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Charlotte Faivre

**Native American Women and Feminist Activism:
Addressing the Crisis of Missing and Murdered Indigenous Women, Girls and
Two-Spirit People in the United States**

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Mémoire de Recherche
Master 2 LLCE Études Anglophones

NATIVE AMERICAN WOMEN AND FEMINIST ACTIVISM

Addressing the Crisis of Missing and Murdered
Indigenous Women, Girls and Two-Spirit People
in the United States

Charlotte Faivre

Année universitaire 2020 - 2021

Sous la direction de Madame Marie Moreau, Maîtresse de Conférences à l'Université
Jean Moulin Lyon III



Labillois, Jonathan. *Still Dancing*.¹ 2014. Native Women's shelter of Montreal.

¹ An idea inspired by the words of Labillois' sister: "Dancers dance for those who cannot, the sick, the elders, and those who are gone. It's like all those women are still dancing through her."

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² According to the native-land.ca website.

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INTRODUCTION

On March 21, 2021, a seventeen-year-old girl named Allison Ward went missing from Idabel in Oklahoma. Three days later, it is eighteen-year-old Elizabeth Hetrick who disappeared from Omaha, Nebraska. Nobody has seen or heard of thirteen-year-old Anntonia Gonzalez from West Hammond, New Mexico, since March 30, 2021. On May 29, 2021, fourteen-year-old Alyssa Laroque went missing from the Blackfeet reservation in Montana. Although they live in different parts of the United States, these four girls have one thing in common: they all are Native American. These four cases of Native American girls going missing are among the most recent that are reported on the “missing.murdered.natives” *Instagram* page which regularly shares information on missing Native people to their almost twenty-two thousand followers with the goal of bringing them home. Unfortunately, the list goes on and on as these four young girls are not isolated cases. The *Instagram* page also shares the names of Natives who have gone missing decades ago, such as Anthonette Christine Cayedito who disappeared in April 1986. She was only nine years old when two unidentified men abducted her from her house. The *Instagram* page provides a photo of her then, but also includes an estimation of what she might look like now, since she is yet to be found and her family never stopped praying for her safe return (missing.murdered.natives).

In the United States, Native American women, girls, and two-spirit people³ go missing and are murdered at higher rates than any other demographic. It has been estimated that Native American women and girls experience murder rates ten times the national average on reservations (The House Committee on Natural Resources). Until very recently, statistics on Native women and girls who go missing or are murdered outside of reservations and in urban areas did not exist (Lucchesi and Echo-Hawk). A recent study of the National Institute of Justice stated that more than half of Native women are sexually assaulted in their lifetime. It also revealed that Native women are 1.2 times more likely to experience violence than non-Hispanic white women (Rosay). However, the consensus is that the numbers of missing and murdered Native women is likely to be much higher in reality since they are typically underrepresented in national data. In 2016, only 116 of almost 6,000 Indigenous women reported missing were logged into the missing persons database of the Department of Justice (Lucchesi and Echo-

³ Gender variant members of Native American communities whose “attitudes about sex and gender can be very diverse.” “Traditionally, Native American two-spirit people were male, female, and sometimes intersexed individuals who combined activities of both men and women with traits unique to their status as two-spirit people. In most tribes, they were considered neither men nor women; they occupied a distinct, alternative gender status.” (“Two-Spirit”)

Hawk). Not only is there a violence crisis but there is also a data crisis: we know that there are high levels of violence, but we are not certain of its scope.

Awareness on this issue has been raising recently, as more and more people talk about the crisis of missing and murdered Indigenous women, girls, and two-spirit people. The same issue is present in Canada as well, although it has been more documented there, especially since the Canadian government launched its National Inquiry into Missing and Murdered Indigenous Women and Girls in 2016 which has since held hearings to listen to more than 1,500 survivors and families of victims all throughout the country (Austen and Bilefsky). The fact that Indigenous women face the same violence in both countries which share similar histories of colonization hints at the link between violence against Indigenous women and colonization. Although violence against Indigenous women is becoming more apparent and is starting to be addressed more broadly in both countries, it has been a reality for five hundred years. This does not mean that violence did not exist in pre-Columbian societies of North America, but stories that have been carried from generations to generations disclose that these societies had lower levels of gender violence and that most of them were in fact matriarchal. Most Native American men and women have condemned the violence colonizers brought with them and used in order to settle the land and they have always fought against it.

