survivors with small scale alterations to these four highlighted policies would make only a small dent in addressing the larger system of oppression. Even with these changes, Native survivors would still face the institutional racism and colonialism that allowed those policies to be enacted in the first place. The exorbitantly high rate of interracial violence is indicative of this – this violence is both related to public perceptions of the legal climate in Indian Country while part of a larger scheme of racism deeply entrenched in American society.

On the other hand, little to no action is being taken to challenge these legal doctrines. The United States Department of Justice's Office on Violence Against Women recently had its second meeting of the Task Force on Violence Against American Indian and Alaska Native Women. The task force is composed mostly of Native men and women working for antiviolence, either through law enforcement or social services. The focus of the meeting was on research methods for collecting accurate statistics about violence against Native women, because very little exists. The two major sources of statistics they cited – the National Violence Against Women Survey in 2005 and the 'Maze of Injustice' by Amnesty International in 2007- used very small sample populations that are not representative of the larger American Indian population in the United States, and lacked details about enrollment

status, age, reporting status, etc.[120] Aside from commenting on research methods, the attendees also spent a significant amount of time pointing out larger structural barriers to service, including failures of the IHS in crisis services and evidence collection, racism of law enforcement, geographic isolation, and the legal policies in place, such as the four discussed here. But because task forces like these, or surveys such as the National Violence Against Women Survey, are all funded and integrated into the federal government, there is little space for more radical responses of questioning these laws themselves, for example. The notes of the meeting report the task force members having discussed these infrastructures as influential on victimization in Indian Country, but do not challenge their existence directly and instead recommend smaller policy changes. A few members did express frustration that the focus of the meeting was to be on collecting statistics rather than addressing causality and approaches to prevention of sexual violence.

> There is a need to get more information on persons who don't report crimes. Why don't they report? Perhaps the answer lies in how victims view "success" as opposed to law enforcement and advocates. For law enforcement, success might be a full prosecution for a lengthy prison term. But that might not be what victims want. If researchers can get a sense of how individual victims define success, they might be able to get an idea of why there is so much under-reporting. One of the purposes of Title IX is "to decrease the incidences of violent crimes against Indian women". But what else do victims want, and how can it be provided? Exploring traditional responses to crime in Indian country may be necessary.[121]

This challenge was expressed by Andre Rosay, an Associate Professor at the University of Anchorage in Alaska, and gets closer to the heart of the issues. The

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[120] Minutes of the Section 904 Violence Against Women in Indian Country Task Force Meeting, August 20-21 2008.
[121] Minutes of the Section 904 Violence Against Women in Indian Country Task Force Meeting, August 20-21 2008.

institutional colonialism survivors are met with, both on the ground level and in the federal sponsoring and control over actions like the task force, must be questioned over and over again in order to tackle the issue of violence against women in Indian Country.

Another recent, federally sponsored analysis has been the Indian Crime Concept Paper, presented by Sen. Byron Dorgan (D- ND) in November of 2007, which outlines many of the issues of crime and law enforcement in Indian Country. The report divided federal and state accountability into problems and recommendations, generally agreeing there are deficiencies in the justice system resulting from serious law enforcement problems. The tone, criticisms, and approach are largely similar to that of the task force. Federal accountability issues included the facts that US attorneys are overburdened and frequently decline to prosecute Indian Country crimes or coordinate with tribal prosecutors, and that the US Attorney liaisons have proven to be helpful but extremely inconsistent; the Department of Justice is lacking in resources for tribes and their grant programs are inflexible and are not in tune with the unique needs of Native communities; and that the Bureau of Indian Affairs' Office of Justice Services is disorganized and unresponsive to the needs in Indian Country. [122] The major problem with state accountability is the fact that the responsibility of PL 280 states to deal with major crimes is not enforced and states are not held accountable for their failures in law enforcement or public safety.[123] The report goes much more in depth for issues between state and tribal authorities, focusing mostly on empowering tribal law enforcement, providing

[122] "Indian Crime Concept Paper" 3.
[123] "Indian Crime Concept Paper" 1.

alternative resources and programs for justice systems such as education and rehabilitation, collection of accurate data, and the creation of a domestic violence and sexual assault pilot project.

The Indian Crime Concept Paper also cites that tribal (and state and federal) police training forces provide little preparation or training for the high level of domestic and sexual violence they will encounter on the job. The report recommends enhancing this training in addition to establishing a pilot program "to enhance tribal court jurisdiction over all domestic and sexual violence crimes committed on Indian lands regardless of the race of the offender".[124] Later in the report, the shortfalls in healthcare are also addressed, pointing out the severe lack of training for IHS (Indian Health Service) personnel for sexual assault response and evidence collection. Finally, when cases are investigated (which is rarely), nearly 60% of the sexual violence cases filed with the BIA fall apart in court and US Attorneys decline to prosecute.[125]

An article released in Indian Country Today on March 28, 2008 discusses the paper. Citing a number of Senators, including Sen. Byron Dorgan (D- ND) and Sen. John Thune (R- SD), the article reports that "for the most part, state police and local governments are not providing effective law and order under PL 280…US attorneys are overburdened with cases, often do not communicate well with tribal justice personnel, and lack coordination with the justice and law needs of tribal communities".[126] Meanwhile, "tribal courts are restricted by the Indian Civil Rights Act in their ability to sentence or fine" and "most crimes against Indians, particularly

[124] "Indian Crime Concept Paper" 4.
[125] "Indian Crime Concept Paper" 16.
[126] "A Community's Responsibility for Justice," Indian Country Today 28 Mar. 2008.

Native women, are perpetrated by non-Natives. Increasingly, the courts have ruled that non-Indian US citizens are not subject to tribal criminal law", particularly through *Oliphant*. The article finally points to funding issues in coordination with the web of jurisdiction as a root cause of violence in Indian Country –

> In recent years, funding for law and order programs has significantly declined. Alcohol and drug abuse are associated with the vast majority of crimes in Indian country, yet the Indian Alcohol and Substance Abuse Act has not been funded since 2005. Tribal jails are seriously underfunded and in need of hundreds of millions of dollars, and there are too few police and corrections officers. The BIA has very little funding for courts, police and jails, and no funds whatsoever for rehabilitation programs.[127]

The connection between violence on reservations and the legal and political justice structures in place is evident, and the media attention, particularly since the Amnesty International Report in 2007, is clearly a step in the right direction. As this article and other public statements and reports indicate, there is significant work to be done and, unfortunately, many changes rely on the compliance of the federal government. At this point, a relatively significant amount of energy is being poured into pinpointing the issues around sexual violence against Native women, particularly within the limited lens of the government. Focusing energy on analyzing and mediating these smaller changes is no doubt a huge step in the right direction, but also dangerously suggests that there *is* a simple solution.

The question still remains of long term versus short term change, revolution brick by brick or with a sledgehammer. To focus today's energy on ameliorating the crisis situation in Indian Country by providing small band-aids such as pushing for uniform evidence collection policies among the IHS, or more funding for emergency

[127] "A Community's Responsibility for Justice."

shelters, could be exacerbating the larger problem of colonialist oppression and racism by relying on the colonial state to make these small changes possible. Or should providing the basic resources for survivors today, even if it is done far from perfectly, be a priority? Native activists fall on both sides of this question, which I will explore more in depth in Chapter 4, with many recognizing immediate need for action and the form it must take while promoting a discourse and move for larger institutional revolution.

The Influence of the Violence Against Women Act

A major movement in the direction to counter the jurisdictional maze eliminating the rights of Native survivors was the Violence Against Women Act in 1994. The act was drafted by now Vice President Joe Biden's office with the support of national advocacy and feminist organizations, and designated $1.6 billion to law enforcement and legal rights of survivors and support for educational programs.[128] The passage of VAWA was a huge victory for many Native women's rights activists, as it included the Safety for Indian Women Act as Title IX, but the consequences have been disappointing. The Act focused strongly on providing sexual and domestic violence survivors more legal representation and advocacy, but while only incremental changes have been seen on these fronts, it also steered away from challenging sexism and racism innate to the court system. The general consensus is that very little of the Act's promises have come to bear any fruit, and according to an article in the Ójibwe News in 2007, "Native women are especially at risk for domestic violence and sexual assault due to arcane laws that restrict or complicate

[128] "Violence Prevention Institute honors Steve Zediker, Joe Biden," Sioux City Journal 19 Nov. 2008.

jurisdiction. Additionally, existing laws have not yet been fully implemented, even though years have gone by since the passage of the Violence Against Women's Act".[129] The fact that the laws are in place but are yet to be enacted both indicates the extreme lack of attention and concern by the federal government alongside the very concrete opportunity to begin to implement change once notice is given.

The Violence Against Women Acts I (1994) and II (2005) are also accredited with entrenching the antiviolence movement more deeply in federal funding and reliance on the criminal justice system; "VAWA I and II merged in policy the interests of the state- to criminalize society, populate the cheap labor force of the PIC (Prison Industrial Complex), manage the nation's shifting racial demographics (specifically, the declining white population) by quarantining more people of color in prison, and deflect attention from its role in the production and reproduction of domestic violence – with the interests of the antiviolence movement".[130] While I will discuss later the role of the criminal justice system and non-profit industrial complex on the mainstream antiviolence movement, and thus the alienation of Native antiviolence projects, it is also important to recognize how the huge jump in federal funding of antiviolence projects since 1994 has impacted the investment and direction of its work. To look first exclusively at the structural implications VAWA has had, the Services-Training-Officers-Prosecutors Violence Against Indian Women (or STOP VAIW) program is important.

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[129] Jean Pagano, "Hearing on Prevalence of Violence Against Native Women: Stories and Possible Solutions," The Ojibwe News 15 Oct 2007.
[130] Ana Clarissa Rojas Durazo, "we were never meant to survive: fighting violence against women and the fourth world war" The Revolution will not be Funded: Beyond the Non-profit Industrial Complex Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007) 113-27. 119.

This program was authorized by VAWA in 1994 by the Attorney General's Office of Justice Programs, with a central focus being the coordination of law enforcement and social service providers, something members of the task force expressed a strong need for. The program is one of first to encourage the participation of tribal governments in facilitating change by putting responsibility and funding in their hands through significant grants. However, not only do these grants have strict requirements for applicants to be aligned with a Western justice system and regional law enforcement, but it also prevents funds awarded from being focused on other deeply entwined, cyclical issues such as alcohol and drug dependency.[131] Thus the STOP VAIW grant program, while empowering for tribal governments in certain ways, creates a community dependency on the federal government for funding and prevents more radical solutions and community interventions from taking place. Again, by funding and managing solutions for violence against Native women, legal and political colonial structures in place do not risk being taken down or challenged.

The STOP VAIW program provides significant funds from the Office of Justice "to provide federal financial assistance to Indian tribal governments to develop and strengthen the response of tribal justice systems to violent crimes committed against Indian women".[132] A strict application and review process has placed restrictions on the use of federal monies, with a focus on enhancing law enforcement response and coordination of tribal justice systems and community service providers. The intention of the program is also to disseminate information among tribes about which actions

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[131] United States, Office of Violence Against Women, OVW 2006 S*T*O*P Violence Against Indian Women Discretionary Grants Program Solicitation PDF (Washington: U.S. Department of Justice, 2006).
[132] US OVW, Solicitation PDF

and programs have worked, and which have not. While the program claims a major benefit "is the expansion of tribal sovereignty that results from the assertion of tribal authority" it governs closely the tactics tribal governments can use to tackle violence against women within their own communities. "Tribal approaches to the solution of domestic violence" are mentioned, but defines culture mostly as the size and location of the reservation, rather than traditional Native systems.

The application for STOP VAIW funding strongly discourages the proposal of projects that "may compromise victim safety". Claiming "certain responses by the authorities may have the effect of minimizing or trivializing the offender's criminal behavior",[133] they define these activities as:

- "Offering perpetrators the option of entering pre-trial diversion programs
- Mediation or counseling for couples as a systematic response to domestic violence
- Batterer intervention programs that do not use the power of the criminal just system to hold batterers accountable for their behavior, and
- Procedures that would force victims of domestic violence, sexual assault, or stalking to testify against their abusers or impose other sanctions on them"[134]

Essentially, federally funding will not go to Native restorative justice projects. While such funding would be an ironic support by the colonial government of programs working to eradicate colonial influence, to some degree, it would also be extremely helpful to tribal communities interested in these alternatives. The Department of Justice is providing financial support on their terms through their criminal justice system while providing minimal recognition of Native culture or traditions of justice. By providing large amounts of funding in this way, an interesting

[133] US OVW, Solicitation PDF
[134] US OVW, Solicitation PDF

dynamic is created – given the extensive application process and requirements, applicants must already represent generally cohesive, organized, and presumably somewhat financially secure tribal governments. Simultaneously, restorative justice programs that are tribal initiatives will also require a sum of funding that must come from the tribes own resources, rather than a federal grant. Therefore, financial limitations suggest wealthier, more stable tribal governments are much more likely to host restorative justice projects *and* qualify for Office of Justice funds. Poorer nations, or those lacking federal recognition, have much less of an opportunity to establish alternative justice programs, despite the possibility of a greater need for them.

