Chapter 1

Beloved Women: Life Givers, Caretakers, Teachers of Future Generations

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The unique legal relationship of the United States to Indian tribes creates a Federal trust responsibility to assist tribal governments in safeguarding the lives of Indian women.[1]

In 1994, the U.S. Congress passed the Violence Against Women Act (VAWA),[2] marking the federal government's recognition of the extent and seriousness of violence against women. In 2005, Congress reauthorized VAWA, with the inclusion of a Safety for Indian Women Title[3] recognizing the unique legal relationship of the United States to Indian tribes and women. One purpose set forth by Congress for the creation of the title is "to strengthen the capacity of Indian tribes to exercise their sovereign authority to respond to violent crimes committed against women."[4] In this light, the VAWA of 2005 marks a shift in recognition by Congress of the seriousness of violence committed against Native[5] women and an attempt to fulfill the federal responsibility for their safety. The act, like other federal legislation, is an extension of a historical relationship between Indian nations and the United States as governments. It is this legal relationship that altered over time the existence of Native women and continues to affect their safety as a population.[6]

It is the history of this legal relationship that constitutes the social fabric of the current violence perpetrated against Native women as a population. The findings contained in the Safety for Indian Women Title refer to research by governmental agencies that unveils the level of danger confronting Native women as a population.[7] The U.S. Department of Justice (USDOJ) reports that the rate of violent crime victimization of Native women is higher than for all other populations in the United States.[8] These statistics estimate that the rate of violent crime perpetrated against American Indian females is 2½ times the rate for all females.[9]

More specifically, research by the Department estimates that one of three Native women will be raped,[10] that three of four will be physically assaulted,[11] and that Native women are stalked at a rate more than double that of any other population.[12] These estimates reflect a constant danger in the lives of Native woman and a threat to the stability of Indian nations. The reports also reflect a high number of interracial crimes, with white or black offenders committing 88 percent of all violent victimizations from 1992 to 2001.[13] Nearly four in five American Indian victims of sexual assault described the offender as white.[14] Although these statistics establish that violence against Native women is dramatically higher than for any other population in the United States, most advocates believe that crimes against Native women are actually underreported and underestimated.[15]

Within the United States three sovereigns exist: the federal government, tribal governments, and state governments.[16] Governmental responses available to assist Native women seeking safety from violence are defined not by a single body of law, but frequently by a combination of tribal, federal, and state laws. This combination of jurisdictional authority is the direct result of the legal relationship between Indian nations and the United States as governments. The jurisdictional gaps and inconsistent handling of violent crimes against Native women reach far beyond the failure of individuals to respond appropriately. It is the historical relationship between governments that shapes current legal authority over such crimes. This same historical legal relationship serves as the foundation for American cultural tolerance of violence against Native women.

Such violence is the contemporary mirror of the violence adopted by European nations[17] to achieve domination of Indian nations of North America.[18] Deer writes, "[W]hen speaking with Native American women who have survived rape, it is often difficult for them to separate the more immediate experience of their assault from the larger experience that their people have experienced through forced removal, displacement, and destruction."[19] While legal reform is essential to enhancing the responses of government agencies and services available to Native women, such reform must be combined with cultural change that increases respect for Native women and intolerance of violence against them. An ending point cannot exist without a beginning point, and ending violence against Native women requires an understanding of its historical beginning. The root of violence against Native women is not found in any single code, act, or policy but is revealed in the layers of governmental laws and policies known as Federal Indian Law.[20]

Safety and justice in the lives of Native women, while related, exist as separate realities. Safety, or the prevention of immediate violence against a Native woman, is within our reach. It is the goal driving advocates, justice personnel, and tribal leaders to work endless hours with scarce resources. Brutal beatings, rapes, and murders have been prevented because of the efforts of these dedicated women and

men. Justice, on the other hand, is more complicated. In the words of Moana Jackson, a Maori leader in Aotearoa,[21] "colonization is only over when the colonized persons say it is over."[22] Reaching physical safety is but one part of the path to justice in the lives of Native women.

Following the legal, cultural, and spiritual journeys Native women have taken is a revealing story of strength, courage, and wisdom. Understanding the journeys of the grandmothers and Indian nations to defend and protect women is a challenge to the living. The first journey in this chapter is one to understand the concept of safety for Native women in a time prior to foreign domination by Europe or the United States. It was a time during which Native women experienced safety within their nations as **covenants** of their respective peoples. The second journey is one to understand the cultural changes that socially normalized violence against Native women.

Tillie Black Bear, founding member of the White Buffalo Calf Women Society, links her day-to-day work to enhance the safety of Native women to traditional teachings of White Buffalo Calf Woman.[23] "It is our belief that we are spirits on a human journey. In that way every step we take in our human life is a spiritual act. Every word we speak is a conversation with the creator." In this context, this chapter attempts to share the impact of the laws and policies of governments upon the lives of American Indian and Alaska Native women.

The Time before Colonization: Understanding That Violence Against Women Is Not Traditional

Two types of important resources are available to help explain the original status of Native women prior to contact with Europeans. While they represent divergent worldviews, both the foreign and indigenous sources agree that Native women have always performed essential, multifaceted roles within their nations.

Written historical documents of early contact between Indian nations and explorers chronicle Europeans' first impressions of the relations between Native men and women; specifically the authority women held within their nations. These observations, although sometimes skewed by Eurocentrism and racism, serve as documentation of the original status of Native women of North America.

In 1724, a Jesuit missionary named Lafitau wrote a detailed account of the customs of the Iroquois and other northern Indian nations. In his writing, Lafitau made specific reference to the status of Native women within Iroquois society. Lafitau's record demonstrates the importance and corresponding social status of Iroquois women.

> [T]here is nothing more real than this superiority of the women. It is they who constitute the tribe, transmit the nobility of blood, keep up the genealogical tree

> and the order of inheritance, and perpetuate the family. They possess all actual authority; own the land, and the fields and their harvests; they are the soul of all councils, the arbiters of peace and war; they have the care of the public treasury. . . .[24]

The original status of Native women is also preserved in the teachings handed down over generations by the oral historians of Indian nations. These teachings from the cultural life bearers convey beliefs that define the lives and roles of women and their nations. These beliefs did not isolate women from their societies, but instead reflected the reality that Native women were essential to the existence of their nations. In many ways these beliefs are still operational in what is known today as **customary law**. This body of law is based upon the beliefs and practices developed within the respective Indian nations in many instances over thousands of years. Today, customary law continues to operate effectively as tribal **common law** within many Indian nations. Unlike the written reports of foreign explorers and missionaries, oral teachings are the living memories indigenous to each Indian nation. The conceptual foundations of these teachings are helpful in understanding the safety Native women experienced prior to European contact.

In general, Native women experienced the concept defined by the English word "safety." This was not due to individual actions but to cultural beliefs and practices that defined societies. This relationship is described in the words of Christine Zuni: "The word that comes closest to 'law' in Tiwa is the word for tradition—*keynaithue-wa-ee*, which translates 'this is our way of living'. That way of life is elaborated upon in prayer."[25] The way of living was not defined by a single individual's life but was reflective of the relationships between all members and things. Therefore, the concept of safety as a "way of living" was present in a Native woman's life as part of her existence within her tribal society.