In recent years, the movement to end violence against Native women, girls and two-spirit people has considerably grown in the United States and fighting at the front lines are Native women themselves. Whether it be by raising awareness on the issue, developing grassroots activist groups, or helping each other heal from trauma which has often been passed on in families, Native women are dedicating their lives to finding solutions.

This dissertation presents the work of Native women who fight against a crisis, the crisis of missing and murdered Indigenous women, girls, and two-spirit people, of which they are the targets and that is not only deeply rooted in the colonial history of the country but has also been rendered largely invisible for centuries. Its goal will be to answer the three following questions. Why does the crisis of missing and murdered Indigenous women, girls, and two-spirit people find deep roots in the colonial history of the country? Why has this crisis remained invisible despite Native women voicing it out and documenting it over centuries and how can it be unveiled for all to comprehend its urgency? Finally, why is it crucial that the very members of the victimized group – Native American women – be the ones leading the fight?

It first appears necessary to explore the context of the crisis by looking at links between settler colonialism and violence against Indigenous women. It has been largely acknowledged that colonization of North America was very violent to its many Indigenous peoples, but most

history books leave that violence in the past. Yet, Native Americans still suffer from the violence and its legacy today and women are particularly vulnerable. Because a large part of the colonial effort was to remove Native Americans from their lands and to assimilate them into the settler society, the resulting American system is deeply rooted in structural racism, and it can be harmful to Native Americans in several ways. A history of policies designed to take lands and political power away from Indigenous people and to diminish their “Indianness” has progressively built a country in which it is not always safe to be Indigenous. What is absent from history books but has been discussed by Native scholars since the late twentieth century is the use of violence against Indigenous women to colonize a continent. What is particularly striking about the violence that Native American women face today is that the perpetrators are, for the most part, non-Native. Indigenous people have been voicing this concern out for a long time, but a recent study confirmed it and came to support their complaints (Rosay). Non-Native women in the United States are also victims of violence as well, but it tends to be at the hands of men from the same race or ethnicity. The general pattern of Native women being hurt by non-Native men hints to an intersection between gender violence and colonialism. In order to comprehend how colonization has been a gendered process, we shall review the many ways in which white settlers have used Native American women to their advantage, while at the same time transforming the gender organizations of Indigenous societies over the centuries.

Focusing on the connection between colonialism and violence against Indigenous women shall not only allow us to identify some causes of the crisis, but it shall also give us some clues as to why such levels of violence targeted on a specific part of the population have remained invisible for centuries. Indeed, we will analyze stereotypes that have been conveyed from the arrival of Anglo-Europeans on the continent to nowadays, while also considering how representation of Native Americans in both fiction and non-fiction has been different for men and women. If both Native men and Native women are generally dehumanized, men tend to be demonized whereas women are mostly sexualized. Recent works created by Native American women – or allies of the movement to end violence against Indigenous women and girls – have been produced in the last decade in order to provide a more accurate representation and thus fight against stereotypes. Some of them also introduce the public to the crisis of missing and murdered Native women, its main causes, and the need to start conversations about it so as to identify possible solutions. The analysis of three of such works – a documentary, a play, and a film – are provided in this dissertation. Although raising awareness on the issue is crucial to invite people to join the movement and to make safety for Native women a priority, numbers are also needed to inform the government on the seriousness of the crisis. We shall pay attention

to the ways in which federal agencies have been gathering data on crime committed against Native people and then compare it to Indigenous data collection that has been on the rise. Estimating that the federal government has been failing them, independent non-profit Native organizations have decided to take the matter into their own hands, starting their own databases and developing their own research.