The language used in the application discouraging applicants from requesting grant monies for "projects that may compromise victim safety" is also interesting because it mirrors very closely that used by mainstream feminists in their denunciation of restorative justice programs. Not only does this symbolize the alienation of women of color from mainstream feminism and the antiviolence movement, but it also represents a complete, thorough incorporation of these once antagonistic feminist aims into the state agenda. Finally, it epitomizes the paternalism present throughout the entire application, maintaining control and a presence in all of the initiatives the program will fund and restricting those it cannot. A final interesting note is the 2002 Executive Order 13279, passed by Bush, allowing federal funding to go to religious organizations- in this case, those in collaboration with tribal governments' antiviolence initiatives.[135] Not only does this violate any semblance of the separation of church and state, but it encourages alliances between religious

[135] US OVW, Solicitation PDF

organizations and tribal communities – and though today some of these alliances are very strong and integral to certain Native communities and cultures, federally-sponsored support of these alliances is conspicuously colonial in nature given the history of the doctrine of discovery, forced Indian Christian boarding schools, and other Christian assimilation projects.

The language and restrictions of the generous STOP VAIW program not only limit possibilities of restorative justice programs, but impose mainstream antiviolence structures and dependence on federal funding, law enforcement, and the prison system on Native communities that qualify. In this way, benevolent federal funding acts as a tool of institutional oppression, allying mainstream feminist work with the colonizer in opposition to Native restorative justice projects and other, more radical initiatives. The binary of justice methods this creates- also framed as "law" versus "mediation"- is dangerous for the case of restorative justice because it eliminates possibilities of moderate support, thus making the necessity of building trust in the programs a much greater challenge.

Confidence in restorative justice programs comes from their association with rich traditions of justice. Western justice systems have played a significant role in assimilation and resistance for many tribes, and colonialism was frequently validated by fabricated legal claims. Many tribes, however, see law as analogous to culture, lifestyle, and being in a way that places it at the core of resistance and assertion of tribal sovereignty.[136] Traditions of justice, like modern restorative justice initiatives, vary widely by tribe and are strongly influenced by the geographic and cultural

[136] Marianne O. Nielson and James W. Zion Nielson, Navajo Nation Peacemaking: Living Traditional Justice (Tucson: University of Arizona Press, 2005) 13.

location of the community. Though the language of the STOP VAIW program application implicates a binary between mainstream and Native feminist work, and therefore “law” and “mediation”, there is middle ground between these two polarities that is being explored with increasing effectiveness.

Colonialism and state violence have been used almost interchangeably here; but colonialism does not have the same universally negative connotations as state violence, and is not always recognized as an integral part of today’s US domestic policy. The philosophy behind programs such as STOP VAIW, the Task Force, or other federally funded programs to combat sexual violence, is that colonialist systems can simply disentangle themselves from their colonial pasts through actions of their modern governments. But because these very governments are colonial themselves, so are their actions – and for communities of the colonized residing in these states, these actions reinforce colonial structures that have a greater residual impact than any small scale reactive policy could undo. To address large scale problems such as sexual violence in Indian Country, these policies must focus on undoing the colonial infrastructure itself rather than attempting to limit its impact.

Chapter 3
The Mainstream Antiviolence Movement: Flaws and Possible Solutions

Sexual violence work today is largely under the model initiated by the powerful activism of 1970's feminists, which I will refer to as the mainstream antiviolence movement. This chapter will look at how the history and structure of the mainstream antiviolence movement is generally incompatible with the needs of Native survivors and their communities, largely because of its financial alliance with the government and criminal justice system, centering of the white, heterosexual female in its services and approaches to antiviolence work, and isolation of survivors from community healing in the criminal justice and medical systems. I will then look at how the restorative justice movement can present answers to many of these issues, while presenting new ones in its application to sexual violence. Both movements are examined in their theoretical frameworks, yet are broadly associated with the non-profit industrial complex to varying degrees and therefore state control over women's bodies, capitalism, and colonialism, all counter to the interests of Native survivors. While this chapter examines the intricacies of the movements themselves, Chapter 4

will move to look at opportunities for grassroots, Native work within or in alliance with these philosophical frameworks.

Most of the work done by sexual violence organizations and domestic violence shelters is in the non-profit sector of the economy, neither formally associated with the government nor entirely disconnected from it. A non-profit is generally defined as a type of business that serves "a purpose of public or mutual benefit other than the pursuit or accumulation of profit".[137] While most do not gain revenue, they are permitted to raise a profit related to "recognized nonprofit purposes" and are granted tax exemption by Congress and state legislatures. Since 1940, the number of secular charitable tax-exempt organizations (non-profits) in the United States has exploded from 12,500 to approximately 1.2 million today, providing nearly 10% of employment in United States, according to some estimates.[138] The definition of a non-profit organization is intricately related to state support and tax status, just as their rapid proliferation is closely tied to the rise of capitalism and social services. Some see the strong presence of non-profits in today's economy as a band-aid to larger social problems not adequately addressed by the government; at the same time, their work generally is hugely beneficial to millions of people and in encouraging a more benevolent American society.

The Weekly Standard, a conservative American opinion magazine, expressed concern in a 2007 article about the enormous role of non-profits and foundations in the American economy relative to other countries. In explaining their role, Gerard

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[137] "Non-Profits in Carlisle: A History of Non-profits in the U.S.," 30 Mar 2009 http://carlislehistory.dickinson.edu/?page_id=278.
[138] Gerard Alexander, "The Nonprofit Industrial Complex: Is there such as thing as too much civil society?" The Weekly Standard 23 April 2007.

Alexander writes "radicals fear foundations 'prop up' capitalism by mitigating its worse effects,"[139] and quotes Kenneth Prewitt's concern that "an endowed foundation is perhaps unique in its distance from any accountability mechanism: no shareholders, no customers, no voters, no dues-paying members, no clients who can withhold contributions or support".[140] From both the radical left and conservative think tanks, non-profits and foundations are acknowledged positives and "representative of American generosity" for millions, but also pivotal points of concern for how society deals with social problems and the intricate relationship of good intentions with capitalism.

Some politically radical organizations, such as INCITE! Women of Color Against Violence, have named these concerns the "non-profit industrial complex". The NPIC, built off the same concepts of the Prison and Military Industrial Complexes,[141]

> "is a system of relationships between the State (or local and federal governments), the owning classes, foundations, and non-profit/NGO social service and social justice organizations that results in the surveillance, control, derailment, and everyday management of political movements. The state uses non-profits to:
>
> - monitor and control social justice movements
> - divert public monies into private hands through foundations
> - manage and control dissent in order to make the world safe for capitalism
> - redirect activist energies into career-based modes of organizing instead of mass-based organizing capable of actually transforming society
> - allow corporations to mask their exploitative and colonial work practices through 'philanthropic' work

[139] Alexander
[140] Alexander
[141] The MIC refers to the close relationship between a country's armed forces and private industry; the PIC refers to the profiteering of labor by prisoners rather than rehabilitation

- encourage social movements to model themselves after capitalist structures rather than to challenge them"[142]

INCITE, as an antiviolence community organization focused on preventing violence against women of color, spends a significant amount of time publishing about the impact of the NPIC on the antiviolence movement. At the same time, their opposition to reliance on the federal government allies them even closer with the stance of many Native feminists and activists against accepting federal, colonialist funding in the name of tribal sovereignty. This position is complicated, however; for example, the hugely influential work of Amnesty International as an international NGO has provided many Native activists with tools to effectively challenge the federal government and sexual violence while beginning to provide more substantial resources to Native survivors. Complete removal from capitalist and colonial systems by social justice organizations is an impossible challenge many organizations, particular Native ones, are striving to meet, but is not always the most effective approach in today's climate. .

Many critics of the mainstream antiviolence movement argue its reliance on the federal government, through the NPIC and foundation funding, particularly marginalizes antiviolence work in communities of color. It cannot be disregarded that the movement massively transformed cultural perceptions of gender and rape, particularly by legal and political standards. However, the revolutionary changes that ensued, largely aimed at and manufactured by white, middle class heterosexual women, coincided neatly with national expansions of social services, the prison

[142] "Beyond the Non-Profit Industrial Complex" INCITE! Women of Color Against Violence. 5 February, 2009. http://www.incite-national.org/index.php?s=100.

system, and population control rhetoric- and all served to shape its relationship with Native communities. For these and other reasons, today's mainstream antiviolence services largely fail to meet the needs of Native women, and I begin this chapter exploring these issues. Given that one of the largest criticisms is the movement's reliance on the criminal justice system for incarceration and redress, I will spend the second part of the chapter looking at the restorative justice and prison abolitionist movements as they relate to sexual violence and Native communities.

Approaches of the Mainstream Antiviolence Movement

The current state of the mainstream antiviolence movement is not an appropriate strategy to combat sexual violence against Native women, largely because it is controlled and contained by the state. A multitude of trends within the movement, its priorities, and its alliances all make it generally unsuitable for providing solutions to this violence. First, the privatization and professionalization of sexual violence and domestic violence shelters have effectively prevented the movement from addressing institutionalized violence and cultures of rape, and is entrenched in reactive, hierarchical approaches that are alienating and ineffective for many communities, particularly women of color. The unique political relationship between American Indians and federal or state law enforcement is marked by a history of state violence that has bred distrust rather than confidence in the legal and criminal justice systems. With its strong reliance on incarceration and legal retribution, the mainstream antiviolence movement alienates communities where police brutality, legal invisibility, and prison time are everyday realities. At the same time, the containment,

medicalization, and professionalization of sexual violence response isolate survivors from communities.

There is a painful irony in exclusively providing access to resources through the state or state funding. Kristen Bumiller writes about the transition of antiviolence organizations to federal funding: "often these organizations grew directly out of grassroots efforts and followed feminist ideology and principles that stress nonhierarchical decision making. As these organizations matured, they faced both internal and external pressures for more bureaucracy and professionalization, especially as they sought state funding, and were thus subject to review and evaluation by government bureaucracies".[143] The mainstream feminist antiviolence movement, dominated by white-middle class interests, looked toward police accountability, harsh legal consequences, and mandatory arrest laws to 'protect' women from abusers. Not only was this strategy alienating to women of color, particularly the mandatory arrest policies, but "breaking through the traditional notions of how privacy has prevented legal intervention may have the reverse effect of creating a situation where women lose control of the private domain because of mandatory arrest laws and no-drop policies that take away from women their power to decide whether to pursue criminal justice intervention".[144] The interest in exposing and criminalizing domestic and sexual violence in the 1970's held the state accountable for the safety of women, but as it succeeded, forced survivors to become increasingly reliant on the state. This dependence grew to limit and homogenize

[143] Bumiller 65.
[144] Bumiller 142.

approaches while institutionally supporting only the initial white, middle class audience.

State and federal funding work to regulate the bodies of women of color, and by professionalizing the mainstream antiviolence movement, Native women are given no other options than to rely on the state for what are deemed 'appropriate' resources and response. With the broadening of social services addressing violence against women, "women have become subjects of a more expansive welfare state and social service agencies have viewed women and their needs in ways that often have discouraged them from resisting regulations and from being active participants in their own decisions".[145] To rely on a violent state for 'protection', a state that is so implicated in the very perpetration of that violence, is ineffective and pointless. This funding issue and the fostering of dependence also directly challenges claims to tribal sovereignty and the ability of Native women to take care of their own bodies and communities, structuring a cycle of dependence on the state and state violence. The federal government can contain and depoliticize responses to violence against Native women by working to be the exclusive sponsor of these response efforts, and thus regulating what organizations can and cannot do. Sexual violence against women of color becomes contained in specific social services and professional diagnoses, far removed from community or identity. In using money to control the actions of antiviolence organizations, it is using money to control the bodies of Native women again as well. The imposition of mainstream antiviolence approaches onto Native communities is an example of the modern-day colonialism in which women's bodies

[145] Bumiller 66.

and reproductive capacities have replaced the land and territory of initially genocidal, colonial efforts.

The medicalization of sexual violence response is a characteristic of federally funded antiviolence efforts that further polices the bodies of Native women, a situation that is particularly pronounced for women on rural reservations reliant exclusively on the Indian Health Service. By relegating dealing with sexual violence to the medical professionals – doctors, therapists, etc- the mainstream antiviolence movement has been removed from a cultural context. Bodies of survivors have been tainted, diseased, and damaged, to be dealt with only by properly trained, authoritative professionals. Not only does this place the body of knowledge firmly in the hands of non-Native authority, but it also imposes entirely westernized standards of health and welfare onto Native communities that may be the singular mode presented for responding to a sexual assault.

The federal government's containment of sexual assault response into the medical field has allowed it to be depoliticized, contained, and controlled, all the while maintaining the benevolent white man's burden of providing medical care. This places an enormous amount of power in the hands of medical professionals not only in responding to sexual assaults themselves, but to shaping how seriously sexual assault is dealt with and coped with in Native communities. Finally, this institutional medicalization of sexual assault suggests a degree of failure, of deviance from health, on the survivor and nothing on the aggressor. Particularly following the stereotype of Native people as diseased and outside the boundaries of civilization, this places a level of blame on Native female survivors, as though this medicalized condition is

racialized and genetic, declaring Native women are meant to be raped. The broad medicalization of the mainstream antiviolence movement places gendered and racialized blame on the survivor, and extreme focus on the individual rather than the community.