The concept defined by the English word "respect" has been a foundational belief that prevented the abuse of and assured the safety of Native women. Marlin Mousseau,[26] quoting elder Jessie Johnnie,[27] describes the relationship of respect to safety as "whatever you respect, you don't mistreat" and "if we lived by our value of respect we wouldn't mistreat our partners by abusive behaviors."[28] Although the concept of respect is universal, the roles and responsibilities of women were defined by each individual nation. Karen Artichoker explains, "In the circle, everyone and thing had a role and function. None was above or below. The gifts that anyone or thing had to offer were valued and validated."[29] Within these worldviews, Native women had a place that was respected. Behavior that did not support their status was considered socially unacceptable and responded to accordingly.

A fuller understanding of the original social position of Native women can be understood by exploring the concept of the English word "spirituality." Pauma

Yuima leader Juana Majel-Dixon explains, "Indian nations after all the things we have experienced . . . after all our differences . . . languages . . . religions . . . it seems spirituality is our universal bond."[30] From their unique historical experiences, Indian nations developed specific spiritual beliefs and lifeways that came to define social norms and roles within their societies, such as the identities of women and men; the proper relationship between women and men, boys and girls; and relations within immediate and extended families. These relationships were critical to the stability of the entire community and therefore to each Indian nation in its entirety. The story of White Buffalo Calf Woman is one example of the relationship of the spiritual beliefs of the Lakota people to the safety of Lakota women. Tillie Black Bear,[31] speaking of the work of the White Buffalo Calf Woman's Society shares:

> They tell us in this camp the people were running out of food. And they decided that they would send two men out to hunt for food. And they went all over the canyon and up and down hills, looking for game. And they came upon this high hill and when they got on top of the hill they saw from the west this cloud was coming. And as the cloud got closer to them, in this cloud was a woman. And as the cloud got closer, one of the young scouts had unhealthy thoughts about her. And they tell us that she didn't speak our language. And so she signed to the man in the universal language and challenged the young man to come forward. The young scout being foolish went towards her. And the elements came together and protected this woman. When they all quieted down all that was left of this man was his bones and maggots. So one of the first teachings she brought to us as a people was that even in thought women are to be respected . . . Probably, the biggest teaching of all she brought to us, that is still with us today, was as a nation we pray because if we are spiritual beings on a human journey, everything we do on this journey is a prayer. We teach this to our children, we teach this to our grandchildren, so that those generations to come will know what is expected of them and will know how to treat each other as relatives.[32]

European government officials and settlers did not understand these spiritual beliefs and lifeways as the operational basis of Indian nations. Deloria and Lytle note:

> Given the absence of formally structured institutions within the Indian tribes they encountered, it appeared to the earliest settlers that the tribes existed without any forms of government. The Indians were generally viewed as living almost in a state of anarchy and some early political writers, seeking to conceive a "state of nature" upon which they could build the philosophical framework for their natural law—social contract theories of government, frequently referred to Indians as "children of nature" and applauded their apparent ability to live without the confining and complex rules that had been devised within the European system of government.

> Tribal governments of enormous complexity did exist but they differed so radically from the forms used by the Europeans that few non-Indian observers could understand them.[33]

The complexity of tribal governance was misunderstood in part due to the essential multifaceted roles of Native women within their respective nations. The social organization of many Indian nations dramatically differed from European societies. Many Indian nations held the mother's role as culturally and structurally central to their societies. In addition, many Indian nations had woman-centered economic systems. Women had authority over the home, production of foods, and oftentimes activities associated with trade. Although women headed many European monarchies, colonial governments could not conceive of a nation following descent through one's mother. The reality that many Indian nations were organized as matrilineal[34] societies seemed incomprehensible to the foreign observer. The Native customary practice of daughters taking their husbands or men to live at their mothers' homes was also viewed as unacceptable. In addition, women in many Indian nations retained the right to separate from an unwanted husband and retain her property.[35]

Europeans found the role of Native women perplexing, often describing it as uncivilized. Many rights of Native women within their nations were not recognized, and in some cases were declared illegal in European and American law. Native women were socially measured according to European standards of how women should behave. The differences that existed between women of Indian nations and European women were not only misunderstood as uncivilized, but also perceived to be unchristian.

In particular, the use of violence to control the behavior of a woman was not a belief or practice common to Indian nations. While British common law and early United States cases permitted abuse and violence against a wife by a husband,[36] such behavior was unacceptable within Indian nations. When individual incidents of violence against Native women occurred in precolonial times, they were addressed in the context of the worldview and spiritual beliefs of the tribe.[37] Unlike non-Indian jurisdictions, the commission of an act of violence held harsh consequences for the abuser, and the right of a husband to beat his wife was not legally sanctioned.

Prior to contact, such spiritual beliefs and cultural practices formed the basis of the customary law of Indian nations that created safety and respect for Native women within their homes and nations. European and later American governments misunderstood this combination of concepts that were reflected in the social structure of Indian nations. Native women, because of their strong identities and important roles, were perceived to be uncivilized and subsequently became targets of the federal efforts to civilize the Indian populations. The following pe-

tition for citizenship by the Alaska Natives of the Village of Hydaburg is but one of many examples of the erosion of the rights of Native women as terms of conquest.

> We the undersigned, Alaskan Natives of Hydaburg, Alaska, hereby declare that we have given up our old tribal relationships; that we recognize no chief of clan or tribal family; that we have given up all claim to or interest in tribal and communal houses; that we live in one family house in accordance with the customs of civilization; that we observe the marriage laws of the United States; that our children take the name of the father and belong equally to the father and mother, and that the rights of the maternal uncle to direct the children are no longer recognized and that in the case of death of either parent we recognize the laws of the United States relative to inheritance of property; that we have discarded the totem and recognize the Stars and Stripes as our only emblem; and that we are a law abiding and self-supporting people. We therefore believe that we have fulfilled all requirements necessary to citizenship in the United Sates, and we respectfully request that the Congress of the United States to pass a law granting to us the full rights of citizenship.[38]

Colonization and the Erosion of Safety for Native Women

> *Let your women's sons be ours; our sons be yours. Let your women hear our words.*[39]

In 1781, a Cherokee woman named Nancy Ward spoke these good words in addressing the United States Treaty Commission at Holston. She believed that peace could only be sustained if the Cherokees and their enemies became one people bound by the ties of kinship. As a leader of the Cherokee nation she called upon the women of the United States because, in her worldview, only the women could accomplish this goal. At a subsequent meeting in 1785 at Hopewell, South Carolina, Nancy Ward was again introduced by the Cherokee Chiefs to speak to U.S. treaty commissioners as a "beloved woman who has borne and raised up warriors."[40] Perdue writes, "The political power of Ward and other Cherokee women rested on their position as mothers in a matrilineal society that equated kinship and citizenship. In such a society, mothers—and by extension, women—enjoyed a great deal of honor and prestige, and references to motherhood evoked power rather than sentimentality."[41] She did not know that the women of the United States did not possess the authority to respond to her call for peace.