For Native American people and more specifically Native American women, having a central role in addressing the crisis of missing and murdered Indigenous women is in fact highly important. The last part of this dissertation will focus on two types of actions Native women advocates have been undertaking to fight for themselves and other women in their communities. First, they lobby Congress in order to seek legislative reform that would provide safer environments to Native women both on and off reservations, encourage better documentation of the crisis, and give tribes more resources and authority to hold criminals accountable and assist survivors and families. However, seeking the help of the federal government is rather debated: to some Native Americans, it sounds counterproductive to look for solutions in a government that they consider in large part responsible for the problem. Nonetheless, others argue that working with the federal government to address the crisis is inevitable and necessary. By testifying before subcommittees of the House of Representatives and of the Senate, advocates have the opportunity to provide insightful information on how to write and vote the best policies to address the crisis. We shall pay attention to the testimonies given by Native women advocates in a hearing from March 2019, before we can review a law that was being written at the time and discover how much of their advice was taken into account. The second type of activism that is equally if not more important is the grassroots actions that help communities, survivors, and families on the ground to prevent or heal from trauma. In both cases, we shall review the strengths of these women, as well as the limits they face but work hard to challenge. This last section shall invite us to discuss the concept of sovereignty and to understand why Native women argue that restoring it to tribes might be the best way to counter the violence they experience today.

I. Settler Colonialism and Violence Against Women

The reasons why Native American women, girls, and two-spirit people are targeted for violent crimes more often than any other demographic of the United States are multiple and complex. However, many if not all of them must be examined in relation to the history of the country, and more specifically the way the nation was created. Scholars and advocates all argue that the missing and murdered indigenous women, girls, and two-spirit people crisis⁴ must be recognized as a consequence of the colonial history of the United States. Although the MMIWG2S crisis has been gaining general attention in recent years, advocates such as Sarah Deer and Mary-Kathryn Nagle insist on the fact that “kidnapping and raping women has been a colonialist project from the get go” (Nagle, *AT&T Webinar*):

The crisis that we are talking about today has deep roots in the historical mistreatment of Native people throughout the history of the United States. Native American women, girls, and two-spirit people have been disappearing literally since 1492 (Deer, The House Committee on Natural Resources).

Therefore, our attempt to understand the current crisis requires an analysis of such a history. The country as we know it today, like other countries in the world such as Canada or South Africa, was founded by settler colonialism, which is when a population settles on an already inhabited territory and replaces its Indigenous peoples with a new group of settlers (LeFevre). The territories of North America were coveted by several European nations, but it was British and later on American colonists who ultimately settled the lands of today’s United States.

The first goal of this dissertation will be to understand how settler colonialism is intricately connected to violence against Native women, girls, and two-spirit people. Delving into the history of settler colonialism shall provide clues allowing us to comprehend why Native Americans and more specifically Native women, girls and two-spirit people are more vulnerable. Questioning settler colonialism invites us to investigate how different societies of North America were before the arrival of Europeans and, consequently, to contemplate the changes Europeans brought about. We will begin with an analysis of a direct consequence of settler colonialism: structural violence affecting Native people. Indeed, the political entities of the United States were developed throughout the years in a specific context: colonization of a territory with people that were removed, eliminated, and assimilated. That context was brutal

⁴ From now on in this text, the Missing and Murdered Indigenous Women, Girls and Two-Spirit People will now be referred to as the MMIWG2S2S.

for Indigenous people and it still has real consequences today. Then, we will review how policies and laws designed in such a context have constructed a justice system which fails to protect Native women, girls, and two-spirit people from violence today. There is a true jurisdictional maze in the country that makes prosecution of crimes committed on Native lands or against Native people very complex. Finally, we will consider how colonization has been a gendered process by analyzing the role sexual violence played in the American Indian genocide.