Work in the wider non-profit sector in the interest of environmental work promotes a discourse of population control that frequently promotes state control over the bodies of women of color. Population control policies in the United States mirror "widespread perceptions by many radical and moderate conservatives in the United States who directly link social ills with the fertility of women of color".[146] And while the forced sterilizations of the 1970s may have decreased (at least to public knowledge), even the Left has incorporated what Betsy Hartmann calls the 'greening of hate' in its population control policies as environmental necessities. "Entire communities can be monitored and regulated by controlling how, when, and how many children a woman can have and keep. This is particularly true for women on Native American reservations, incarcerated women, immigrant women, and poor women across the board, whose reproductive behavior is policed by an adroit series of popular racist myths, fierce state regulation, and eugenicist control".[147] And while these policies alone might not be immediately associated with state violence or genocide, it raises strong questions about the role of the state in regulating bodies and women's reproduction and the modern conception of a 'greater social good'. At the same time entire indigenous communities in the rural United States, Hawai'i, and

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[146] Loretta J. Ross, "The Color of Choice: White Supremacy and Reproductive Justice" The Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 53-65. 57.
[147] Ross 61.

Alaska are being severely depleted because of rampant birth defects and cancers caused by federal dumping of toxic waste on or near tribal lands, suggesting a complicated intersection of social justice efforts and Native sovereignty.

The primacy of the individual is one of the most fundamental assumptions of the mainstream antiviolence movement that is contradictory to approaches incorporating community healing and prevention. The medicalized, depoliticized approach taken by state-sponsored programs is reactionary, dealing with individual survivors after an incident of rape or sexual assault. While these services are clearly necessary, these shelters and organizations will never work themselves out of a job, and in many ways exacerbate problems. By focusing exclusively on the individual (even in prevention efforts, looking at the choices of individual men and women etc) the community is absent from the healing and prevention efforts. No efforts can then be made to alter a culture of rape, and all reactions are individual and isolated.

This approach is consistent to the medicalization, as previously discussed, and the structure of the federal justice system. Both draw attention to the individual in a vacuum, or the relationship between the survivor and aggressor in a vacuum, rather than as an incident strongly influenced by and influential on the community in which they reside. Community justice initiatives, in this context, are frequently cited as a feasible way to challenge this structure. As the Introduction to The Color of Violence states, "the criminal justice system has always been brutally oppressive toward communities of color, including women of color….thus, this strategy employed to stop violence has had the effect of increasing violence against women of color perpetrated by the state," simultaneously encouraging "the strategy often engaged by

communities of color to address state violence is advocating that women keep silent about sexual and domestic violence to maintain a united front against racism".[148] This is reflective of conversations of prioritizing tribal sovereignty over antiviolence work and female sovereignty.

Applying the mainstream antiviolence model to Native communities as 'inclusive' and deviations from the white, middleclass norm should be replaced by 'centering' services around Native women. Most organizations today use a model designed for white, female-identified, middleclass survivors and utilize 'specialty' advocates and programs for those clients who deviate from this. This takes on a heavily colonial tint when applied to Native communities, particularly with the history of Anglo attempts to whiten, civilize, and tame Native women into their white mold of motherhood and patriarchy. "INCITE also stresses the importance of transcending the 'politics of inclusion' to address the concerns of women of color. Inclusivity has come to mean that the sexual or domestic violence prevention model, developed largely with the interests of white, middle-class women in mind, should simply add a multicultural component. An alternative approach to 'inclusion' is the place women of color at the center of the analysis of and the organizing against violence", reads the INCITE! website, suggesting that this shift would more adequately address and provide insight into intersecting forms of oppression, and require more emphasis on addressing state and institutional violence.[149]

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[148] Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 2.
[149] "INCITE Analysis: Dangerous Intersections." INCITE! Women of Color Against Violence. 5 February, 2009. http://www.incite-national.org/index.php?s=77.

To provide services that are only accessible under this rubric of assimilation, Native survivors are further alienated from the system and forced to negotiate questions of tribal sovereignty and personal identity in their quest for services. Even in organizations (largely urban ones) that provide 'Native-friendly' resources and advocates, they are marginalized as deviant from and unwelcome in the mainstream resources provided. Just as the medicalization of the healing process and resource access normalizes certain responses and creates a model survivor from which all women of color deviate, so does the way resources are structured within the organization.

Under federal funding and regulation, power structures within many organizations often recreate oppressive hierarchies and locations of authority survivors are fleeing by regulating the race, citizenship, sexuality, and religious identity of clients seeking services- all in the interest of maintaining federal funding.[150] Additionally, counselors have accessed a level of training and social capital that grants them a degree of authority that eliminates the option of peer-to-peer work with survivors. The authority professionals have been granted, mostly by certification by the state and experiences of being employed, mean that many survivors who access shelters do not find advocates with common experiences available to work with them. While experience and knowledge of the system are key to working with and advocating for a survivor, if antiviolence efforts are to be inclusive and aimed towards community healing and education, the hierarchical structures of many organizations must be questioned. Organizations such as

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[150] Emi Koyama, 'Disloyal to Feminism' Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press 2006) 208-222. 208

CARA[151] and NAWHERC[152] are staffed by members of the community and take a peer-to-peer approach to counseling efforts and education. Survivors are encouraged to talk to someone with a common experience, not necessarily the professional, programmed training state organizations require. This can challenge both the problematic 'multicultural' approach, the power structures within the shelter system, and the tension between the community healing approach and individual isolation of the current system.

The criminal justice system the antiviolence movement relies on reinforces structures of state violence and negatively impacts Native communities as well. Prison abolitionists, such as Angela Davis, speak of the present corrections and criminal justice system as a lynch pin to the cycle of violence in this country, as a system of social not crime control, and the new plantations.[153] INCITE collaborates with Critical Resistance to argue that "it is critical that we develop responses to gender violence that do not depend on a sexist, racist, classist, and homophobic criminal justice system. It is also important that we develop strategies that challenge the criminal justice system and that also provide safety for survivors of sexual and domestic violence".[154] The structures of oppression and violence that infiltrate the lives of Native women permeate the prisons as well, and the mainstream antiviolence

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[151] Communities Against Rape & Abuse, a Seattle-based community organization aimed to provide community-based alternatives to survivors marginalized by mainstream anti-violence work

[152] Native American Women's Health and Resource Center on the Yankton Sioux Reservation in South Dakota, a grassroots, Native–run community organization addressing a wide range of women's health and political issues

[153] Angela Y. Davis, If They Come in the Morning: voices of resistance New York: Third Press, 1971. 70.

[154] Statement by Critical Resistance and INCITE! Women of Color Against Violence, "Gender Violence and the Prison-Industrial Complex" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 223-226. 223.

interest in maintaining one to eliminate the other only further enacts racist ideologies and dismantles communities.

American Indians are sent to prison at a rate 38% higher than the general population, a statistic difficult to measure because of their frequent classification at 'other' within the system itself[155]. However, the fact that in Arizona, "where many reservations are policed by tribal authorities and hearings are held in tribal courts, the rate of Indian incarceration appears not significantly higher than non-Natives"[156] suggests the significant role racism plays in incarceration. Stormy Ogden pushes this further, saying "American Indians caught in the criminal justice system are much more likely than other populations to be in prison or jail (instead of parole or probation); about half of American Indians in the criminal justice system are in prison while only one third of the general population is."[157] Within the system, Native Americans are treated as an "other" race and denied rights to traditional spiritual practices, ultimately disconnecting them from Native community both within and without the prison. As a solution for sexual violence, prisons only perpetuate cycles of violence and deconstruct community necessary for social change and healing.

The Restorative Justice and Antiviolence Movements in Conversation

It is easy to criticize a movement that has taken on a massive social issue and made enormous strides in thirty years, given the likelihood that its work will be less

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[155] "Incarceration of Native Americans and Private Prisons" Native American Heritage Programs 12 April 2009, http://www.lenapeprograms.info/Articles/Prison.htm.
[156] "Incarceration of Native Americans and Private Prisons"
[157] Stormy Ogden, "Pomo Woman, Ex-Prisoner, Speaks Out" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 164-169. 169.

than perfect. To cohesively look at the problems presented and seek out alternatives to continue to address sexual violence in all communities is constructive and challenges antiviolence activism to push further towards its goals. For this reason, I would like to look at the restorative justice movement as an answer to many of the questions posed by the mainstream antiviolence movement. The questions include strong financial and ideological alliance with the state, emphasis on the individual rather than community healing process, complete reliance on the criminal justice system and therefore state violence, and marginalization of women and communities of color in approaching sexual violence. The restorative justice movement, a relatively new and more subversive initiative throughout the U.S., takes on a huge range of forms and philosophies in its work, many of which pose solutions to these problems and some of which do not. Restorative justice, in its generic, more mainstream definition, cannot and will not be an answer to sexual violence against Native women. However, the central values and framework of this newer 'movement' challenge head on many of the causes of sexual violence and problems in applying mainstream antiviolence strategies to Native communities.

Alternatives to the United States criminal justice system have been developed from a wide range of traditions and goals, and today the term 'restorative justice' encompasses a huge range of these alternatives. Restorative justice, community justice, peacemaking initiatives, conflict mediation, and community healing all name methods of approaching criminal justice and conflict resolution outside of the incarceration, denial of rights framework the US prison system embraces. Sarre locates the tension from which the need for the programs arrived "when formally

organized governments began to assert their authority after the 12th century, victims lost the central role in the justice process that they previously enjoyed. Crime became crime against the state, the key features of punishment became deterrence and retribution".[158] Initiatives today are interested in removing typical state involvement from the process- to widely varying degrees-, and locating justice back in the hands of the community, victim, and perpetrator. Relationships between a community and the restorative justice project must be reciprocal; the projects require community support and involvement, and thus some sense of community, while also aiming to rebuild trust relationships and responsibility for justice within that community. They are grassroots, locally based initiatives designed to respond to the specific needs of a community where the federal justice system is not working.

Restorative justice, the term I choose to use because of its broad application, "encompasses a growing social movement to institutionalize peaceful approaches to harm, problem solving, and violations of legal and human rights…rather than privileging the law, professionals and the state, restorative resolutions engage those who are harmed, wrongdoers and their affected communities in search of solutions that promote repair, reconciliation and the rebuilding of relationships", as defined by Walker.[159] David Altshuler, in his article "Community Justice Initiatives: Issues and Challenges in the US Context", outlines Umbreit and Coates' six restorative justice principles that are theoretically applicable to all approaches to community justice. These principles are:

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[158] Rick Sarre. "Themes and Issues in Restorative Justice [Review article]". (Criminal Justice Review 2007)
[159] Walker et. al., "Pono Kaulike: A Hawaii Criminal Court Provides Restorative Justice Practices for Healing Relationships." (Federal Probation 2007)

> "1) Crime violates social relationships, both personal and those resulting from being members of communities.
> 2) The proper goal of justice is to repair the damage done and restore relationships, personal and communal, to their original state to the extent possible.
> 3) Victims of crime must have the opportunity to choose to be involved in the process of justice.
> 4) Offenders committing criminal acts must have the opportunity to accept their responsibilities and obligations toward individual victims and the community as a whole.
> 5) The local community and its resources must be brought to bear on the needs of victims, offenders, and their families as well as in prevention.
> 6) The formal justice system must continue to work to ensure victim, offender, and family involvement that engages all participants without coercion"[160]

One or more of these principles are the motivating factors behind the wide range of projects that qualify as restorative justice – these principles also open the door to apply these programs to crimes and populations that have not yet explored these alternatives.

The movement gained mainstream media attention in the 1990's, when the concept of its broad application was reportedly imported from New Zealand.[161] The majority of these programs seen in the mainstream media were aimed at keeping nonviolent youth out of the prison system, preventing what a 2008 Boston Globe article called 'killing a fly with a sledgehammer'. Many of the programs were instituted through school systems, and at least partially federally funded. In particular, a program in inner-city Milwaukee gained national attention with its success in providing mediation by former gang members of conflicts between students in the public school system. Two years of this advising system positively influenced levels

[160] David M. Altshuler, "Community justice initiatives: issues and challenges in the U.S. context" (Federal Probation 2001) 29.
[161] Altschuler 28.

of gang violence and other crime throughout the city, an indication that these mediation programs can have an organically positive effect on a community in the way incarceration in the federal prison system cannot.

These federally supported, youth centered mediation programs drew the most media attention, and disassociated media representations of restorative justice from more severe violence and crime. Even with Milwaukee's proof of the ripple effect of these school programs, they remained focused on a sector of the population that is immediately presumed innocent, its youth. This case also evokes what Andrea Smith, citing many others, speaks of in her book *Native Americans and the Christian Right*: "While the face of crime remains colored, the face of the individual prisoner who transcends his or her situation (or was unjustly convicted in the first place) is usually white. The ones who 'save' prisoners are usually white as well".[162] Milwaukee's school system is 84.4% students of color, in a state that is 77% white, and is the only public school in the state that is more than 50% students of color, disregarding small magnet schools in the city and reservation schools. [163] The face of the white, state government swooping in to reform Milwaukee's justice system and gang violence evokes Smith's "savior" figure and highlights the complicated racial dynamics these projects confront if outsiders enter communities to promote mediation.