In 2005, 224 years after Nancy Ward's appeal to the women of the United States, Tex Hall, former president of the National Congress of American Indians (NCAI) stated: "Our women are abused at far greater rates than any other group of women in the United States. The rate of violent assault is so high because (the)

lack of authority given to tribal police has created a system destined to fail our people and our women."[42]

The journey from 1781 to 2005 is one of the physical, cultural, and spiritual survival of Native women. It is markedly similar to the process that occurred around the world, as indigenous nations became colonies of Europe. In response to the imposition of foreign governments, Indian nations were forced to dismantle or modify their systems of governance. This disruption included a breaking down of customary law and tribal lifeways that safeguarded Native women from crimes of physical and sexual abuse. The legalization and cultural acceptance of violence perpetrated against Native women as populations began with the conquest of Indian nations by colonial governments such as Spain, France, Russia, and England.[43] An outstanding characteristic of conquest was the physical and cultural genocide of indigenous women of the Americas. Historian Bouvier writes:

> Spain's conquest of California, like that of its other American colonies, occurred in three phases: exploration (often referred to as "discovery"), colonization, and evangelization, the last two overlapping considerably. . . . During the late fifteenth and early sixteenth centuries, Spain's golden age of exploration, rumors spread that lands inhabited by women lay undiscovered just beyond the reaches of the charted territory. On his first trip across the Atlantic Ocean, Christopher Columbus wrote of the existence of such an island.[44]

Such rumors piqued the curiosity of Spanish monarchs, who began to request that explorers search specifically for these mythic women, whom they called Amazons.[45] The purpose of their conquest was to claim the vast riches of a new land and its strong women.

Under the dominion of each conquering nation, Native women became targets of the colonizer in the quest to conquer and assimilate Indian nations. Within the United States, the body of law and policy that governs the legal relationship between Indian nations and the United States is known as Federal Indian Law. It is within this legal context that Native women have witnessed a dramatic shift in their quality of life as a population. This legal relationship, established over hundreds of years, separates Native women from any other population of women, as illustrated in the following historical episodes.

Erosion of the Authority of Indian Nations to Protect Women

As the aboriginal[46] people, Indian nations have always exercised the right of self-government, including authority over all persons committing acts of violence

against women within their territorial lands. This authority of Indian nations over their members and land is known as **inherent authority**.[47] It is the natural and permanent authority that Indian nations have held over their members as governments for thousands of years. In 1831, in a case arising between the Cherokee Indian Nation and the State of Georgia, Chief Justice Marshall acknowledged, "The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with the treaties and the acts of Congress."[48]

Independent of European nations, Indian nations make specific reference to the fact that they retain power to govern their land and the people who come within it. For example, among the Iroquois Confederacy, the Great Law addressed the Confederacy's jurisdiction:

> Roots have spread out from the Tree of the Great Peace, one to the north, one to the east, one to the south, one to the west. The name of these roots is The Great White Roots and their nature is Peace and Strength. If any man or any nation outside the Five Nations shall obey the laws of the Great Peace and make known their disposition to the Lords of the Confederacy, they may trace the Roots to the Tree and if their minds are clean and they are obedient and promise to obey the wishes of the Confederate Council they shall be welcome to take shelter beneath the Tree of the Long Leaves.[49]

Women under the Great Law were granted rights and privileges that outlawed violent and abusive behavior, thereby creating a culture within the Five Nations that afforded fundamental safety to women.

Historical accounts of nations punishing offenders for abusing women exist on the opposite side of the continent as well. In the land now known as Alaska, Russian sailors were held accountable for abuse of Native women, as told in the story "Taa'ii' Ti'":

> When the Russians landed they fooled around with the Indian women during the night. There were lots of men in the big ship. The Chief named Taa'ii'Ti' told them not to bother the women, but they still did it, so he told them, "Don't ever do that again." He spoke very loudly. The Russian men he was talking to at that time were feeling his body muscles like this (gesturing) and said to him: "You have a weak body, why are you talking?" He was like a President himself so he was really mad when they told him that. He didn't say another word until everyone went to bed. The next morning, he reminded them not to do it again, but they still fooled around with the women, even the married women. The people in the village told him about it. The Russian men were sleeping at that time. They were

> sleeping in tents, and Taa'ii'Ti' got his cane and hit all of them. They all cried out in pain. While doing that he reminded them that they underestimated him and that his body was not weak. He only spared four men. They didn't like it, but what could they do about it. He ordered the rest of the men away to continue what they were being punished for. So the four men invited him to return with them since they knew he knew their own leader too. "Okay, yes," he said. So he went over with them (laughs). When they arrived (in Russia) they took him to the President there. Taa'ii'Ti' told him about the shipload of men that went over to Alaska and how he killed them all that one morning.[50]

Violence against Native women was rare because such behavior was inconsistent with the role of women within the worldview of Indian nations. When such behavior occurred, the nation addressed the offender's action appropriately. For example, among the Tlingit people, perpetrators of domestic violence crimes were tied to stakes during low tide and justice was left to greater powers. If the perpetrator survived, then he survived. If not, then he did not. The punishment was well known for such crimes.[51] The wishes and roles of the aggrieved woman were central to the response from the community. Violence was considered inappropriate behavior and the well-being of the woman was central to restoring the balance of the community. Thus, the family, the clan, as well as spiritual and tribal leaders held essential roles in the process of holding offenders accountable for their actions.

Offenders were often removed from the tribe through banishment or execution, whipped, or publicly humiliated, within the specific practice of the tribe. The Payne Papers contain the following report of the death of a Cherokee chief:

> Doublehead had beaten his wife cruelly when she was with child, and the poor woman died in consequence. The revenge against the murder now became, in the Indian's conscience, imperative. The wife of Doublehead was the sister of the wife of (James) Vann. Vann's wife desired with her own hand to obtain atonement for her sister's death. Vann acquiesced; and he and a large party of friends set away with his wife upon the mission of blood.[52]

The safety of women was and continues to be directly linked to the inherent authority of Indian nations to use the power of government to protect their well-being. The erosion of rights after the arrival of Europeans made it more difficult for nations to protect their women.

In exchange for lands and resources, the United States guaranteed to protect the sovereignty of Indian nations. The language of treaties signed by the United States and Indian nations indicates that lands were set aside for the exclusive use of Indian nations.[53] The U.S. Supreme Court has also affirmed that tribes retain

the inherent right of self-government unless explicitly removed by Congress.[54] Specifically, the Court has stated that tribal government authority includes "the power to punish tribal offenders . . . to regulate domestic relations among members."[55] In addition, the Court added that tribes retained inherent sovereign power, even on **fee lands**, to regulate conduct of non-Indians that threatens or directly affects "the health or welfare of the tribe."[56] All of this envelops the federal trust responsibility of the United States, which Congress has defined to include "the protection of the sovereignty of each tribal government."[57] The federal trust responsibility assures tribes that the United States will defend the right of Indian nations to self-government. The United States has a trust responsibility to promote the welfare of Indian tribes, which includes a duty to assist tribes in making their reservations livable homes.[58] Within this large context lies the responsibility of the United States to assist Indian nations in safeguarding the physical safety and well-being of Native women from violence.

Regardless of the trust responsibility, both Congress and the Supreme Court have gradually restricted the jurisdictional authority of Indian nations, resulting in the erosion of the legal ability of tribal governments to protect women citizens. This pattern is highlighted by a review of the impact on Native women by the following federal actions.

The first is the Major Crimes Act, passed in 1885, wherein the U.S. government assumed jurisdiction over serious crimes[59] committed by an Indian in Indian Country (specifically in relation to acts of violence commonly committed against women: the crimes of murder, kidnapping, maiming, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, and, later, sexual abuse).[60] This was devastating, because these are crimes that relate to acts of violence commonly committed against women. Although Indian tribes retain **concurrent** authority over such crimes, the act severely undermined tribal authority.[61] The Major Crimes Act thus **eroded** the traditional response of tribal governments to such crimes by sending a clear (but incorrect) message to Indian nations that they could not properly handle such cases.