A. Structural Racism and Structural Violence

1) Viewing Settler Colonialism as an Ongoing Structure Rather than a Historical Event

For Australian scholar Patrick Wolfe, whose main research topics include race, colonialism, and genocide, settler colonialism is “inherently eliminatory” (Wolfe 387) and must be understood as “a structure rather than an event” (Wolfe 390): “settler colonizers come to stay: invasion is a structure not an event. [...] Elimination is an organizing principal of settler-colonial society rather than a one-off (and superseded) occurrence” (388). The elimination of Native Americans did not stop after the “frontier” between “civilization” and “unsettled territories” ceased to exist when farmers established themselves in the most western lands of the continent and therefore, settler colonialism is not a historical event, but a structural organization. After demonstrating how, in a first stage of colonization, White settlers geographically removed Indigenous people whose lands they aspired to own and cultivate – and he stresses the extent to which acquiring land was crucial to most colonists who had been landless in Europe – he argues that the elimination process continued through assimilation strategies:

With the demise of the frontier, elimination turned inwards, seeking to penetrate through the tribal surface to the individual Indian below, who was to be co-opted out of the tribe, which would be depleted accordingly, and into White society. (399)

Furthermore, he explains that assimilating Indigenous people in order to eliminate them is an easier method than simply killing them as “it does not involve such a disruptive affront to the rule of law that is ideologically central to the cohesion of settler society” (402).

Among the assimilation policies that were established by the government of the United States, Wolfe cites the creation of boarding schools for Indian youths and the Dawes Act of 1887 that instituted the fragmentation and distribution of tribal land to Indian individuals, also

commonly called the allotment process. Because they lived among tribal societies and owned the land in a collective way, land was difficult to obtain to the White settler. In order to create private properties that could be bought, it was necessary to break down tribes and absorb Indians into White society and an efficient way to achieve that was to fragment the land and to distribute parcels to Native individuals. In doing so, colonists not only aligned Indians to the capitalistic European model of land ownership and acquired large acreages that were supposedly a surplus of land, but they also introduced Native Americans to the patriarchal organization of society since the new fragmented lands were attributed to male heads of families (Simonsen 10-11). This dissertation will later draw attention to the fact that, contrary to most European societies, a good number of Native American tribes were not organized around the control of women by men.

To support his argument that settler colonialism is an ongoing structure and its central “logic of elimination” kept on being implemented after what he calls “the era of frontier homicide” (402), Wolfe mentions the blood quantum regime that started to be widely applied in the 1930s under which non-Indian ancestry compromises one’s Indian status and claim to land.⁵ He explains that “the calculus [...] is a construct of Euroamerican culture” and quotes Annette Jaimes who called this practice “statistical extermination” (400), since Native Americans are fated to progressively lose their official Indian status generation after generation when interracial couples have children.

Another way Wolfe illustrates his point that settler colonialism entails a type of genocide of “sustained duration” (400) is by quoting article II (d) of the *UN Convention on Genocide* which declares that using “measures intended to prevent births” within a group that is considered to be the target of partial or integral elimination is considered to be genocide. Wolfe links this article to the Australian government removing Aboriginal children during the twentieth century. However, the same reasoning could be applied to the coerced sterilizations Native American women experienced in the 1960s and the 1970s in government-funded medical centers of the Indian Health Service or IHS. In ten years, the number of average children per Native American woman declined by sixty percent, a rate seven times that of white women (Lawrence). Doctors performed the forced sterilizations for various reasons, including a will to help low-income minority families acquire financial stability at a time when many women were on welfare.⁶ Yet, a study led by Dr Connie Pinkerton-Uri in 1974 pointed out that

⁵ Blood quantum was introduced by the federal government but some tribal nations, such as the Cherokee Nation, still use them to this day (Chow).

⁶ After President Lyndon Johnson’s mid-1960s War on Poverty led him to enforce several federal welfare

full-blood Indian women were specifically targeted to be sterilized. For a woman to be sterilized without her consent is a traumatic experience, and it has scarred Native families and communities for generations (Lawrence).