For Native communities, this racial dynamic is evoked by non-Native cooptation of mediation methods deemed 'traditional' by larger society. Through the exotification of these alternatives, American Indians are portrayed as peace loving, cohesive communities with great wisdom to instill on American society; this outsider

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[162] Smith Christian Right 27.
[163] Wisconsin Department of Public Instruction

simplification of Native cultures and justice systems dangerously ignores the impact of European contact and complexities of American Indian involvement with the prison system. The racial dynamics of the supposed importation of some of these projects from New Zealand in the 1990's also raises some questions about the history of Native justice systems and the new restorative justice movement. As Tom Tso, a Navajo jurist, comments "Anglo judicial systems now pay a great deal of attention to alternative forms of dispute resolution. Before 1868 the Navajos settled disputes by mediation. Today our peacemaker courts are studied by many people and governments…we have taught the Anglos these things 150 years ago. Today, the Navajo courts are structured very much like the state and federal courts".[164] Colonialism has not only imposed legal structures on tribal governments over the years, but silenced their deeper traditions of peacemaking, community justice, and- to use the same words- restorative justice.

A few non-Native initiatives resemble the traditional Native structures Tso is referring to, including projects that fall mostly under the heading of 'community justice'; "community justice programs are often geographically oriented and include strategies such as community policing, citizen patrols, neighborhood watch, community or neighborhood courts, teen courts, drug courts, parole and probation supervision, halfway houses, group homes, and other programs within a specific area. In theory, these efforts build relationships within the community and between the community and the justice system".[165] Gilbert discusses how restorative justice programs should work to reframe the role of the government as facilitator and

[164] Nielson 31.
[165] Michael J. Gilbert et. al., "The Next Step: Indigenous Development of Neighborhood-Restorative Community Justice" (Criminal Justice Review 2007).

supporter of the restorative justice process. The applicability of this approach to Native communities is questionable, yet a strong alternative to the more idealistic complete distance from the criminal justice system some Native advocates push for. This reframing Gilbert constructs may be the most realistic approach to sexual violence in Native communities given current dependence on federal funding and institutions alongside the desire to distance projects from colonial influence.

The Boston area recently initiated youth-centered programs in many of its suburbs, in which "victims and offenders agree to meet in what is known as a circle, which includes the offender's parents, police officers, a community members, and a facilitator. Victims ask questions and explain how the crime affected them. Victims and offenders then hammer out a plan to have the offender pay up for their wrongdoing".[166] The example used by the article is an adolescent spraying graffiti swastikas on a neighbor's property, and predictably understanding the pain his actions had caused through conversations with his neighbor. The article, however, seems somewhat disconnected from Nielson's definition of community justice that evokes more community investment in the causes of harm, such as a climate of anti-Semitism.

The approach by the mainstream media in the US is very different from that in the UK, with headlines such as 'Meet victims to stay out of jail', 'Criminals could escape prison by apologizing to victims under new plan', and 'crooks go face-to-face with victims'.[167] While the mainstream US approach has been to apply restorative justice to softer cases with perpetrators the media already presents as innocent, the

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[166] Julia Quinn-Szcesuil, "More communities offer victims 'restorative justice'" (The Boston Globe 9 Nov 2008).
[167] BBC headline search 'restorative justice' www.bbc.co.uk 3 March 2009.

UK has adopted a language of criminality the US shies away from. But the same tactics against these programs are used in both countries, though in the US, it is more motivated by federal interests in the prison system. And as Takagi and Zehr point out, the community support and cohesion community justice relies on has been particularly difficult in the United States. [168]

While the federally sponsored programs of youth mediation are interested in preventing violence and arrests, there is very little federal interest in programs that bypass or challenge prosecutions and incarceration itself, and there is a distinct avoidance of using restorative justice to address adult crime in communities of color or sexual violence. The reliance and confidence of most mainstream feminists in the criminal justice system has also created space for feminist resistance to restorative justice domestic violence programs. Yet "in 2000 the National Violence Against Women Survey (NVAW) found that… only one-fifth of all rapes, one quarter of all physical assaults and one half of all stalking incidents perpetrated against females by intimate partners were reported to the police. These findings suggest that victims of intimate partner violence do not consider the criminal justice system an appropriate locus for resolving conflicts with intimates".[169] And as presented before, there are many reasons for communities of color to resist contacting law enforcement or relying on the shelter system. For mainstream feminist work and the federal government to shy away from considering restorative justice work addressing sexual violence in communities of color is to exacerbate this problem and reinforce conceptions that the prison system is designed for these marginalized groups.

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[168] Paul Takagi et. al. "Critique of Restorative Justice". (Social Justice 2007)
[169] Grauwiler 51.

Peggy Grauwiler and Linda Mills outline the four assumptions mainstream feminism is basing this dismissal of restorative justice on; [170] that men batter because they are privileged over women physically, socially, and financially, women stay in these relationships because of this patriarchy, that the criminal justice system is sexist and minimizes issues of violence against women, and that huge efforts will be needed to overturn and stop this violence. These assumptions drive the work to further criminalize domestic violence – simultaneously reinforcing that racism integral to the prison system- and refusing to look beyond the white, heterosexual, middleclass, female identified victim status of the mainstream antiviolence movement.[171] And while the issues of applying restorative justice philosophies to cases of domestic and sexual violence is hotly debated, it has also been pointed out that the same patriarchy mainstream feminists have condemned is reinforced by the central argument against restorative justice programs- that women are entirely disempowered by the violence against them, and therefore by the patriarchy, and thus are threatened and unsafe in the presence of their perpetrators- "the certainty of this power to silence her is asserted as a fundamental reason to reject conferences that address intimate abuse."[172]

A major criticism of how the federal justice system deals with sexual violence is the inactive role of the survivor in the process – the prosecution is frequently taken completely out of their hands. Alternately, it may also re-victimize survivors and is another instance of society not taking sexual violence seriously and utilizing a 'soft option' for justice. But Walker writes "the arguments against using restorative justice have successfully blocked application of it world-wide in domestic violence cases,

[170] Grauwiler 53.
[171] Grauwiler 53.
[172] Grauwiler 63.

resulting in a paucity of evidence to confirm or discount the critics' or proponents' claims"[173]- there is very little empirical evidence on the impact of these programs.

Kathleen Daly's article "Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases" "presents findings from an archival study of nearly 400 cases of youth sexual assault, which were finalized in court and by conference or formal caution over a six-and-a-half-year period in South Australia".[174] These findings supported general arguments for and against restorative justice, and through interviews affirmed that many who brought charges through the formal court system regretted it. Daly consolidated the potential problems of restorative justice to be a threat to victims' safety by allowing power imbalances to go unchecked, and therefore never eliminating the threat of violence.

Restorative justice is also vulnerable to manipulation by offenders, particularly by diminishing guilt or victim blaming, and places a significant amount of pressure on survivors to advocate on their own behalf and guarantee their voice is fully heard. Community norms, as an integral part of the justice project, may actually promote male dominance and victim-blaming, could incorporate complicated systems of alliance to friends, family, and judges, and may be less effective against entrenched patterns of abuse. Finally, "there is a danger of reprivatizing domestic and sexual abuse after decades of feminist work" alongside the potential for symbolic interpretations that violence does not involve serious repercussions. [175] This fear of reprivatization was immediately invoked by mainstream feminists, given that a major

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[173] Walker
[174] Kathleen Daly "Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases" (The British Journal of Criminology 2006)
[175] Daly

aim of the antiviolence movement in the 1970's was to bring sexual and domestic violence into the public realm. Many of these fears listed, however, are closely connected to the fact that restorative justice is not yet associated with mainstream justice, and thus there is little confidence and weight in the system. To significantly build the movement, trust and growth must come almost simultaneously, because one does not exist without the other.

Daly also consolidates a list of positive points about restorative justice, beginning by qualifying the room for survivor voice and participation in the system, providing an opportunity for empowerment and the telling of one's story. The communication also makes room for victim validation and placing blame on the perpetrator, creating a validation of blame and the truth that frequently is lacking in the court system. There is no script as there is in formal court, either, so there is room to tailor the process to the participants and needs of the survivor, to aim to avoid revictimization, and pursue a method of justice that creates room for relationship repair and forgiveness if appropriate. Essentially, there is enormous opportunity in restorative justice for healing, both individually and communally, and a depth to redress that cannot be found in the criminal justice systems of incarceration and denial of rights.

Many argue that mediation justice programs, such as many of those that would address domestic violence, work only because they have the federal prison system and threat of incarceration to back them up. This is particularly true with domestic violence, where mandatory arrest laws have been passed since VAWA in 1994. Mika writes "where financial restitution remains the primary objective of

mediation practice, it is questionable whether mediation is at all appropriate for personal crimes involving violence. Domestic violence and sexual assault are certainly ill suited to an intervention with restitution as its centerpiece".[176] This requires participants are both emotionally invested in the process and aims of restorative justice – on an individual *and* community level – that its success is restitution enough. Many also criticize restorative justice projects, even in their aims to incorporate survivors into the judicial process, remain offender focused by being on their timeline and terms of healing/recovery. Finally, "some mediation groups appear to have turned their attention to violent crime largely due to the financial incentives for this type of programming. The 'cookie cutter' approach to restorative justice, despite even profound differences in the circumstances from one jurisdiction to another, reveals a real lack of responsiveness to local needs, and a lack of basic political savvy as well".[177]

The path of mediation towards reconciliation is clear, and many survivors report feeling the pressure of this system on their own healing process and emotions. Just as the legal system presents specific options to the survivor, a mediation process similarly contains the options available to the survivor[178]- "thus, though typically polarized, law and mediation both "govern" the victim in the sense of determining the options available to her (Foucault, 1982: 221)".[179] In Minnesota in the in the late 1980's, a rapid proliferation of community justice centers "made access to justice

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[176] Harry Mika et. al. "Listening to Victims--A Critique of Restorative Justice Policy and Practice in the United States" (Federal Probation 2004)
[177] Mika
[178] Lois Presser et al, "Can restorative justice reduce battering? Some preliminary considerations." (Social Justice 2000)
[179] Presser

more difficult, not less, by directing people to 'exit points' from judicial institutions"[180]- while the formal court system coerces perpetrators, Presser points out, many in that system at the time felt that survivors were the ones being coerced through mediation. Alternately, "community interventions may be preferable to formal justice in addressing race, class, and cultural concerns…. processes in which members of one's own community participate will abide by one's culture without stereotyping it or deferring to it 'in ways that abandon women to abuse' (Crenshaw, 1997: 107)".[181] For many communities of color, this makes restorative justice a stronger alternative to the racism integral to the formal justice system. Crenshaw also argues assessing the individual needs of survivors of domestic violence is complicated by the question of when to take culture into account- a question we are more likely to find an answer to through individualized restorative justice projects.[182]

The concentration on the individual in a vacuum is a trademark of the mainstream antiviolence movement – isolating survivors has been a significant consequence of the medicalization and criminalization of sexual violence. However, many community justice initiatives and their strong emphasis on community involvement assume first that individual healing and learning experiences are secondary and generally ineffective (negatively associated with Anglo social structures) and community based efforts are the ideal to strive for – that with community comes harmony and functionality. First, this false dichotomy can dangerously abandon the desires of the individual in a healing process or even accessing knowledge about sexuality and consent. Second, the sense of community

[180] Presser
[181] Presser
[182] Presser

that is necessary for the radical shift from individual to community based prevention efforts is difficult to achieve, and an ideal situation many Native communities today cannot match.

Social factors influencing levels of sexual violence include alcohol and drug use, poverty levels, climates of racism and sexism, and understanding and expectations of consequences for assault- while none of these factors cause sexual violence, clearly, their presence creates an atmosphere of lower value of human life that makes sexual violence more permissible. These destructive factors are pervasive in many rural Native communities, weakening and tearing apart traditional bonds of community that may have once made community healing initiatives more feasible. Therefore, to talk about repoliticizing and demedicalizing the mainstream antiviolence movement today, and to radically reconstruct a new approach based on community healing and addressing the sources of violence, efforts must be made to reestablish weakened community bonds. For each region/community the approach would be different, but for many this may mean reviving youth participation in traditional culture, drug intervention and education, creating jobs, or strengthening basic efforts at community building through meetings, education, or childcare. For Native communities, this also may mean striving for a common sense of identity within the complex legality of indigeneity and federal recognition, generational divides, and money.

Between the criticism and promotion of the use of restorative justice in domestic violence cases, there seems to be a single trend – that while there are significant possibilities for the process to fall short by revictimizing the survivor or

worsening the cultural climate around violence, the positives are not conditional and are innate to the system itself. In this way, restorative justice projects addressing sexual violence have great potential to be positive given they are dealt with carefully and consciously, with constant awareness of the larger cultural implications of its use and the threat of the federal justice system behind it.[183] By generalizing community ownership over sexual and domestic violence, restorative justice can begin to get at the root of "many institutionalized power imbalances,"[184] and building off the legal framework feminists of the early mainstream antiviolence movement fought so hard for, has potential for significant change.

[183] Presser
[184] Presser

Chapter 4
Recentering Native Antiviolence Work

Wilma Mankiller's well known quote is worth repeating here again – "I want to be remembered for emphasizing the fact that we have indigenous solutions to our problems".[185] Indigenous solutions to sexual violence in Native communities in many ways offer the greatest hope in the face of criticisms against the actions of the federal government or work of the non-profit sector. By providing appropriate resources, centering the experiences of Native women in sexual and domestic violence response, aiming to eliminate the influence of colonial structures of law enforcement and criminal justice, and incorporating community healing into supporting the self-determination of the survivor, Native antiviolence work is in many ways the answer.