The second act of erosion is contained in sections of the Indian Civil Rights Act, passed in 1968, which limits the sentencing authority of tribal courts to "in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of one year and a fine of $5,000, or both." This limitation severely restricts the ability of tribal governments to appropriately respond to crimes of violence against Native women such as sexual assault and domestic abuse.[62] The limitations also reinforce the myth that offenders of such crimes will not incur any significant consequence.

The third act of erosion occurred in 1978, when the Supreme Court ruled in *Oliphant v. Suquamish Indian Tribe* that Indian nations did not have authority to prosecute

crimes committed by non-Indians.[63] This landmark shift in criminal jurisdiction by the Court altered the ability of Indian nations to hold non-Indian offenders committing violent acts accountable. Indian tribes, while continuing to exercise civil jurisdiction over these offenders, also encounter the public perception that non-Indians can commit such crimes without significant consequences.

In 1953, Congress increased the jurisdictional complexity confronting Indian nations by enacting Public Law 83-280 (PL 280).[64] As an extension of the federal policy to "terminate" Indian tribes, Congress withdrew federal criminal jurisdiction on reservations in six states[65] and authorized those states to assume criminal jurisdiction over Indian nations[66] and permitted all other states to acquire it at their option. Under PL 280 federal responsibility for the prosecution of serious crimes under the Major Crimes Act,[67] such as sexual assault, was transferred to state law enforcement agencies. While PL 280 did not alter the civil or criminal jurisdictional authority of tribal governments, tribes located in PL 280 jurisdictions were denied federal funds to support the development of tribal justice systems.[68] In addition, the transfer of federal responsibility to the state governments to provide law enforcement services to Indian nations was not accompanied by the allocation of any funds to support such services. Today, many tribes located in PL 280 states have no emergency or other law enforcement services that should be provided by states and do not receive funding from the federal government to develop such services. Native women living within PL 280 states frequently report that crimes of physical or sexual assault are not addressed. The consequences of PL 280 are far-reaching and tragic.[69]

In addition to these congressional and Supreme Court actions, the ability of Indian nations to protect women citizens was also eroded through misinterpretation of treaties. Indian nations that entered into treaties with the United States did so on a nation-to-nation basis.[70] This **government-to-government** relationship recognized the inherent sovereign authority of Indian nations over their lands and peoples. In this context, Indian nations held full authority to protect women citizenry from foreign individuals choosing to enter their lands and commit acts of violence against women. The Choctaw and Chickasaw nations, for example, safeguarded authority to protect women citizens by including language providing for jurisdiction over non-Indian persons choosing to reside within the boundaries of the nation.

> Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw Nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws in all respects as though he was a native Choctaw or Chickasaw.[71]

According to these agreements, Native women could rely upon their governments for protections from individual acts of abuse from their husbands. In earlier treaties Indian nations also provided for protections for women citizenry by including clauses specific to women.[72]

The Relationship to the Land and the Status of Native Women

Attacks on Native culture began with land acquisition. The legal fiction for creating a basis for land title in North America was the "doctrine of discovery." Under this doctrine, the sovereign discoverer could occupy land already occupied by infidels to extend their Christian sovereignty over the land and the indigenous people who resided there.[73]

The initial dispute between foreign conquerors and Indian nations over land has continued over time. In 1823, the Supreme Court adopted into U.S. law the "doctrine of discovery." Chief Justice John Marshall wrote in *Johnson v. McIntosh*, "As the United States marched across the continent, it was creating an empire by wars of foreign conquest just as England and France were doing in India and Africa. In every case the goal was identical: land."[74] The taking of tribal lands through these wars altered the relationship of Indian nations and specifically Native women to their homelands.

Originally, in the Eastern region of the North American continent, many Indian nations viewed cultivation of the soil as the responsibility of women.[75] In this region:

> [They] developed two forms of land tenure, one communal and the other individual. The village or cultural group claimed sovereignty over a particular area, and individual women controlled the use of specific fields. As long as a woman used a portion of land for agriculture, she had the continuing right of usage. If she stopped cultivating that land, however, either someone else would take the plot or it would revert to communal or village control.[76]

European and later American governments, on the other hand, considered farming the domain of a man and land the private property of individuals. Altering the identity of Native women as caretakers and cultivators of the land and instituting individual ownership was a vehicle for "civilizing" and assimilating the Indians. Because the worldview of many Indian nations held the earth as feminine, the spiritual mother, private ownership of land was culturally destructive to Indian nations and Native women.

Through treaties, Indian nations exchanged lands and resources for peace and recognition of their sovereignty. The language contained in such treaties frequently

was not interpreted according to the lifeways of the Indian nation but that of the United States. One example of this is the claim of Sally Ladiga and her heirs to land under the Treaty of New Echota enacted in 1832.

> Under the treaty, Indian heads of families were to be allotted 320 acres of land to live on and cultivate. Local federally appointed "locating agents" decided who was an Indian and who was the head of a family and allotted heads of families the land on which they resided and had made improvements. When Ladiga was enrolled, she had a cabin and a cultivated field on her land, had raised a family of several children, but had no husband of record. The only people recorded living with her were another woman, Sarah Letter, and a boy named Ar-chee-chee. In spite of evidence that Ladiga bought clothes for Ar-chee-chee, as well as conflicting evidence that he was Ladiga's orphaned grandson, the locating agent found that Ladiga was not the head of a family and was not entitled to a half section of the land. . . . Despite all Sally Ladiga's efforts to continue living upon her land a soldier forcibly removed her from it. A white man named Smith entered her land and took over her cabin and field. Armed troops forced Ladiga to immigrate to Indian Territory in Arkansas.[77]

In 1844 the U.S. Supreme Court held that Sally Ladiga was indeed the head of a family. "We cannot seriously discuss the question, whether a grandmother and her grandchildren compose a family, in the meaning of that word in the treaty, it must shock the common sense of all mankind to even doubt it."[78] Although years later the Supreme Court recognized Sally Ladiga as "a head of family," it did not benefit her or her heirs. Sally Ladiga apparently died on the Trail of Tears and her grandchildren could not legally prove that she was their ancestor.

Native women also suffered the loss of their communally held tribal homelands through the General Allotment Act (passed by Congress), which conveyed personal ownership of land to individual Indians.[79] Prior to the Allotment Act, most Indian nations held land collectively. It is estimated that Indian nations lost 90 million acres of land due to the act, displacing hundreds of Native women and families. The act was inconsistently interpreted in different regions of the United States. In some regions, women could not receive allotments as head of household. As a result of the act many tribal women became landless. Additionally, Native women who did receive individual allotments frequently lost land to non-Indian men. In many cases non-Indian men married Native women to gain access to land and resources.[80] The large number of murdered women of the Osage Nation of Oklahoma finally sparked a federal investigation.[81] While the Allotment Act was later abolished, it had a devastating impact upon Indian nations, especially upon the lives of Native women. Many Native women went from holding a strong role in a communal land to being landless.

The alteration of the legal relationship of Native women to the land was another dimension in the erosion of the status and identity of Native women. In many instances it eliminated self-sufficiency, created economic and legal dependency upon a male head-of-household, and, in the case of Sally Ladiga, imposed the status of "homeless."