The dynamic of elimination which started when the colonists first arrived on the continent has not really ended. Wolfe quotes the words of General Philip Sheridan turned into the maxim “the only good Indian is a dead Indian” to mention a period of history when settlers often had violent encounters with Native Americans, especially in frontier areas. When discussing assimilation as the continuation of the elimination process, he alludes to Captain Richard Henry Pratt, founder of the first federally-funded boarding school for Native American children in Carlisle, Pennsylvania, who wrote in 1892: “kill the Indian [...] and save the man” (Wolfe 397). The period of assimilation officially began with the removals of Eastern tribes in the 1830s during what is infamously remembered as the Trail of Tears⁷. However, from the 1880s until as late as the 1970s, Native American life was intensely impacted by “political manipulation” (Pauls). Among the ways in which elimination was carried out, Wolfe cites the following:

[...] officially encouraged miscegenation, the breaking-down of Native title into alienable individual freeholds, Native citizenship, child abduction, religious conversion, resocialization in total institutions such as missions or boarding schools, and a whole range of cognate biocultural assimilations. (388)

The bureaucrats, law enforcement officers and clergymen who carried out these assimilation programs were often progressives who genuinely believed they would help Native communities – a minority they thought was disappearing – and solve the country’s structural inequalities that were linked with race. Although most of them had good intentions, they developed their policies with the social and economic ideals that dominated in their culture, a culture that differed in many ways with Native American culture, which had, for instance, different views on family organization, different approaches to the division of land and of labor, and different ways to practice religion. The consequences of many of these assimilation programs turned out to be harmful to Native communities who usually preferred to retain self-government and continually fought against assimilation over the decades (Pauls).

programs.

⁷ The Trail of Tears refers to the removal of about 100,000 Native Americans of eastern tribes of the United States to the West of the Mississippi River after President Andrew Jackson signed the Indian Removal Act of 1830. During the journey, many died of illness, starvation or exposure (Pauls).

2) *Structural Violence is the Legacy of Settler Colonialism*

Whether it be through homicide, assimilation, or other means, the removal and elimination of Indigenous people of the United States has been fundamentally violent. The system in itself is violent to Indigenous people (*Feminists Deliver - Annita Lucchesi Keynote*). Violence has been perpetrated by the federal government: “In every generation, white society asked itself what to do with the American Indians. Their answers have resulted in the twists and turns of federal Indian policy” (Green 9). The link with government policy, however, is not always clear: victimization is often rendered invisible and attributed to individual failure which both normalizes the violence and labels Native Americans as being “unworthy victims in the broader collective” (Monchalin *et al.* 213). The MMIWG2S crisis might be the best indicator of the systemic violence Indigenous people experience today:

Nowhere is the marking of Indigenous bodies for violent victimization and death more salient than the current crisis of missing and murdered women experienced in both Canada and the United States. (213)

Indeed, the MMIGW crisis has to be seen as a “manifestation” of structural violence in the United States, and must therefore “be situated within, and understood through, the logic of settler colonialism” which is itself “indisputably a form of structural violence” (213). The term structural violence, often also referred to as institutional violence, is:

[...] one way of describing social arrangements that put individuals and populations in harm’s way [...]. The arrangements are *structural* because they are embedded in the political and economic organization of our social world; they are *violent* because they cause injury to people (typically, not those responsible for perpetuating such inequalities). (Farmer *et al.* 1686)

The cause-and-effect relationship between political and economic arrangements and hardships endured by Native Americans can be demonstrated in many cases: environmental racism, high rates of unemployment, inequality of income, poor health indicators, and poor housing conditions, among others (Monchalin *et al.*). In our case, we will examine the devastating legacy of Indian residential schools and the unnoticed, yet high number of Native people killed by police.