Native Feminist Organizing and Conflict

Unfortunately, the opportunities to meet these aims are limited by the colonial infrastructure and context of communities today. Andrea Smith encourages grassroots work to be thought of by community, rather than individual response, to a conflict.

[185] Ybanez 63.

"Our first work around community accountability came with doing these activist institutes because we thought prison didn't work, but we didn't know what else there was to do. So we have these community-based activist institutions to discuss what could we do and actually found out [that] is was not hard…to develop a strategy for intervening but also a culture of accountability that has an impact no just in terms of violence, but in terms of how to act together in a better way",[186] she spoke in an interview with Critical Resistance.[187] Native women activists, since long before the conception of WARN, have focused on change at the community level. As Madonna Thunder Hawk responds in an interview as well, "grassroots is pretty basic. It's reality. Here's what is real. If you don't live on the rez, it's got to be what's going on your community, wherever you are…it's a real issue dealing with real people".[188] The grassroots nature of most Native antiviolence work responds immediately to the needs of specific tribal communities as integral to the communities and composed of its members, while at the same time balancing the aim of community healing with the need for individual sovereignty of survivors.

Many social movement theorists argue that identity politics convolute social movements and pose a hurdle to change in public policy, with the impulse for separate organization around specific social positions to be particularly divisive. On the other hand, many argue that the separate organizing of 'identity politics' can be critical for empowering and engaging marginalized groups. In S. Laurel Weldon's

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[186] "An Interview with Andrea Smith..." Critical Resistance: The Abolitionist Newspaper. 11 March 2009 http://www.criticalresistance.org/article.php?list=type&type=17.

[187] Critical Resistance is a leading national organization dedicated to opposing the expansion of the prison industrial complex.

[188] Castle, Elizabeth A. "Keeping One Foot in the Community: Intergenerational Indigenous Women's Activism from the Local to the Global (And Back Again)" (American Indian Quarterly 2003) 858.

article "Women's Movement, Identity Politics, and Policy Impacts: A Study of Policies on Violence Against Women", they argue that "separate organizing around social positions can create more inclusive social movements and lay a groundwork for cooperation across social cleavages". [189] In support of Native grassroots activism, therefore, Weldon also points out that it was the racial inequality itself that weakened the antiviolence movement, not separate agendas of identity politics. The position of many Native communities is unique from other 'separate groups' both because of the legal relationship between Indian nations and the United States and the geographic isolation many Native communities are set in. Organizing grassroots efforts may even go directly against tenets of the mainstream antiviolence movement, but according to Weldon and general perceptions of the work of Native activists, are not detrimental to the larger national antiviolence efforts.

The article goes on to look at the responsiveness of legislature to work by social groups or movements, and establishes "separate organizing, however, does not appear to have a strong direct effect on such responsiveness. This result holds, even controlling for the diversity of the population…and other relevant variables", yet "the indirect effects of independent organizing on responsiveness to the women's movement is positive and significant". [190] Weldon accredits some of this with an increased affiliation with the movement as identity groups are formed and become more inclusive, but also with the strength social movements, communities, and society at large gains from recognizing different needs and identities. Analyses of the organizing of women of color also provide some insight into working outside of the

[189] S. Laurel Weldon. "Women's Movement, Identity Politics, and Policy Impacts: A Study of Policies on Violence Against Women" (*Political Research Quarterly* 2006) 111.
[190] Weldon 118.

antiviolence movement: "Under the old but still potent and dominant model, people of color organizing was based on the notion of organizing around shared victimhood. In this model, however, we see that we are victims of white supremacy, but complicit in it as well. Our survival strategies and resistance to white supremacy are set by the system of white supremacy itself."[191] This sheds light on how to frame Native antiviolence work in relation to mainstream projects, similarly recentering the framework rather than offering an alternative to the central structures of the mainstream antiviolence movement.

A 2001 article by Lisa Udel presents the politics of 'motherwork' as central to differentiating Native from mainstream feminist ideologies. Within this different set of goals, "one aspect of traditional culture that Native women cite as crucial to their endeavor is what Patricia Hill Collins calls 'motherwork'. Many Native women valorize their ability to procreate and nurture their children, communities, and the earth as aspects of motherwork….First Nations women argue that they have devised alternate reform strategies to those advanced by Western feminism….an approach that emphasizes Native traditions of 'responsibilities' as distinguished from Western feminism's notions of 'rights'".[192] Udel recenters conceptions of women in Native feminism against Western feminism's supposed condemnation of motherhood responsibilities, while attributing some of this procreative culture to the violent history of forced sterilization and abduction of Native children into foster homes and boarding schools. Motherwork, she argues, involves the physical survival of

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[191] Andrea Smith, "Heteropatriarchy and the Three Pillars of White Supremacy" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 66-73. 66.

[192] Lisa J. Udel. "Revision and Resistance: The Politics of Native Women's Motherwork" (*Frontiers: A Journal of Women Studies* 2001) 43.

community and acknowledges the public, communal space of Native cultures lacking in and motivating work of mainstream society's feminists.

Women of All Red Nations was founded by many of the women of the American Indian Movement (AIM) recognizing that, as women, they had a certain invincibility in the Red Power Movement of the 1970's against arrest and police violence.[193] They organized for sovereignty and self-determination, originally focusing on environmental issues and sterilization of Native women by HIS, and are the ultimate example of Native feminist grassroots organizing. "We were dealing with the policies of genocide committed by the US government, so our goal was not to assimilate into the US. Consequently, we did not try to become part of any funding establishment, as that would have made our work less radical" writes Madonna Thunder Hawk. [194] She describes how WARN and AIM operated mostly on private donations, and spent little time organizing but instead poured all their energy into activism and organizing. If they were traveling through a certain town, for example, they would call ahead to the church and ask if they could house them in a space in town (usually a school gym), and they shared resources communally in the group and with Native communities they stayed with and worked with along the way. [195] "How we organized was different from how activists tend to respond now. We didn't wait for permission from anyone…we did not worry if our work would upset funders, we just worried about whether our work would help our communities",[196] she says, and

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[193] Madonna Thunder Hawk, "native organizing before the non-profit industrial complex" The Revolution Will Not be Funded: Beyond the Non-profit Industrial Complex Ed by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007) 101-106. 104.
[194] Thunder Hawk 102.
[195] Thunder Hawk 102.
[196] Thunder Hawk 104.

focuses on how applying for and monitoring funding skews priorities of activist organizations today. Thunder Hawk, a co-founder of WARN, criticizes non-profits for being part of the system of colonialism, blaming this on paying people to do activism. "This way of organizing benefits the system, of course, because people start seeing organizing as a career rather than as an involvement in a social movement that requires sacrifice",[197] she concludes her essay *native organizing before the non-profit industrial complex* saying. In every way Thunder Hawk describes, WARN effectively avoided the trappings, containment, and professionalization that has dominated the antiviolence movement since the 1970's.

Devon Mihesuah discusses the gender dynamics of AIM, and how members of WARN got fed up with the ulterior motives of the men of AIM, forming WARN to "deal with a variety of social issues that appear to be most important to Native females: education, health care, sterilization, treaty rights, and political incarceration of Native people".[198] Though as Lorelai DeCora explains it, "I spoke at a NOW [National Organization for Women] conference about the role of women in the struggle of American Indians, and I told them that we don't have the luxury as a people to address issues of equality. If your people are dying and they're hungry, then you have to address those issues before you have time to address other issues".[199] The method of organizing WARN in the 1970's was similar to this approach, with a belief that priorities must be set for activism to be effective.

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[197] Thunder Hawk 105.
[198] Mihesuah, Devon Abbott. Indigenous American Women: Decolonization, Empowerment, and Activism. (University of Nebraska Press, Lincoln, 2003) 168.
[199] "Women of All Red Nations" Autonomous AIM website.

Within Native communities, fights for sovereignty against United States colonialism are frequently placed as absolute and first, marginalizing the violence against Native women as a consequence of colonialism that will disappear with its demise. Simultaneously, other Native activists are striving to prove attacks on Native women are attacks on sovereignty as well, and the interplay of colonialism, sexism, and racism cannot be dissected or hierarchized. As Andrea Smith writes, "it has been through sexual violence and through the imposition of European gender relationships on Native communities that Europeans were able to colonize Native people in the first place. If we maintain these patriarchal gender systems in place, we are then unable to decolonize and fully assert our sovereignty".[200] This goes back to Crenshaw's question of how inclusive restorative justice programs should be of culture, though colonialism further complicates it. Regardless, all relations, traditions, and approaches to justice have and must be shaped by the colonial encounter, and tribes are faced with the challenge of how to incorporate histories and look outward toward the colonist state or inward to tradition that must be influenced by this state.[201]

At the same time, it is dangerous to look at sexual violence as something inflicted *on* Native communities, given many tribal governments turn a blind eye and "the community silence encountered by Native survivors of sexual violence is the most heartbreaking". [202] The internalization of patriarchy, the intention of the boarding schools responsible for inflicting massive sexual violence on an older

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[200] Smith, Andrea. "Native American Feminism, Sovereignty, and Social Change." (*Feminist Studies* 2005) 125.
[201] Bruce Miller. The Problem of Justice: Tradition and Law in the Coast Salish World. (University of Nebraska Press 2002) 152.
[202] Hudson, Eileen. "Native Women: Creating a Response to Sexual Violence". (Minnesota Indian Women's Sexual Assault Coalition 2007) 3.

generation,[203] must also be challenged in any antiviolence action in Native communities. According to workers at the Native American Women's Health and Resource Center on the Yankton Sioux Reservation in South Dakota, community members will often argue that sexual violence is 'traditional',[204] reflecting an internalization of the self hatred inflicted by the process of colonialism. Finally, the common argument that men were disproportionately affected by colonialism because they have been deprived of economic status simultaneously marginalizes the histories if the colonization of Native women, imagines colonialism as merely economic, and rewrites patriarchy into indigenous histories. In truth, many Native scholars and sexual violence activists argue, sexual violence and patriarchy were instituted by colonialism through practice- from the actual violence inflicted on Native women, to the sexualized stereotypes developed of them, to European leaders refusing to speak with female tribal leaders and members, to land division to male heads of households under the General Allotment Act of 1887.

This complex internalization of colonialism, as Native scholars Andrea Smith and Renya Ramirez frame it, has created schisms among activists addressing sexual violence in Native communities and challenged the mainstream antiviolence movement, and Native activists are divided on the answer to this question. Much of this centers around naming oneself as feminist or not. Annette Jaimes and Theresa Halsey wrote "American Indian Women: At the Center of Indigenous Resistance in North America" criticizing self-declared Native feminists as too assimilated and in alliance with the colonizer. They define feminism as an imperialist notion innately

[203] Smith Conquest 51.
[204] Smith Conquest 13.

oppressive to indigenous women and ultimately a derivative of white culture. Instead, they argue, tribal sovereignty and group rights are a matter of survival and *must* come first. Lorelei DeCora, one of the founders of WARN, writes American Indian women must be *American Indian* first and *women* second.[205] This rhetoric is similar to that used in other anti-racism movements of the civil rights era. Sexual and domestic violence, they say, are a consequence of colonialism and will disappear with it as long as indigenous peoples remain united under the banner of sovereignty.

Paula Gunn Allen writes that "our traditional lifeways have been significantly eroded….the high rate of violence against women cases is powerful evidence that the status of women within our tribes has suffered a grievous decline since contact. That decline has intensified in recent years".[206] Luana Ross, Andrea Smith, Renya Ramirez, and Winona LaDuke are a few of the most public voices of self-declared Native feminists challenging the primacy of sovereignty over the safety of Native women. Winona LaDuke asks Native communities not to "cheapen sovereignty" by denying individual for group rights. [207] These women bring together gender, race and tribal nation with colonialism and argue attacks on Native women are attacks on sovereignty.[208] To challenge sexual violence in Native communities, Ramirez suggests sovereignty must be reconceptualized around a Native woman's perspective,[209] because currently, sexism is not a primary factor in the organizing of indigenous women. At the center of this work, she argues, Native feminists must

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[205] Smith 'Native American Feminism' 118.
[206] Ybanez 57.
[207] Jacqueline Agtuca, "Beloved Women: Life Givers, Caretakers, Teachers of Future Generations" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press 2008) 3-20. 19.
[208] Smith Conquest 138
[209] Renya Ramirez. "Race, Tribal Nation, and Gender: A Native Feminist Approach to Belonging" (*Meridians: Feminism, Race, Transnationalism*. 2007) 8.

differentiate themselves from the antiviolence work of mainstream feminists by unpacking the core of how colonialism is at the center of today's gender norms and gender violence. Finally, both Smith and Ramirez strive to define sovereignty in non-Western terms, Ramirez calling it a "western notion"[210] and Smith saying it includes an inherent connectedness with the earth[211] that must be part of sovereignty and antiviolence projects. Smith calls for a nation differentiated from the nation-state, built on community and responsibility.