Impact of Federal Indian Policy on the Safety of Native Women

Historically, federal policy toward Indian nations has eroded the protections and status of Native women within their respective nations and within the United States. Federal policy served as an additional legal dimension that supported the normalization and cultural acceptance of violence committed against Native women. The policies during the Indian Wars, the Boarding School Era, the Adoption Era, and the Forced Sterilization Era highlight the impact of some federal policies upon the lives of Native women.

During the Indian Wars, Native women and their children were targeted. Phrases such as "kill and scalp all, big and little" and "nits make lice" became a rallying cry for the troops. "Since Indians were lice, their children were nits—the only way to get rid of lice was to kill the nits as well."[82] This policy of extermination legalized the killing of Native women. To avoid being killed or having their children murdered, Indian women were forced to assimilate. Assimilation for Native women meant relinquishing honored multifaceted roles within their nations for the role of non-Indian women within the United States. As a result Native women were instructed in the domestic tasks of servants.

The Boarding School Era, from the 1880s to the 1950s, followed by the Adoption Era from the 1950s to the 1970s, removed the children of Native women in order to further the federal policy of assimilation. This policy was clearly a violation of the concept of **mother's right**. Further, the cultural responsibility for raising children, according to customs and traditions of many Indian nations, is that of the mother and the maternal relatives. Therefore, these policies took from women the privilege of raising and passing on cultural traditions to their children. The intent of these two eras is captured in the following statement of the 1886 Commissioner of Indian Affairs:

> It is admitted by most people that the adult savage is not susceptible to the influence of civilization, and we must therefore turn to his children, that they might be taught to abandon the pathway of barbarism and walk with a sure step along the pleasant highway of Christian civilization. . . . They must be withdrawn, in tender years, entirely from the camp and taught to eat, to sleep, to dress, to play, to work, to think after the manner of the white man.[83]

There was a specific intent to disrupt the bond in order to assimilate Indian children. The cultural genocide committed through the forced removal of Native children is well documented as having lifelong detrimental effects on Indian families. One girl later wrote, "I cried aloud, shaking my head all the while until I felt the cold blades of the scissors against my neck, and heard them gnaw off one of my thick braids. Then I lost my spirit."[84] The consequences for resisting the removal of their children to government boarding schools were severe for parents.[85] Further, the physical and sexual violence committed against girls within the government schools by employees further normalized violence committed against Native women.[86]

More recently, Native women were the subjects of a policy described as "forced sterilization"[87] by the Department of Health and Human Services, Indian Health Services, and other health care facilities. Congress investigated the permanent sterilization of Native women at Indian Health Service facilities and contract facilities. In 1976, the comptroller general released a summary report.[88] The investigation, while limited to four areas of the United States for a period of three years, revealed that Native women, without their informed consent, were being permanently sterilized. The report states:

> Indian Health Service records show that 3,406 sterilization procedures were performed on female Indians in the Aberdeen, Albuquerque, Oklahoma City, and Phoenix areas during fiscal years 1973-76. Data for fiscal year 1976 is for a 120 month period ending June 30, 1976. Of the 3,406 procedures performed, 3,001 involved women of child-bearing age (ages 15-44) and 1,024 were performed at Indian Health Service contract facilities. On April 18, 1974, the U.S. District Court for the District of Columbia issued regulations to address the sterilization of persons by the Indian Health Service.

The policy of "sterilization" was operational beyond Indian Health Service facilities as recounted by a victim of the policy:

> I was badly beaten by my husband and left on the street outside our apartment building. An ambulance took me to the hospital. When I woke up I felt my stomach and there were stitches. I asked the nurse, "Did my husband do this?" She said, "No, the doctor did that." I asked why. The nurse said, "The doctor gave you a hysterectomy." I didn't know the meaning of the word. No one in my family knew the meaning of the word.[89]

The depth of the erosion of the physical safety and respect for Native women caused by this genocidal practice is societal and intergenerational.

These legislative acts of Congress, Supreme Court cases, and policies implemented by the executive branches of the U.S. government are not directly respon-

sible for current statistics showing that Native women are the most victimized population in the United States.[90] The social extension of the federal laws and policies discussed above is, however, culturally significant to the acceptance of violence committed against Native women. The fact that Native women are victimized at a rate more than double that of any other population must be understood in this historical context.

The Journey Home

The Violence Against Women Act of 2005 provides Indian nations unprecedented access to resources to improve the governmental response to violence against Native women.[91] The accomplishments of this decade, 1995–2005, provide life-saving services to Native women seeking safety. The shift in federal law and policy over the last ten years is a beginning. Indian nations not only receive unprecedented resources under the act, but an affirmation of their inherent sovereign authority to respond to crimes of violence against women such as domestic violence, dating violence, sexual assault, and stalking.[92]

Indian nations and advocates for the safety of Native women are pursuing a strategy reflective of this reality. Similar to slaying a mythical two-headed monster, Indian nations and advocates must hold accountable both the individual perpetrator and also the justice systems charged with the responsibility of protecting Native women. While individual perpetrators are held accountable for specific acts of violence, legal reforms must be implemented to address gaps in tribal, federal, and state justice systems that increase the vulnerability of Native women to violent victimization as a population. As women's advocate Karen Artichoker remarks:

> We are working to re-shape 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, nation, and cosmos.[93]

The prevalence and severity of such crimes committed against Native women today cannot be disconnected from the process of colonization that has occurred since contact with European countries. It is not merely a distant historical period, but a continuing process lived and remembered by Native people on a daily basis. This living memory is evident in the stories and experiences of the survivors. Effie Williams, an Athabascan elder of the Native Village of Allakaket, recounts her first encounter with non-Natives and watching as children were forcibly removed to boarding schools. Marlin Mousseau, an Oglala Sioux traditional pipe bearer, remembers his

great-great grandmother, who survived the mass graves of the Wounded Knee massacre at Pine Ridge, South Dakota. Juana Majel-Dixon, of the Pauma-Yuima Band Luiseño Indians, speaks of her forced sterilization in 1967 at an Indian Health Service contract care facility in Escondido, California.

Through education and increased awareness of the origins of violence against Native women, tribal nations can create a path toward its elimination. Understanding the connection of contemporary violence to policies of colonization is a social process important to reforming justice systems and unraveling myths that support cultural acceptance of violence against Native women. The Violence Against Women Acts of 1994, 2000, and 2005 are important historic points to begin the legal process of restoring social protectors of safety for Native women. The act can go further by continuing to support essential services that assist Native women in danger, strengthening the authority of tribal governments to address the safety of women, and establishing a policy that develops of services to assist Native women directed by the customs, practices, and beliefs of that community.

The election of advocates for the safety of Native women to positions of tribal leadership is perhaps the clearest political statement by Indian nations of the commitment to eliminating violence against Native women.[94] Federal Indian Law is often analogized to the swinging of the pendulum. The last ten years is clearly one reflection of that swing in federal policy. For all that understand this reality the successes of the last ten years represent a challenge to continue to move forward until Native women and all women can live free of violence. In the words of Tillie Black Bear:

> As Indian women we have survived, as Indian nations we have survived. We have survived because of our beliefs, teachings and traditions. One of our strongest beliefs is in the teachings of White Buffalo Calf Woman. One of the first teachings brought to the Lakota people is that, even in thought, women are to be respected.[95]

Notes

1. *Violence Against Women and Department of Justice Reauthorization Act of 2005* (H.R. 3402).