a) **Indian Residential Schools and Ulterior Outplacement of Native Children**

An illustration of institutional violence is the legacy of Indian boarding schools. During the progressive era that followed the Civil War, schools for Native Americans were founded by religious denominations on reservations. President Grant’s 1869 Peace Policy financially

supported the building of such schools. In 1879, Richard Pratt created Carlisle Indian school, the first off-reservation boarding school in the United States, which served as a model for the Bureau of Indian Affairs to build many more (Smith). Richard Pratt argued that off-reservation schools were more efficiently assimilating Indian youth and he thought it would be even better if children could not go home for the summer so that the assimilation efforts would not be reversed. Because legislation required Native American children to receive an education, many were forcibly taken away from their parents and their homes at a young age and they could not go back until they were adults. Native American parents had no choice: a rule issued by the Commissioner of Indian Affairs in 1892 declared that parents who would refuse could risk incarceration (Deer). From the late nineteenth century to as late as the 1960s, “more than 100,000 Native children were forced into attending these schools” (36). In some communities, the rate of children who were removed from their homes exceeded 70 percent (Deer).

In these residential schools, Native languages, clothes, religions, and traditions were forbidden, and children were taught to worship Christian values. A much less expensive means to eliminate Native people than “physical genocide,” according to Richard Pratt, this “cultural genocide” (36) had a terrible impact on Native American communities everywhere in the United States and in Canada. First, it is worth noticing that the conditions in which the children were living were terrible: “they routinely died of starvation and disease” (38) and had to do forced labor in order to fund the boarding schools. However, what has traumatized generations is the violence that existed in these institutions: “physical, sexual, and emotional abuse” were very common (38). The violent acts that were perpetrated against children in residential schools have been much more investigated in Canada than it has in the United States but survivors have talked about “medical experimentation, sexual assaults, babies getting buried behind school walls, and torture” (40–41).⁸

The children who attended Indian residential schools were deprived of parental love and guidance, were likely to have experienced violence or to have witnessed it and grew-up listening to negative messages about their “savage” origins. As a result, they were not “adequately equipped to fit into mainstream society” and abuse started to spread within Native communities (Smith 43). Not only are people who have been abused in their youth likely to become abusers in their adult lives, but in the case of Indian boarding schools, the victims also

⁸ In May 2021, the remains of 215 Native Canadian (or First Nation) children were found buried on the site of a former Residential School in British Columbia. We do not know what happened to these children, some of whom were only three years old. These deaths had not been recorded in documents. Anti-colonial researchers argue that this is only the tip of the iceberg and that many similar burial sites must exist in Canada and in the United States as well (Dangerfield).

learned to despise their Native identity. Once again, this phenomenon has been more documented in Canada – where the government and major churches have made some reparation efforts – than it has in the United States, but it appears that in many families, “violence, substance abuse and other related problems [...] almost invariably [...] begin with the generation that first went to boarding school” (44). To this day, Native communities

[...] continue to suffer devastating effects as a result of [boarding school] policies, including physical, sexual, and emotional violence in Native communities; increased suicide rates; increased substance abuse; loss of language and loss of religious and cultural traditions; increased depression and post-traumatic stress disorder; and increased child abuse” (43).

Smith believes that, for Native communities to start healing, the silence on what happened in the boarding schools has to be broken in the United States. Even if not all people who went to these institutions had negative experiences there, it clearly had a negative impact on Native American communities and families. What happened to some of the children and teenagers were human rights violations and witnessing abuse is human rights violation as well (Smith).

The outplacement of Native children continued after the era of boarding schools through the removal by social services of Native children from environments that were deemed unfit, and through their placement into a majority of non-Native families or in the foster care system. This started in the late 1950s when the Bureau of Indian affairs and the Child Welfare League of America developed a program called the Indian Adopting Project. Too often, the criteria on which social workers based their evaluation of the unfit environments were “vague” and “ethnocentric” (Smith 41): they did not take into account, for instance, the fact that it is not unusual for Native children to reside with family members such as uncles, aunts, grandparents, cousins, or other adults close to the family; this organization does not conform with the typical nuclear family, commonly valued as the best structure within which a child can grow up (Pauls; Smith).