Native Organizations

"I think it's very important that we have our own Native-based shelter that is run by Native staff because we are the only ones who truly understand our culture. The Native people are very connected. I believe individuals from the same community understand one another better than outsiders"[212]. This quote is from Lenora Hootch, the director of the Emmonack Women's Shelter in Emmonak, Alaska. This shelter is one of many the Tribal Law and Policy Institute analyzed in 2004 to determine how Native shelters were centering their work around Native issues and addressing institutional challenges. The Emmonack Women's Shelter is in an extremely isolated region of Alaska, with no roads system and the river as a highway. 95% of people in the region are Alaska Native, mostly Yup'ik Eskimo, and it is the only shelter in a village setting focused on cultural relevancy and traditional community support in

[210] Ramirez 9.
[211] Smith 'Native American Feminism' 14.
[212] Tribal Law and Policy Institute. *Victim's Service: Promising Practices in Indian Country*. United States Department of Justice, Office for Victims of Crime. November 2004.

Alaska.[213] In 2005, the shelter was forced to close down due to major cuts in state funding, and is yet to reopen.

Another shelter of note is the Two Feather Native American Family Services in McKinleyville, CA. When the center was founded in 1998, the Native staff had a difficult time reaching out to Native women because of a general distrust of the shelter system and declarations of 'cultural relevancy'. Now the shelter focuses some of its time on training other shelters in the area about more appropriate 'cultural relevancy' and Native culture. These two very different organizations have responded much more directly to the needs of their communities- much of this may be because while they receive substantial federal funding for their work, the centers are also supported by tribes and community organizations in the area. The Crow Creek Reservation's domestic violence shelter Wiconi Wawokiya, Inc is Native run, and federally funded (with some private donations). Their staff includes an FBI agent and federal prosecutor, and the shelter was key to affecting mandatory arrest laws in the area. Their report says the staff spends a significant amount of time convincing survivors domestic violence is not tradition, just as staff of NAWHERC[214] on the Yankton Sioux Reservation in South Dakota does. Finally, the Saulte Ste. Marie Tribe Victim Services Program discusses cultural relevancy in the report, saying, "Often, non-Native American programs cannot provide cultural services due to lack of funding or knowledge. Because of the connections that Sault Ste. Marie Victim Services has in the community, the important needs of victims can be immediately addressed in a culturally competent manner. By using the traditional Chippewa

[213] Tribal Law and Policy Institute
[214] Native American Women's Health and Education Resource Center

culture, the program deals with the aftereffects of violence and works to help crime victims reintegrate into society"[215]. The program manager is quoted at the end of the report encouraging others to apply for funding to establish victim's services programs in their communities.

On the other hand, Brenda Hill in her essay "The Role of Advocates in the Tribal Legal System: Context is Everything" believes advocacy is vital for survivors and community healing, but warns against conflicts of interest advocates may face working with small tribal governments. "If advocates are tribal employees, they operate under tribal personnel policies and procedures that usually reflect little history or experience with advocacy programs, or safety and accountability issues….advocates are often expected to act as emissaries for the employer's program or systems and are often charged with the responsibility of getting the woman to cooperate with those systems, rather than the other way around".[216] In this way, Hill warns that activism from within tribal systems as well is challenging because the systems in place are already very political in nature, and frequently modeled after Western systems of justice. The tribal governments have little resources to address issues of coordination and reorganization, and unfortunately this burden frequently falls on the advocate and survivor.

The reports on these organizations or advice for advocates that a significant amount of literature by Native feminists addresses are clear manifestations of the truth – survival and short term access to resources must come before revolution for

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[215] Tribal Law and Policy Institute 15.
[216] Brenda Hill, "The Role of Advocates in the Tribal Legal System: Context is Everything" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press 2008) 193-211. 203.

Native survivors. There is a careful line between short and long term goals these organizations must walk, evident in their choices to receive federal funding and support while advocating for culturally specific resources and Native-centered services in their organizations. These reports, at the same time, are distant from radical activist publications such as those by South End Press, and are clearly focused on responding to the specific needs of their communities and reporting back on them to their source of funding.

Indian Nations and Restorative Justice

Throughout the years of federal Indians policy's era of 'self-determination', Indian nations have rapidly acquired more responsibility for a wide range of government programs. This has produced larger government bureaucracies, workforces, and budgets with more frequent business interactions. These developments have demanded stronger and more responsive tribal governments. These rapid changes have led to shifts and reevaluation of governments, particularly constitutions introduced by the IRA (Indian Reorganization Act) of 1934. While these constitutions lay out specifically the powers of tribal, state, and federal government, they also centralize power in a small tribal council, lack provisions for separating power among branches of government, and do not provide for independent courts. This is contrary to traditional models of collective decision-making for many tribes, and therefore frequently lacks political legitimacy. American Indian nations have been denied the luxury of seeing their own fundamental values organically

incorporated into their own political documents over the span of millennia, and thus there is a disjoint between written law and practice in many tribes.

In the late nineteenth century case *US v. Kagama*, the Supreme Court was challenged to question Congress's authority in enacting the Major Crimes Act. Kagama, whose tribe actually lacked a treaty with the United States,[217] was indicted for murdering another Native man on their reservation. The Court upheld Congress' power, relying on the Marshall rhetoric that "the Indian tribes are wards of the nation" and that the Act was necessary to protect tribes from states.[218] The decision essentially immunized Congressional plenary power in federal Indian policy from any substantial constitutionally based judicial scrutiny or review.[219]

As the Major Crimes Act was enacted and *Kagama* confirmed the decision, the Bureau of Indian Affairs Commissioner Hiram Price made motions to require all reservations to house a "court of Indian offenses". This is one of the more concrete examples of the imposition of the Western, Anglo justice model on tribal governments; the legacy is transformed but remains strong today, particularly in the content and composition of tribal constitutions. Under Price's regulation, three tribal members were to be selected by the agent to act as judges in a quasi-judicial forum (also supervised by the agent) to deal with offenses against the peace of the reservation.[220] These courts were supported politically and financially soon after inception by Congress, along with support for Indian police forces. By 1934, the Collier Bill had called for an established dual system of tribal courts at the tribal and

[217] Williams 79.
[218] Pommersheim 143.
[219] Pommersheim 144.
[220] Deloria 77.

national levels.[221] The national Court of Indian Affairs could be staffed by seven judges, each in charge of a particular region, which would always be in session and held on a number of different circuits. The Court would assume responsibility for hearing all major cases that fell under the Major Crimes Act, rather than the federal government, and a number of circumstances for which the local level of tribal jurisdiction could be innately biased.[222] At the same time, the smaller tribal courts were being designed for minor crimes along the lines of misdemeanors and public nuisances.

This conversation of sovereignty and community carries over into restorative justice initiatives. Legal scholar Sarah Deer has challenged the use of traditional forms of "restorative justice" - "We face a dilemma: On the one hand, the incarceration approach promotes the repression of communities of color without really providing safety for survivors. On the other hand, restorative justice models often promote community silence and denial around issues of sexual violence without concern for the safety of survivors".[223] Many Native domestic violence advocates are reluctant to pursue alternative forms of justice because they often pressure survivors to 'forgive and forget' for the sake of the cohesion of the family and tribe, and they lack the safety mechanisms for survivors. [224]

Once again, for these traditional methods to be effective, they must be backed by the threat of incarceration and therefore the federal criminal justice system. This is true because many of the punishments once used, such as banishment, are ineffective

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[221] Deloria 76.
[222] Deloria 77.
[223] Smith Conquest 160.
[224] Smith Conquest 141.

in today's society and/or illegal under the 1968 ICRA's imposition of parts of the Bill of Rights on tribal governments. In this way, the United States federal government maintains relative control over justice in Indian Country solely by monopolizing social clout and establishing appropriate forms of punishment. Therefore, even for restorative justice programs to form in the interest of tribal sovereignty and avoidance of the racist, violent prison system, it still must rely on its presence to exist successfully. Like mainstream domestic violence mediation programs, there cannot be true success until community trust has been built and invested in a restorative justice program. Enough weight must be attributed to the punishments or retributions doled out by the tribal courts/justice programs to deter perpetrators from acting.

While the general consensus remains that restorative justice programs offer the most hope, they also offer the most opportunity for conflicting priorities to silence a survivor in the midst of the tribal community. As long as tribal sovereignty and the well-being of Native women are seen as separate issues, community based restorative justice programs will not offer appropriate access to justice. The sense that "the feds will take care of the rape cases"[225] essentially allows Native survivors to fall through the cracks of sovereignty struggles, and unfortunately, the burden of immediate emotional response and safety cannot be maintained by a small number of Native resource centers if a larger battle must be fought. Impositions on tribal sovereignty such as *Oliphant* and a lack of law enforcement must budge before room can be made to make community restorative justice programs *just* or anti-patriarchal movements resonant. Because as long as Native survivors are silenced by and invisible to federal

[225] Smith Conquest 143.

and state justice systems, they will continue to be silenced by members of their own communities in the interest of sovereignty.

Karen Artichoker, contributor to *Sharing our Stories of Survival: Native Women Surviving Violence,* sums it up well saying: "We are working to reshape a western, imposed, punitive criminal justice system into a system that utilizes consequences for bad behavior in combination with the tribal concept of relatives. A system based on this concept allows us to show compassion for offending relatives and will offer the opportunity for offenders to look at themselves and the impact of their behavior on themselves, others, the community, and cosmos."[226] The contributors discuss causes and responses to violence in Native communities, with a resounding interest in reclaiming traditional values to return women to their rightful places in society[227]- "our work will gain strength as we incorporate a response to domestic violence that does not rely on mainstream models, but instead turns to our memories of how things worked in our tribes before colonization", as Wilma Mankiller writes, arguing strongly that the answers to challenging sexual violence are in Native cultures and histories.[228]

Stormy Ogden, a Native survivor, focuses in her piece on the interconnectedness of sexual assault and imprisonment as "violent colonial mechanisms",[229] and to use one to address the other is futile and dangerous. The book minimally presents restorative justice as an alternative to the prison system, but focuses closely on key issues of legal advocacy and approaches that can assist

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[226] Agtuca 19.
[227] Ybanez 63.
[228] Ybanez 63.
[229] Stormy Ogden, "Prisoner W-20170/ Other" Sharing Our Stories of Survival: Native Women Surviving Violence Ed Sarah Deer et al (Lanham, MD: Altamira Press 2008) 149-162. 161.

survivors within the current system. However, the thematic cry for "Social Change, not Social Services" naturally extends such ideas as the Coordinated Community Response (CCR) focused on law enforcement accountability, dialogue, and community involvement in safety initiatives. George Twiss, in his chapter "The Role of Parole in Providing Safety for Native Women", cites the traditional community oriented policing in many tribal cultures that once was used to "prevent major infractions by addressing minor ones before they escalated. These societies were also expected to proactively address issues…and reporting the actions of individuals causing concern, or situations that might lead to conflict within the community".[230] He uses this model to present reform within the modern structures of probation, presenting it as more of a model of community policing than law enforcement. This proposition presents an interesting middle ground of appropriate cultural response and community responsibility with existing colonial infrastructures and law enforcement. Unlike the reliance of mediation on the threat of incarceration to validate its effectiveness, community regulated probation could successfully merge the clout and funding of the federal government with Native community interests.

Indigenous models for justice are often the inspiration for modern restorative justice approaches, and therefore the topic is very controversial for Native scholars; "on the one hand, Christians, such as Colson, often appropriate justice models based on indigenous forms of governance without crediting indigenous peoples. On the other hand, many Natives, particularly antiviolence advocates, complain that the restorative justice programs have been foisted on them by the state under the claim

[230] George Twiss, "The Role of Probation in Providing Safety for Native Women" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press) 311-334. 314.

that they are 'indigenous'".[231] The Aboriginal Women's Action Network, or AWAN, is based in Canada and supports legal reform and aid to Native survivors. The network is critical of the pressure on Native communities (by the Canadian government) to accept 'circle sentencing' that, according to AWAN, was never 'traditional' in any communities they are aware of.[232] They also express concern that "the process of diverting cases outside the court system can be dangerous for survivors"[233] but that some programs are taking steps to ensure advocacy of the survivor in community justice programs by creating support teams, ensuring the survivor has control over whether they meet the perpetrator, and that the facts be agreed upon before the sentencing itself. Because of their legal status, alternative justice programs are easier to set up in Native communities, a trend that in Canada is leading to Native prisons as well (reservations in the US already have tribal prisons, but on a very small scale). Prison abolitionist Dylan Rodriguez argues that these justice programs are heading rapidly down the path of becoming another alternative *within* the system, rather than an alternative form of justice enabling prison abolition.[234] He also cites the clear historical pattern that minor prison reform has actually strengthened the prison system, a point Ross Green reinforces saying "the fact that some programs require the perpetrator to make a guilty plea to be eligible for sentencing, for instance, could lead to more people, particularly people of color

[231] Smith Christian Right 57.
[232] Smith Christian Right 58.
[233] Smith Christian Right 58.
[234] Smith Christian Right 59.

without legal representation, to plead guilty and find themselves in the criminal justice system".[235]

These are only some reasons restorative justice is particularly controversial to Native scholars and activists, and the responses emphasize the great stake Native communities have in an appropriately just justice system. It is, undoubtedly, idealistic to argue that these programs in their ideal states would tread on none of these concerns. Implementing culturally and institutionally appropriate programs is something that would take years to do effectively, and in the process could reinforce some of the problems with the criminal justice system today. As with most revolutionary, systematic change, the US prison system would need to be at a point where it becomes near-universally recognized that even imperfect implementation of these programs would be an improvement. Some might argue that moment is long passed, while others that it will not and never will be worth the risk. On the small scale, however, to have the option of alternative justice for a community that can consciously and positively implement the programs to the benefit of the individual survivor and the community remains a powerful motivator.