2. *Violence Against Women Act,* Title IV of the *Violent Crime Control and Law Enforcement Act of 1994* (Pub. L. 103–322), as amended by the *Victims of Trafficking Protection Act of 2000* (Pub. L. 106–386), as amended by the *Violence Against Women and Department of Justice Reauthorization Act of 2005* (H.R. 3402).

3. H.R. 3402, Title IX, Safety for Indian Women.

4. H.R. 3402, Sec. 902 (2). See also inherent right of self-government codified in the *Indian Reorganization Act of 1934,* ch. 576, 48 Stat. 984 (codified as amended at 25 U.S.C. §§ 461-479 (1994 & Supp. IV 1998)); *Indian Civil Rights Act of 1968,* Pub. L. No. 90-284, 82 Stat. 77 (codified as amended at 25 U.S.C. §§ 1301-1341 (1994 & Supp. IV 1998)); *Indian Education Act of 1972,* Pub. L. No. 992-318, 86 Stat. 873 (codified as amended in scattered sections of 7,12,16, and 20

U.S.C.); *Indian Self-Determination and Education Assistance Act of 1975,* Pub. L. No. 93-638, 88 Stat. 2206 (codified as amended in scattered sections of 5 U.S.C. and 25 U.S.C.); and *American Indian Religious Freedom Act of 1978,* Pub. L. No. 95-341, 92 Stat. 469 (codified as amended at 42 U.S.C. § 1996 (Supp. IV 1998)).

5. Throughout this chapter, the term "Native" is used in lieu of "American Indian" or "Alaska Native" when not specifically citing or paraphrasing other work. Native Hawaiians are not included in this reference because they have a distinct historical and contemporary legal relationship to the United States. See *Liliuokalani, Hawaii's Story by Hawaii's Queen* (Honolulu: Mutual Publishing, 1990[1898]) (International plea for justice by Queen Liluokalani for restoration of the Hawaiian throne and her nation to determine its own destiny); *Apology Resolution of 1993,* Pub. L. 103-150 (S.J. Res. 19) (Apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii); *Policy of the United States Regarding Its Relationship with Native Hawaiians*, Hearing on S. 2899 Before the Subcommittee on Indian Affairs (2000) (statement of Jacqueline Agtuca, Acting Director of Office of Tribal Justice, USDOJ).

6. See U.S. Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (2003), available at http://www.usccr.gov/pubs/na0703/na0204.pdf.

7. H.R. 3402, Title IX, Safety for Indian Women, Sec. 901, Findings.

8. See Lawrence A. Greenfeld and Steven K. Smith, *American Indians and Crime* (Washington, DC: Bureau of Justice Statistics, USDOJ, February 1999, NCJ 173386); Steven W. Perry, *American Indians and Crime* (Washington, DC: Bureau of Justice Statistics, USDOJ, December 2004); Calli Rennison, *Violent Victimization and Race, 1993–1998* (Washington, DC: Bureau of Justice Statistics, USDOJ, 2001); Ronet Bachman, *National Crime Victimization Survey Compilation* (Washington, DC: Bureau of Justice Statistics, USDOJ, 2004).

9. See Patricia Tjaden and Nancy Thoennes, *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women: Findings from the National Violence Against Women Survey* (National Institute of Justice and Centers for Disease Control and Prevention, NCJ 183781, November 2000), p. 22.

10. See Greenfeld and Smith, p. 4.

11. See Tjaden and Thoennes, p. 22.

12. See USDOJ, *Domestic Violence and Stalking, Second Annual Report to Congress Under the Violence Against Women Act* (1997); USDOJ, *Stalking and Domestic Violence, Third Annual Report to Congress Under the Violence Against Women Act* (1998).

13. Supra note 8.

14. Tjaden and Thoennes, p. 22.

15. One example is that "There were 9,520 incidents of domestic violence reported to Navajo Nation Department of Law Enforcement in 2003. The good news is that number declined from the 11,086 incidents reported in 2002. These figures by no means represent the total number of cases on the reservation, because many incidents go unreported." Kathy Helms, "Tribe Battles High Domestic Violence Rate," *Gallup Independent,* March 18, 2005, available at: www.gallupindependent.com/2005/mar/031805dviolence.html.

16. Hon. Sandra Day O'Connor, "Lessons from the Third Sovereign: Indian Tribal Courts," *Tribal Court Record* 9, no.1 (National Indian Justice Center, 1996).

17. Russia, France, England, and Spain negotiated with and followed similar patterns of violence through warfare against Indian nations and Native women. See Herman J. Viola, *Diplomats in Buckskins: History of Indian Delegations in Washington City* (Bluffton, SC: Rivilo Books, 1995, originally published by the Smithsonian Institution Press, 1981).

18. David E. Stannard, *American Holocaust: The Conquest of the New World* (New York: Oxford University Press, 1992).

19. Sarah Deer, "Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law," *Suffolk University Law Review* vol. 38 (2005): 455.

20. Federal Indian Law refers to codes, cases, and executive orders of the United States and not the tribal law of specific Indian nations.

21. *Aotearoa* is the aboriginal name for New Zealand.

22. Moana Jackson, *Address at the National Collective of Independent Women's Refuges Conference and Annual General Meeting*, Rotorua, Aotearoa (October 15, 2003).

23. Tillie Black Bear is a founding member of the White Buffalo Calf Woman Society of the Rosebud Sioux Tribe (1978) and a founding member of the National Coalition Against Domestic Violence (1978). She is considered one of the grandmothers of the Battered Women's Movement in the United States.

24. Lafitau, *Moeurs des Sauvages*, vol. I (Paris, 1724), pp. 71 and 72, as cited in *Iroquois Women, An Anthology; On the Social and Political Position of Women Among the Huron-Iroquois Tribes* (Iroqrafts, Traditional & Ceremonial Iroquois Crafts & Arts from the Six Nations Reserve Reprint, 1990), p 36.

25. Christine Zuni Cruz, "Tribal Law as Indigenous Social Reality and Separate Consciousness[Re]Incorporating Customs and Traditions into Tribal Law," *UNM Tribal Law Journal* I (2000/2001), available at http://tlj.unm.edu/articles/volume_1/zuni_cruz/index.php. (The Tiwa words and translations used here are from a discussion and interview between Isleta Pueblo member and Tiwa instructor Doris Lucero with Christine Zuni, October 14–15, 2000.)

26. Marlin Mousseau is a traditional pipe bearer of the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota. Mousseau developed the Medicine Wheel Approach to working with domestic violence, which incorporates traditional Lakota beliefs, philosophies, and ceremonies. He has worked in the field of domestic violence for over twenty years.

27. Jessie Johnnie, Chookaneidee Elder, Sitka Tribe of Alaska; Kayaani Commissioner; Rural Human Services Program Council Member.

28. "Alaska Native Women's Coalition Against Domestic Violence & Sexual Assault" (Statewide Conference Documentary Video, September 2003).

29. Karen Artichoker, *The Criminal Justice System: Indian Country and Domestic Violence Response* (unpublished 1991).

30. Interview with Juana Majel-Dixon, Tribal Council Member, Pauma Yuima Indian Nation (November 2004).

31. Tillie Black Bear, Interview, August 2004.

32. "Beyond the Shelter Doors," Office on Violence Against Women, USDOJ, documentary video in celebration of the ten-year anniversary of the passage of the Violence Against Women Act (Produced by Clan Star, Inc., September 2004).

33. Vine Deloria Jr. and C. Lytle, *American Indian, American Justice* (Austin: University of Texas Press, 1983), pp. 80–109.