In 1978, the Child Welfare Act was passed with the goal of adapting these criteria to the lived experiences of Native people and involving tribes in determining where the children would be placed. However, this act is not systematically enforced. A consequence of this act is that, in some states, a large number of children in the foster care system are Native: “as of 2002, 60 percent of the children who are in Alaska foster care are Native while Natives are only 25 percent of the population” (Smith 42) and

[..] statistics compiled by the South Dakota Department of Social Services (DSS) show that although American Indians comprise less than 9 percent of South Dakota's population, 52 percent of the children in the state's foster care system are American Indians. An Indian child is 11 times more likely to be placed in foster care than a white child in South Dakota. (Pevar)

The placement of Native children in foster care can be seen as a perpetuation of the boarding schools' design to break families and tribes apart that has resulted in children growing up in unstable and sometimes violent environments. In many cases, the intergenerational trauma has a ripple effect that is still perpetuating inequalities and causing injury⁹ today.

b) Police Killings

Institutional violence also includes violence that is perpetrated by the police. From the beginning of the colonization of North American territories, Indigenous peoples were characterized as being savages that needed to be tamed. Automatically, and in order to carry on with conquest of the territory, the use of law and order was needed, and police forces were asked to deal with said savages in Canada and in the United States:

[...] colonial violence has been built directly into the structure of societal institutions, and notably within a central tool used by the colonial state to advance colonialism – the police. (Monchalin *et al.* 214)

In the past seven years, the Black Lives Matter movement – which fights against police killings of African Americans in the United States – has grown a lot. With its broadly used hashtag #BlackLivesMatter, elected “word of the year” in 2014 (Berlin), the movement rapidly spread on social media, which allowed its activists to raise awareness on racialized police brutality. What the public is not really aware of, however, is that Native Americans have a higher risk of being killed by a police officer than any other group in the country when compared to their percentage of the U.S. population (Woodard). They are therefore more likely to be killed by police than African Americans and analysis of data from the Centers for Disease Control and Prevention from 1999 to 2014 “shows that Native Americans are 3.1 times more likely to be killed by police than white Americans” (Woodard). The reason why this goes unnoticed is that mainstream media rarely cover the police killings of Native people and when they do, they sometimes misidentify the victim as Latino. Even related events such as protests from families and Native communities are not covered by major U.S. newspapers: the 2015 march of an angry crowd towards the police headquarters on the Cheyenne River Sioux Tribe's

⁹ Going back to Farmer *et. al.*'s definition of structural violence.

reservation in South Dakota was never mentioned in the U.S.'s top-10 major newspapers.¹⁰ The absence of Native Americans from mainstream media is central to the MMIWG2S crisis and will therefore be further discussed in this dissertation.

In her article on the police killings of Native Americans, journalist Stephanie Woodard mentions the cases of seventeen Natives who died at the hands of the police. Interestingly enough, there are recurrent elements in these seventeen deaths: oftentimes, the victims were in custody or in jail and died because they were refused health care in serious situations after having complained of pain or were found dead in their cell for unclear reasons; the victims were in their home, their vehicle, or in the street when a police officer shot them, sometimes in front of family members; the victims might have been holding a cellphone, or another small object, that was mistaken for a gun. In many of these instances, although family members, witnesses, and local community members have questioned the ways police officers handled the situations, court rulings generally classified the killings as justified. In some cases where the killings were ruled unjustified, the officers responsible did not face criminal penalties.

More importantly, Woodard's investigation emphasizes the recurring link between the police killings of Native people and mental health problems:

People threatening suicide and experiencing other mental health crises made up one-quarter of all those killed by cops in the first half of 2016, according to data collected by the *Washington Post*. [...] As funding for mental healthcare continues to plummet, police are increasingly the first responders to mental health crises that they are untrained for and ill-equipped to handle. (Woodard)

In many of the cases Woodard describes, the victims were about to commit suicide and were apparently not threatening anybody but themselves when they were shot by police. In a mental health crisis, it is difficult for anybody – not only Native people – to understand the instructions given by a police officer and to follow them. In order to improve law enforcement response to calls involving Native people in a state of mental distress (suicidal behavior, depression, schizophrenia, etc.) some police departments have tried to train police officers to “slow down and find alternatives to the immediate application of lethal force” (Woodard). Others have chosen to pair them with mental healthcare professionals on calls involving mental disorders. However, there are not enough Native healthcare professionals “who understand cultural factors affecting patients” (Woodard). A cultural factor could be for instance a cycle of