Native restorative justice projects, while maintaining many superficial similarities with those in other communities of color, also vary politically, culturally, and traditionally. While tribes confront these issues differently, questions of justice are innately tied to nationalism, sovereignty, and the role of tradition. At the same time, recent media attention on restorative and community justice has commodified it in a way alien to the way most Native communities have embraced traditional (or

[235] Smith Christian Right 60.

allegedly traditional, in any case) alternative forms of justice, particularly given the alternative is jurisdiction under what many see as a foreign government.

Two clear examples of peacemaking initiatives and traditional justice systems are in Navajo Nation and the Coast Salish communities of the Pacific Northwest. The communities are structured very differently, though share relatively similar philosophies of justice. On a general level, both invoke comparisons between their own 'horizontal' structure of justice and the 'vertical' approach of the US federal system and philosophy. Bruce Miller, author of The Problem of Justice, argues this dichotomization is harmful to Native systems of justice because they must rely on the federal justice system for funding and, therefore, existence. By creating a tension of right and wrong, he argues, we are both demonizing and generalizing Western systems of justice as uniformly hierarchical and impersonal. Miller, who writes about the Coast Salish, criticizes this breakdown. He argues:

> 'such analyses misrepresent Western legal traditions in omitting the various processes of reconciliation, adjudication, and restoration that have always been part of mainstream justice in focusing on the punitive feature and omit the punitive features of indigenous justice…contemporary justice narratives from within the communities are largely outward looking in that they are primarily directed to managing relations with the dominant society and focus conservatively on a purported period of harmony prior to contact.'[236]

He goes on to argue that idealizing pre-contact justice systems simplifies them, something he calls 'cultural editing'. In reviving justice systems, this editing is both imposed on indigenous peoples and self-imposed in the interest of 'de-colonization'.[237] And while this approach could still realistically sustain a successful

[236] Miller 10.
[237] Miller 15.

justice system, most Coast Salish rely heavily on history to inform their current systems. As a result, enormous weight is placed on the limited concrete knowledge possessed about the specifics of these systems, and attempts to deviate from this format are met with skepticism.[238] This is not to suggest that the body of knowledge around philosophies of justice is limited- as Miller presents it, these views are so ingrained in and intertwined with beliefs of the world and existence that they are central to the culture of many Coast Salish. This supports the argument that peacemaking, or restorative justice projects, should be constructed from the innate, shared ethics of a community and thus locally and temporally specific and structurally similar to the grassroots work of Native antiviolence activists.

While avoidance of 'cultural editing' makes sense, it is more the allegiance to tradition for traditions sake (whether it is *actually* tradition or not) that could be harmful for restorative justice programs in today's world. Definitions of tradition and practices of restorative justice must take into account modern circumstances, such as different levels of community cohesion and assimilation, funding sources, and realism of different methods of restitution. Essentially, as Crenshaw discusses, the question of defining culture, colonial influence, and justice is complicated and controversial. Parsing out these three is important to the appropriateness and effectiveness of any restorative justice program, just as defining the priorities of Native feminism is complicated by these factors.

Marianne O. Nielsen and James W. Zion's book Navajo Nation Peacemaking looks at peacemaking efforts in Navajo Nation of the American Southwest. Nielson and Zion take a very different approach to questions of justice than Miller does, and

[238] Miller 57.

an essay by Robert Yazzie in the book contemplates the high value of the 'horizontal' Navajo system of justice, and spends a significant amount of time criticizing the 'vertical' structures' flaws and hypocrisies. What Miller might call 'cultural editing' they call pride in a successful, strong tradition of justice that is uniquely and valuably Navajo.

Nielsen and Zion's critique also elaborates on ideas of truth within Navajo and federal justice systems; while the Navajo tradition respects truth, this is not the central aim of its justice system. The example used recalls a case where a young child was being molested, and the case was brought to a peacemaker. When it was unable to determine whether the grandmother or son-in-law was molesting the child, the peacemaker instead required that the child not be left alone with either family member. The federal court system would never settle on an agreement of this sort, and the case would most likely go unresolved. Nielsen and Zion argue that this approach to truth is traditional, and by incorporating this approach into justice solutions, they become more effective and practical for the community.

The debates between Zion, Nielsen, Yazzie, and Miller should be contextualized in some way, as well. While the Coast Salish communities are moderately assimilated into non-Native populations, "the Navajo Nation's isolation from non-Navajo society means that many of the peoples' expectations of justice are based on more traditional beliefs. European-based criminal justice seems alien and unjust".[239] Thus, the approaches to alternative justice must widely vary given the range of contexts. However, both the Navajo and Coast Salish tribes do use peacemaking techniques to address sexual violence in their communities, and how

[239] Nielsen 15.

these philosophies play out for justice between survivors and perpetrators is complex. In both regions, questions are raised about the rights and sense of safety of survivors within a peacemaking context. These two examples bring the application of restorative justice into a more complicated reality. This reality keeps Native grassroots organizing and peacemaking efforts from being the absolute answer to problems posed by federal and non-profit work against sexual violence, yet illustrate the strengths such community based work in addressing locally and culturally specific questions of justice.

Conclusion

Sexual violence against Native women is a pressing atrocity that is intricately tangled with colonialism, sexism, racism, the state violence of the criminal justice system, questions of tribal sovereignty, and control of the state. In this project I have attempted to disentangle these issues in order to frame a coherent analysis of their interplay in antiviolence work. Approaches by federal, non-profit, and Native organizations are all entrenched in these systems of oppression to different degrees, and none are entirely distant from them. In analyzing the effectiveness of these three distinct approaches, the same tension of priorities comes to the forefront as in defining Native feminism- long term versus short term aims, female versus tribal sovereignty. In analyzing this work, many dichotomies have emerged that looking more closely at specific Native organizations and restorative justice projects prove false.

The reality of confronting sexual violence against Native women is much more complicated than I have been able to examine in this project. Factors specific to tribal culture, leadership, and structure can greatly impact how realistic certain

initiatives for change can be within communities. As Madonna Thunder Hawk emphasizes, grassroots change is done within the community, by the community, and must answer to the specific needs of survivors. To envision revolutionary changes deconstructing colonialism and its consequences is work that must be done, though it is difficult to implement when access to basic resources is lacking. There is a fine line between addressing these needs and challenging philosophies and infrastructures that are creating these needs.

For this reason, restorative justice work specific to the needs of a community and its survivors can serve a dual purpose. These projects, implemented with these needs in mind, can provide immediate resources of community healing, survivor's access to a support system and safety, and mediation while offering a community based alternative to balance the individually focused medical response of the IHS or other healthcare provider. Even implemented simultaneously with mainstream antiviolence approaches of legal redress, these programs have the capacity to confront cycles of violence head on solely by questioning the criminal justice system and normalization of sexual violence in a public, Native centered way. Restorative justice or peacemaking work in Native communities holds great possibilities for simultaneously providing alternative resources and implementing large scale change.

However, as the impact of the Amnesty International report proves, it is possible for organizations and actions by colonial governments to have a significant impact on the ground and realities of Native survivors. Confidence in grassroots organizing suggests revolutionary changes in approaches by individual Native run organizations and justice programs can have the greatest impact in dismantling

systems of oppression, yet there is also space to redefine sexual violence in the public sphere by standing on the shoulders of the colonial state. As the Amnesty report uses its strength as an international human rights organization to shed harsh light on human rights transgressions by the United States government, so can revolutionizing the language with which we speak of sexual violence greatly influence how such transgressions are viewed by the public at large, and therefore perpetrators and the federal government.

Chris Nelson writes in their article "Pakistan: Gender Violence Equated to Terrorism" that "the Encyclopedia Britannica defines terrorism as 'the systematic use of violence to create a general climate of fear in a population and thereby to bring about a particular political objective.' The U.S. Department of Defense categorizes terrorism as 'the calculated use of unlawful violence or threat of unlawful violence to inculcate fear; intended to coerce or to intimidate governments or societies in the pursuit of goals that are generally political, religious, or ideological.'"[240] They go on to argue the use of sexual violence in Pakistan easily fits these definitions of terrorism, for similar reasons that the violence against Native women would as well. Terrorism against indigenous women as a politically motivated act of dominating a population and creating a general climate of fear gives new language to the crisis of interracial violence against Native women, lending it a new political weight. To utilize the power of an international non-profit, such as Amnesty, to reconfigure this language in the public eye could be a hugely influential action by forcing both the

[240] Nelson, Chris. "Pakistan: Gender Violence Equated to Terrorism" PeaceWomen: Women's International League for Peace and Freedom http://www.peacewomen.org/frame/aboutus.html, 10 April 2009.

general public and government officials to reexamine conceptions of the severity and politically racial nature of sexual violence.

Actions such as these – using the strength and alliance with colonial states to create revolutionary changes in discourse- are a way to work toward changing colonialism itself from the top down as well. Work to end sexual violence against Native women, while philosophically simple to deconstruct and criticize, must also be looked at in realistic terms. The analysis in this project is useful in developing the tools with which to examine the consequences and alliances of all antiviolence work concretely. Just as Native-run centers, such as the Emmonack Women's Shelter in Alaska, are frequently incapable of running without federal or state funding, so is tackling systems of oppression and colonialism an impossible challenge without the support of organizations in partial allegiance to that colonial state and capitalism. Until further change is implemented and Native antiviolence work does not need to rely on state funding to exist, it is important to look at alternatives to state violence – such as community-based restorative justice programs – for creative alternatives within the dichotomy between the colonial state and Native antiviolence work.

Bibliography

Agtuca, Jacqueline. "Beloved Women: Life Givers, Caretakers, Teachers of Future Generations" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press 2008) 3-20.

Alexander, Gerard. "The Nonprofit Industrial Complex: Is there such a thing as too much civil society?" The Weekly Standard Volume 012, Issue 30. 23 April 2007.

Altschuler, D. M. "Community justice initiatives: issues and challenges in the U.S. context". Federal Probation v. 65 no. 1 (June 2001) p. 28-32

American Indian Constitutional Reform and the Rebuilding of Native Nations. Edited by Eric D. Lemont. University of Texas Press, Austin. 2006.

American Indian Policy in the Twentieth Century. Edited by Vine Deloria, Jr. University of Oklahoma Press: Norman. 1985.

Amnesty International, "Maze of Injustice: The failure to protect Indigenous women from sexual violence in the USA". http://www.amnesty.org/en/library/info/AMR51/035/2007/en. London, UK, 24 April 2007.

"An Interview with Andrea Smith, author of *Conquest: Sexual Violence and American Indian Genocide* about her book and her work with INCITE! Women of Color Against Violence, and the Boarding School Healing Project." Critical Resistance: The Abolitionist Newspaper. 11 March 2009 http://www.criticalresistance.org/article.php?list=type&type=17.
BBC headline search 'restorative justice' www.bbc.co.uk 3 March 2009.

Benson, Diane E. "Violence Across the Lifecycle" Sharing our Stories of Survival: Native Women Surviving Violence. Edited by Sarah Deer et al (Lanham, MD: Altamira Press 2008) 131-147.

Bergoffen, Debra B. “From Genocide to Justice: Women's Bodies as a Legal Writing Pad”. *Feminist Studies* v. 32 no. 1 (Spring 2006) 11-37.

“Beyond the Non-Profit Industrial Complex” INCITE! Women of Color Against Violence. 5 February, 2009. http://www.incite-national.org/index.php?s=100.

Blumenthal, Kenneth. “For Indian Victims of Sexual Assault, a Tangled Legal Path” *New York Times* 27 April 2007.

Bumiller, Kristen. In an Abusive State: How Neoliberalism Appropriated the Feminist Movement Against Sexual Violence. Duke University Press, 2008.

Bureau of Justice Statistics, “Intimate Partner Violence in the US” 12 April 2009. http://www.ojp.usdoj.gov/bjs/intimate/victims.htm#racea

Butler, Judith. “Explanation and Exoneration, or What We Can Hear” Precarious Life: the powers of mourning and violence (London: Verso, 2004)

Castle, Elizabeth A. "Keeping One Foot in the Community: Intergenerational Indigenous Women's Activism from the Local to the Global (And Back Again)” American Indian Quarterly, Vol. 27, No. 3/4, Special Issue: Urban American Indian Women's Activism (Summer - Autumn, 2003), pp. 840-861

Clarkin, Thomas. Federal Indian Policy: In the Kennedy and Johnson Administrations 1961-1979. University of New Mexico Press: Albuquerque. 2001.

Crenshaw, Kimberle. Mapping the Margins: Intersectionality, Identity Politics, and Violence Against Women of Color. Stanford Law Review, Vol. 43, No. 6. (Jul., 1991), pp. 1241-1299.

Communities Against Rape and Abuse, “Taking Risks: Implementing Grassroots Community Accountability Strategies” Color of Violence: the incite! anthology ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 250-266. 250.

Daly, K. Restorative Justice and Sexual Assault: An Archival Study of Court and Conference Cases. The British Journal of Criminology v. 46 no. 2 (March 2006) p. 334-5

Davis, Angela Y. If They Come in the Morning: voices of resistance New York: Third Press, 1971.