34. "The Cherokees traced kinship solely through women. This circumstance gave women considerable prestige, and the all-encompassing nature of the kinship system secured for them a position of power" (Perdue, 1998; see note 41). "In the matrilineal societies of the Hopi in the Southwest, where the status of women was high, a woman wished to give birth to many girl babies, for it was through her daughters that a Hopi woman's home and clan were perpetuated" (Niethammer, 1977).

35. "Divorce was common and easy for most Native American women. If a woman was living with her husband's family, she simply took her belongings and perhaps the children and went to her parents' home. If a couple was living with the wife's parents or if the dwelling was considered hers,

she told the man to leave . . ." Carolyn Niethammer, *Daughters of the Earth: The Lives and Legends of American Indian Women* (New York: Collier Books, 1977) p. 3.

36. Beirne Stedman, "Right of Husband to Chastise Wife," *Virginia Law Register* 3 (1917): 241; *State v. Oliver* (1874) 70 N.C. 44; *State v. Rhodes* (1868) 61 N.C. 445.

37. Killing of a woman's sister under Cherokee law allowed the sister to take blood revenge herself.

38. Marian L. Swain, *Gilbert Said* (Walnut Creek, CA: Hardscratch Press Book, 1992).

39. Nathaniel Green Papers (Library of Congress), quoted in Samuel Cole Williams, *Tennessee during the Revolutionary War* (Knoxville: University of Tennessee Press, 1974), p. 201.

40. Ibid.

41. Theda Perdue, *Cherokee Women: Gender and Cultural Change 1700–1835*, (Lincoln: University of Nebraska Press, 1998), p. 101.

42. Tex "Red Tipped Arrow" Hall, *President's Report*, 2005 Executive Council Winter Session (February 28, 2005).

43. See Virginia M. Bouvier, *Women and Conquest of California, 1542–1840: Codes of Silence* (Tucson: University of Arizona Press, 2001); Karen Anderson, *Chain Her By One Foot, The Subjugation of Native Women in Seventeenth-Century New France* (New York: Routledge, 1991); Ann Fienup-Riordan, *Boundaries and Passages: Rule and Ritual in Yup'ik Eskimo Oral Tradition* (Norman: University of Oklahoma Press, 1994).

44. Bouvier, *Women and Conquest of California*, p. 3.

45. Bouvier, *Women and Conquest of California*, p. 5.

46. *Ab origine,* meaning "from the beginning."

47. *United States v. Wheeler*, 435 U.S. 313 (1978). Here, it is evident from the treaties between the Navajo Tribe and the United States and from the various statutes establishing federal criminal jurisdiction over crimes involving Indians, that the Navajo Tribe has never given up its sovereign power to punish tribal offenders, nor has that power implicitly been lost by virtue of the Indian's dependent status; thus, tribal exercise of that power is presently the continued exercise of retained tribal sovereignty. Pp. 323-326. Respondent, a member of the Navajo Tribe, pleaded guilty in Tribal Court to a charge of contributing to the delinquency of a minor and was sentenced. Subsequently, he was indicted by a federal grand jury for statutory rape of a fifteen-year-old girl arising out of the same incident.

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

49. The Iroquois Constitution, The Great Binding Law, Gayanashagowa, Number 2, University of Oklahoma Law Center, available at www.law.ou.edu/iroquois.html.

50. Johnny Frank, Athabascan Elder, as cited in Carrie E. Garrow and Sarah Deer, *Tribal Criminal Law and Procedure* (Walnut Creek, CA: AltaMira Press, 2004).

51. Telephone interview with Tammy Young, member Sitka Tribe of Alaska and codirector of the Alaska Native Women's Coalition, August 1999.

52. As cited by Perdue, *Cherokee Women.*

53. In 1868, the Second Treaty of Fort Laramie established the Crow Reservation and provided that the reservation "shall be . . . set apart for the absolute and undisturbed use and occupation" of the tribe, and that no non-Indians except government agents "shall ever be permitted to pass over, settle upon, or reside in" the reservation. "[T]he United States now solemnly agrees that no persons, except those herein designated and authorized to [450 U.S. 544, 554] do so, and except such officers, agents, and employees of the Government as may be authorized to enter upon Indian reservations in discharge of duties enjoined by law, shall ever be permitted to pass over, settle upon, or reside in the territory described in this article for the use

of said Indians." (Second Treaty of Fort Laramie, May 7, 1868, Art. II, 15 Stat. 650). Similarly, Article II of the Treaty of Medicine Creek, 10 Stat. 1132, provided that the Puyallup Reservation was to be "set apart, and, so far as necessary, surveyed and marked out for their exclusive use" and that no "white man [was to] be permitted to reside upon the same without permission of the tribe and the superintendent or agent."

54. *United States v. Wheeler*, 435 U.S. 313 (1978). See also President Bush, Executive Memorandum to Executive Departments and Agencies, signed September 23, 2004; President Clinton, Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, November 6, 2000.

55. *Montana v. United States*, 450 U.S. at 564 (1981).

56. 450 U.S. at 565–66.

57. 25 U.S.C. 3601.

58. See *Montana v. United States*, 450 U.S. 544, 56 & n. 15 (1980).

59. Seven crimes were originally covered, but the list has been expanded to the present fourteen by a series of amendments.

60. *Major Crimes Act,* 18 U.S.C.A. 1153 (1885).

61. *United States v. Lara*, 541 U.S. 193 (2004). Because the tribe acted in its capacity as a sovereign authority, the Double Jeopardy Clause does not prohibit the federal government from proceeding with the present prosecution for a discrete federal offense. Pp. 4-16. Domestic violence case during which a federal officer was assaulted.

62. *Indian Civil Rights Act,* 25 U.S.C. 1302(7) (1968).

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

64. Public Law 83-280, 67 Stat. 588(1953).

65. The six named states, known as the "mandatory states," are: California, Minnesota (except Red Lake Reservation), Nebraska, Oregon (except the Warm Springs Reservation), Wisconsin, and, as added in 1958, Alaska (except the Annette Islands with regard to the Metlakatla Indians).

66. PL 280 also conferred civil jurisdiction on the mandatory states, 28 U.S.C.A. 1360 (a), that is confined to adjudicatory jurisdiction only. *Bryan v. Itasca County*, 426 U.S. 373 (1976).

67. PL 280 provided that the *General Crimes Act* (18 U.S.C.A. 1152) and the *Major Crimes Act* (18 U.S.C.A. 1153) no longer applied to areas covered by PL 280 in the mandatory states (18 U.S.C.A. 1162).

68. See C. Goldberg-Ambrose and D. Champagne, "A Second Century of Dishonor: Federal Inequities and California Tribes," *Report to the Advisory Council on California Indian Policy,* (1996), pp. 47–59.

69. See Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law* (American Indian Studies Center, 1997), p. 280.

70. Not all Indian nations entered into a treaty with the United States. Further, the U.S. Congress failed to ratify hundreds of treaties negotiated with Indian nations. Vine Deloria Jr. and David E. Wilkins, *Tribes, Treaties and Constitutional Tribulations* (Austin: University of Texas Press, 1999).

71. Article 38 of the treaty with the Choctaws and Chickasaws of April 28, 1866 (14 Stat. 779).

72. Article Six, Republic of Mexico Treaty with the Navajo Chieftains, July 15, 1839. Treaty consisted of seven articles. Article stated: "In case any Navajo Indian woman succeeds in escaping by fleeing from the house of her master, on arrival of the said woman in her own land, when it is verified, that she remain free and without any obligation of the nation to give anything for her ransom." Translation from www.lapahie.com/Dinc_Trreaty_1939.cfm.