Deer, Sarah. *Toward an Indigenous Jurisprudence of Rape,* 14 Kansas Journal of Law & Public Policy 121 (2004).

Deer, Sarah. *Heeding the Voice of Native Women: Toward an Ethic of Decolonization* 81 North Dakota Law Review 807 (2005)(with Carrie A. Martell).

Deloria Jr., Vine and Clifford M. Lytle. The Nations Within: The Past and Future of American Indian Sovereignty. University of Texas Press, Austin. 1984.

Durazo, Ana Clarissa Rojas, "we were never meant to survive: fighting violence against women and the fourth world war" The Revolution will not be Funded: Beyond the Non-profit Industrial Complex Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007) 113-27.

Duthu, N. Bruce. American Indians and the Law. Viking: New York. 2008.

Duthu, N. Bruce. "Broken Justice in Indian Country". *New York Times OP-Ed.* 10 August 2008.

Dworkin, Andrea. Woman Hating. Dutton, New York. 1974.

Editors Report. "A Community's Responsibility for Justice" *Indian Country Today.* March 28, 2008.

Editors Report: "Reclaim Justice as Key to Self-Governance". *Indian Country Today*. November 30, 2006.

"Fact Sheet: Violence Against Women in Indian Country". The National Congress of American Indians, www.ncai.org. September 3, 2008.

Falcon, Sylvanna. "National Security and the Violation of Women: Militarized Border Rape at the US-Mexico Border," Color of Violence: the incite! anthology, ed. INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 119-129.

GAO: U.S. Government Accountability Office. http://www.gao.gov/. 10 Mar 2009.

GAO Report: November 4, 1976. The Government Accountability Office, Washington, D.C. *HRD-77-3 Investigation of Allegations Concerning Indian Health Service*
HRD-77-3 http://archive.gao.gov/f0402/100493.pdf. 2 Feb 2009.

Gilbert, M. J., et. al., "The Next Step: Indigenous Development of Neighborhood-Restorative Community Justice". Criminal Justice Review v. 32 no. 1 (March 2007) p. 5-25

Graef, Chris. "Native Profiles: A Discussion with Charon Asetoyer". News from Indian Country Hayward, Wis: Jan, 8, 2008. Vol. 22, Iss. 1; pg 8, 1 pgs.

Grauwiler, P., et. al., "Moving Beyond the Criminal Justice Paradigm: A Radical Restorative Justice Approach to Intimate Abuse". Journal of Sociology and Social Welfare v. 31 no. 1 (March 2004) p. 49-69

Hill, Brenda. "The Role of Advocates in the Tribal Legal System: Context is Everything" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press 2008) 193-211.

Hudson, Eileen. "Native Women: Creating a Response to Sexual Violence". Minnesota Indian Women's Sexual Assault Coalition, March 2007.

"INCITE Analysis: Dangerous Intersections." INCITE! Women of Color Against Violence. 5 February, 2009. http://www.incite-national.org/index.php?s=77.

"Indian Crime Concept Paper". Committee on Indian Affairs, United States Senate. November 7, 2007. Brian L Dorgan, North Dakota, Chairman.

Interview with Bruce Duthu by J. Kehaulani Kauanui on IndigenousPolitics.mypodcast.com on April 28, 2008 entitled "American Indians and US Federal Law". http://indigenouspolitics.mypodcast.com/2008/07/42908_American_Indians_and_US_Federal_Law_Interview_with_Professor_Bruce_Duthu-125469.html. Accessed Sept. 28, 2008

"Incarceration of Native Americans and Private Prisons" Native American Heritage Programs 12 April 2009, http://www.lenapeprograms.info/Articles/Prison.htm.

Interview with Sarah Deer by J. Kehaulani Kauanui on IndigenousPolitics.mypodcast.com on May 7, 2007. http://indigenouspolitics.mypodcast.com/2008/01/50707_Interview_with_Sarah_Deer-74677.html. Accessed Sept. 28, 2008.

Johansen, Bruce E. "Reprise/Forced Sterilizations: Sterilization of Native American Women" September, 1998. University of Nebraska, Omaha. http://www.ratical.org/ratville/sterilize.html. Accessed Feb 3, 2009.

Lawrence, Jane. "The Indian Health Service and the Sterilization of Native American Women". *The American Indian Quarterly* 24.3 (2000) 400-419.

MacKinnon, Catharine A. A women human?: and other international dialogues Cambridge, MA: Belknap Press of Harvard University Press, 2006.

McSloy, Steven Paul. "A Bird's Eye View of American Indian Law and Its Future: 26 Sept 2003" America is Indian Country: Opinions and Perspectives from Indian Country Today Ed. Jose Barreiro and Tim Johnson (Golden, CO: Fulcrum Publishing, 2005) 83-87. 83.

Mihesuah, Devon Abbott. Indigenous American Women: Decolonization, Empowerment, and Activism. University of Nebraska Press, Lincoln, 2003.

Mika, H., et. al., Listening to Victims--A Critique of Restorative Justice Policy and Practice in the United States. Federal Probation v. 68 no. 1 (June 2004) p. 32-8

Miller, Bruce. The Problem of Justice: Tradition and Law in the Coast Salish World. University of Nebraska Press, Lincoln, 2002.

Minutes of the Section 904 Violence Against Women in Indian Country Task Force Meeting. Department of Justice, Washington, DC. August 20-21, 2008. http://www.ovw.usdoj.gov/siw-s904ttf.htm

Nelson, Chris. "Pakistan: Gender Violence Equated to Terrorism" PeaceWomen: Women's International League for Peace and Freedom http://www.peacewomen.org/frame/aboutus.html, 10 April 2009.

Newcomb, Steven. "Newcomb: Justice from Whose Perspective?" *Indian Country Today*. June 13, 2008.

Nielson, Marianne O. and James W. Zion. Navajo Nation Peacemaking: Living Traditional Justice. The University of Arizona Press, Tucson. 2005.

"Non-Profits in Carlisle: History of Non-profits in the U.S." Carlisle History: A Living History of Carlisle, PA. Fall 2007, 30 March 2009 http://carlislehistory.dickinson.edu/?page_id=278

Ogden, Stormy. "Pomo Woman, Ex-Prisoner, Speaks Out" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 164-169.

Ogden, Stormy. "Prisoner W-20170/ Other" Sharing Our Stories of Survival: Native Women Surviving Violence Ed Sarah Deer et al (Lanham, MD: Altamira Press 2008) 149-162.

Pagano, Jean. "Hearing on Prevalence of Violence Against Native Women: Stories and Possible Solutions". The Ojibwe News, Vol. 19, Issue 39. October 15, 2007.

Pommersheim, Frank. Braid of Feathers: American Indian Law and Contemporary Tribal Life University of California Press, Berkeley. 1995

Presser, L., et. al., "Can restorative justice reduce battering? Some preliminary considerations." Social Justice v. 27 no. 1 (Spring 2000) p. 175-95

Quinn-Szcesuil, Julia. "More communities offer victims 'restorative justice'". The Boston Globe 9 Nov 2008.

Ramirez, Renya. "Race, Tribal Nation, and Gender: A Native Feminist Approach to Belonging" *Meridians: Feminism, Race, Transnationalism*. 2007, vol 7, no 2, pp 22-40. 2007.

Readings In American Indian Law: Recalling the Rhythm of Survival. Edited by Jo Carrillo. Temple University Press, Philadelphia. 1998.

"Restoration of Native Sovereignty: VAWA Legislative Update: Restoration of Safety for Native Women" Sacred Circle: National Resource Center to End Violence Against Native Women. http://www.ncai.org/Domestic_Violence.51.0.html. September 3, 2008

Ross, Loretta J. "The Color of Choice: White Supremacy and Reproductive Justice" The Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 53-65.

Royster, Judith V. "Oliphant and Its Discontents: An Essay Introducing the Case for Reargument before the American Indian Nations Supreme Court" *The Kansas Journal of Law and Public Policy*. Fall 2003. pp. 1-13.

Sarre, R. "Themes and Issues in Restorative Justice [Review article]". Criminal Justice Review v. 32 no. 2 (June 2007) p. 156-62

Sioux City Journal, "Violence Prevention Institute honors Steve Zediker, Joe Biden" November 19, 2008. http://www.siouxcityjournal.com/articles/2008/11/19/news_living/local/4cdc894bb86eef5f8625750600023e47.txt Accessed Dec 3, 2008.

Sharing our Stories of Survival: Native Women Surviving Violence. Edited by Sarah Deer, Bonnie Clairmont, Carrie A. Martell, and Maureen L. White Eagle. Altamira Press, Plymouth, UK. 2008.

Smith, Andrea. Conquest: Sexual Violence and American Indian Genocide. South End Press: Cambridge, MA. 2005.

Smith, Andrea. "Heteropatriarchy and the Three Pillars of White Supremacy" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 66-73.

Smith, Andrea. Native Americans and the Christian Right: The Gendered Politics of Unlikely Alliances. Duke University Press, Durham and London, 2004.

Smith, Andrea. "Native American Feminism, Sovereignty, and Social Change." *Feminist Studies*; Spring 2005. pp 116-132.

Smith, Andrea and Kēhaulani Kauanui. "Native Feminisms Engage American Studies." *American Quarterly* 60.2 (June 2008): 241-249.

Solicitation PDF: "OVW FY 2006 S*T*O*P Violence Against Indian Women Discretionary Grants Program Solicitation". U.S. Department of Justice, Office of Violence Against Women. www.ovw.usdoj.gov/fy2006stopvaiwsolicitation.pdf. Accessed March 10, 2009.

Statement by Critical Resistance and INCITE! Women of Color Against Violence, "Gender Violence and the Prison-Industrial Complex" Color of Violence: the incite! anthology Ed. by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2006) 223-226.

Takagi, P., et. al. "Critique of Restorative Justice". Social Justice v. 31 no. 3 (2004) p. 147-63

Tatum, Melissa L. "Law Enforcement Authority in Indian Country" http://tlj.unm.edu/tribal-law-journal/articles/volume_4/tatum/index.php. Tribal Law Journal. Accessed Nov. 2, 2008

The Color of Violence: The INCITE! Anthology, Edited by Incite! Women of Color Against Violence. South End Press, Cambridge, MA. 2006

The Revolution Will Not be Funded: beyond the non-profit industrial complex. Edited by INCITE! Women of Color Against Violence. South End Press, Cambridge, MA. 2007.

Thunder Hawk, Madonna. "native organizing before the non-profit industrial complex" The Revolution Will Not be Funded: Beyond the Non-profit Industrial Complex Ed by INCITE! Women of Color Against Violence (Cambridge, MA: South End Press, 2007) 101-106.

Tribal Law and Policy Institute. *Victim's Service: Promising Practices in Indian Country.* United States Department of Justice, Office for Victims of Crime. November 2004.

Twiss, George. "The Role of Probation in Providing Safety for Native Women" Sharing Our Stories of Survival: Native Women Surviving Violence Ed. by Sarah Deer et al. (Lanham, MD: Altamira Press) 311-334.

United States, Office of Violence Against Women, OVW 2006 S*T*O*P Violence Against Indian Women Discretionary Grants Program Solicitation PDF (Washington: U.S. Department of Justice, 2006).

Udel, Lisa J. "Revision and Resistance: The Politics of Native Women's Motherwork" *Frontiers: A Journal of Women Studies*, Vol. 22, No. 2 (2001), pp. 43-62

Violence Against American Indian Women and the Services-Training-Officers-Prosecuters Violence Against Indian Women (STOP VAIW) Program Eileen M. Luna-Firebaugh. Violence Against Women. Vol 2, No 2. February, 2006. pp 125-136.

Walker, L., et. al., Pono Kaulike: A Hawaii Criminal Court Provides Restorative Justice Practices for Healing Relationships. Federal Probation v. 71 no. 3 (December 2007) p. 18-24

Weldon, S. Laurel. "Women's Movement, Identity Politics, and Policy Impacts: A Study of Policies on Violence Against Women" *Political Research Quarterly*, Vol. 59, No. 1 (Mar., 2006), pp. 111-122.

Williams, Robert A. Like A Loaded Weapon University of Minnesota Press, Minneapolis. 2005

Wilkins, David E. American Indian Politics and the American Political System. Lanham, Maryland: Rowman and Littlefield Publishers, Inc. 2nd Edition, 2007.

Wilkins, David E. and Lomawaima, K. Tsianina. Uneven Ground: American Indian Sovereignty and Federal Law University of Oklahoma Press: Norman. 2001.

Wisconsin Department of Public Instruction, Public School Enrollment Data. "Public Enrollment by District by School by Ethnicity". (Madison, 2008) 2 April 2009 <http://dpi.wi.gov/lbstat/xls/pede08/xls>.

"Women of All Red Nations". Autonomous American Indian Movement- The Real Thing. http://www.americanindianmovement.org/warn/warnhistory/html. 10 Mar 2009.

Wunder, John R. "Retained by the People": A History of American Indians and the Bill of Rights. Oxford University Press: New York. 1994.

Ybanez, Victoria. "Domestic Violence: An Introduction to the Social and Legal Issues for Native Women" Sharing Our Stories of Survival: Native Women Surviving Violence ed. Sarah Deer et al. (Lanham, MD: Altamira Press, 2008) 49-67.