73. Roe Bubar and Pamela Jumper Thurman, "Violence Against Native Women," *Social Justice* 31, no. 4 (2004): 73.

74. Vine Deloria Jr., *Custer Died for Your Sins* (Norman: University of Oklahoma Press, 1988), p. 51.

75. Indian nations within other regions of North America experienced unique circumstances in negotiating continued control of lands and territory. The relationship of the women of these nations to the land was unique according to their societies.

76. See R. Douglas Hurt, *Indian Agriculture in America: Prehistory to the Present* (Lawrence: University Press of Kansas, 1987).

77. Bethany Ruth Berger, "After Pocahontas: Indian Women and the Law, 1830 to 1934," *American Indian Law Review* 21, no.1 (1997): 7.

78. Ladiga II, 43 U.S. (2 How.) at 583.

79. Act of February 8, 1887, 24 Stat., 388.

80. *Moore v. United States*, 150 U.S. 57 (1893). Palmer's land was rented from an Indian. This land was also claimed by a full-blooded Choctaw woman named Lizzie Lishtubbi. Four days before the murder, defendant Moore married this woman. He had previously boasted that he was going to marry the woman and get the land; "that she was old and would not live long, and he would get a good stake." One of the witnesses told him that he would have trouble over it, as Charles Palmer was about the gamiest man in the territory. He replied: "I am some that way myself." As he started to leave, he said: "I may not get to marry the widow; and if I do not, if you give me away, I will kill you."

81. See Dennis McAuliffe, *Bloodland: A Family Story of Oil, Greed and Murder on the Osage Reservation* (Council Oak Books, 1999); Lawrence J. Hogan, *The Osage Indian Murders: The True Story of a 21-Murder Plot to Inherit the Headrights of Wealthy Osage Tribe Members* (AMLEX, Inc., 1988).

82. Dee Brown, *Bury My Heart at Wounded Knee: An Indian History of the American West*, 1970, p. 90 and David Stannard, *American Holocaust: Columbus and the Conquest of the New World,* 1992, p. 131.

83. Monroe E. Price, *Law and the American Indian Contemporary Legal Education Series* (1973), quoted in Lila J. George, "Why the Need for the Indian Child Welfare Act?" *Journal of Multicultural Social Work* 5 (1997): 166.

84. "School Days of an Indian Girl," *Atlantic Monthly*, 85, Issue 508 (1900).

85. Nineteen Hopi fathers were arrested and imprisoned for over a year at Alcatraz for failing to enroll their children in a government boarding school with deplorable conditions. Wendy Holliday, *Hopi History: The Story of the Alcatraz Prisoners*, available at www.nps.gov/alcatraz/tours/hopi/hopi-h1.htm.

86. U.S. Congress, Senate Committee on Indian Affairs, "Survey of the Conditions of the Indians in the United States, Hearings before a Subcommittee of the Committee on Indian Affairs," Senate, on SR 79, 70th Cong., 2nd session, 1929, 428–29, 1021–23, and 2833–35.

87. See Michael Sullivan DeFine, *A History of Governmentally Coerced Sterilization: The Plight of the Native American Woman* (University of Maine School of Law, 1997), available at www.geocities.com/CapitolHill/9118/mike2.htm; Charles R. England, *A Look at the Indian Health Service Policy of Sterilization, 1972–1976*, p. 1, available at www.dickshovel.com/IHSSterPol.html.

88. Comptroller General of the United States, B-164031(5), November 23, 1976. The regulations specified: "(1) continued a July 1973 moratorium on sterilizing persons who were under 21 years of age or mentally incompetent, (2) specified the informed consent procedure for persons legally capable of consenting to sterilization, and (3) omitted the requirement that individuals seeking sterilization be orally informed at the outset that no Pedersi benefits can be withdrawn because of failure to accept sterilization."

89. Presentation by a survivor during the Alaska Native Women's Statewide Conference (2003).

90. Bachman, *National Crime Victimization Survey Compilation*.

91. Indian tribes received initially a 4 percent set aside in VAWA 1994, a 5 percent set aside in 2000, and a 10 percent set aside in 2005.

92. H.R. 3402 (VAWA). The Acts of 1994, 2000, and 2005 required that a percentage of the total funds be set aside for Indian tribal governments to enhance their governmental response to domestic violence, sexual assault, and stalking. Further, these acts recognized and required that full faith and credit be given protections orders issued by tribal courts: "any protection order issued that is consistent with subsection (b) of this section by the court of one state or Indian tribe (the issuing state or Indian tribe) shall be accorded full faith and credit by the court of another state or Indian tribe (the enforcing state or Indian tribe) and enforced as if it were the order of the enforcing state or Indian tribe" 18 U.S.C. § 2265(a) (2000).

93. Karen Artichoker, "About Circle Sentencing," May 1996 (unpublished).

94. Joe Garcia, elected president NCAI, November 2005; Leonora Hootch, shelter director, elected Village of Emmonak Council, November 2005; Cecilia Fire Thunder, Cangleska advocate, elected president, Oglala Sioux Tribe 2004; Tex Hall, strong supporter of the safety of Indian women, re-elected president, National Congress of American Indians, November 2003. Eleanor David, co-director, Alaska Native Women's Coalition, elected to Village of Allakaket Tribal Council 2003. Wayne Taylor, public zero tolerance for domestic violence campaign, re-elected chairman of the Hopi Indian Tribe. Arlene Quetaki, specialized domestic violence prosecutor, elected governor, Pueblo of Zuni 2001; and Elmer Makua, batterer re-education provider, re-elected to Village Council 2000–present.

95. Supra note 36.

Questions

1. How is the petition that was signed by the Alaska Natives of Hydaburg an example of the subjugation of women from that community? What rights were removed from Alaska Native women? Why did the community agree to the petition?
2. Why would Nancy Ward's speech to the Treaty Commission have surprised non-Native attendees and treaty commissioners? What does it tell us about women in Cherokee society? Why were her American female counterparts unable to respond to her call for peace?
3. What does the story about Russian sailors abusing Native Alaskan women reveal about that nation's laws on violence against women? What were the repercussions for violence?
4. Why might tribes in PL-280 states have a more difficult time responding to violence against women?

In Your Community

1. Are there stories in your community that reveal the status of and teach about respect for women? How did you learn about these stories?
2. How did the General Allotment Act affect women in your community?
3. How does your tribal community work to protect women today?

4. What responsibilities do you believe the federal or state governments have in protecting the women of your community? How have they failed or made strides in keeping women and children safe?

Terms Used in Chapter 1

Common law: Unwritten law of the tribe, developed through custom and tradition.

Concurrent: Together, having the same authority; at the same time.

Covenant: A binding agreement; a promise.

Customary law: A law based on custom or tradition.

Eroded: Caused to diminish or deteriorate.

Fee lands: Land that is owned free and clear without any trust or restrictions.

Government-to-government: A relationship between equal or near-equal nations that prevents one having control over the individuals in another.

Inherent authority: An authority possessed without its being derived from another.

Mother's right: The right of a mother to her children.

Suggested Further Reading

Anderson, Karen. *Chain Her by One Foot: The Subjugation of Women in Seventeenth-Century New France.* New York: Routledge, 1991.

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