¹⁰ The *Wall Street Journal*, *New York Times*, *USA Today*, *Los Angeles Times*, *New York Daily News*, *New York Post*, *Chicago Sun-Times*, *Denver Post*, *Washington Post* and *Chicago Tribune*; identified by Claremont Graduate University researchers Roger Chin, Jean Schroedel and Lily Rowen in a study conducted in 2014-15. (Woodard)

domestic and/or child abuse that started as a consequence of the boarding schools and that has had continued repercussions in a given Native family for generations. A Native individual could be having mental health crisis because of traumatic experiences lived in the foster care system the same way a Native woman could be in a state of depression after having been sterilized without her consent. These are examples of factors of cultural relevance.

Nevertheless, it appears necessary to go back to the root of the problem: the underfunding of social services for Native people. Mental healthcare services – and social services in general – are underfunded for Native Americans: “In 2013, Indian Health Care service per-capita expenditures were \$2,849, compared to \$7,717 per person for healthcare spending nationally” (Woodard). There are even less resources to help Natives with mental health disorders when they live off-reservation, which is the case of more than half of Native people in the country. Unfortunately, 79 percent of the police killings occur in urban areas.

The fact that Indian healthcare services do not receive the same funding per person as other healthcare services in the country exposes a systemic and racialized disparity. Because of this disparity, Native people with mental health problems are not treated as well as other American citizens and that makes them more vulnerable to police violence, which is a form of institutional violence.

Less known than Black Lives Matter, the Native Lives Matter movement originated in 2014 “is attempting to bring attention to the deaths, and to the larger social and economic oppression of Native Americans”(Woodard). Its slogan has since been adopted by “grassroots groups [...] as an umbrella term to advocate for environmental and social causes” (Woodard) as well. Nonetheless, the U.S. criminal justice system is still failing Native Americans:

Despite gaining citizenship rights in 1924, Native Americans have yet to see the day that they enjoy benefits of a nation which boasts “liberty and justice for all” (Lakota People’s Law Project).

Indeed, one can argue that Native Americans do not enjoy the level of justice – and therefore safety – other Americans take for granted.

B. The Creation of a Justice System that Fails to Protect Native Women From Victimization

From 1885 to the late twentieth century, policies and laws that emerged from a colonial state have established a system in which the prosecution of crimes committed by and/or against Native Americans is highly complex and inadequate. We shall first consider the main policies

that have created this complex system, before we can discuss the reasons why it is not just the laws that are problematic, as there is still a certain degree of continuing federal complicity.

1) Federal Laws and Policies Have Created a Jurisdictional Maze

Because of laws and policies that were imposed on Native Americans by the settler state over the centuries, investigating and prosecuting crimes committed on Native lands is very difficult today. For that reason, Native Americans experience high rates of violent victimization:

The country's 310 Indian reservations have violent crime rates that are more than two and a half times higher than the national average, according to data compiled by the Justice Department. American Indian women are 10 times as likely to be murdered than other Americans. They are raped or sexually assaulted at a rate four times the national average, with more than one in three having either been raped or experienced an attempted rape. (Williams, "Higher Crime, Fewer Charges on Indian Land")

Today's tribal legal systems operate under bizarre constraints imposed under even more bizarre conditions, creating a patchwork of various federal and tribal laws that work in tandem to utterly obfuscate justice. [...] Native people are both overvictimized and overincarcerated at significant rates, and nearly everyone who has worked in Indian country can tell you that the criminal justice framework is to blame. (Deer 31)

An overview of the criminal justice system in Indian Country¹¹ is necessary to understand the current complex jurisdictional situation. In this paper, the analysis focuses on policies and laws that have had an impact on Native women specifically, since they brought about a complex jurisdictional maze that fails to protect them.

a) The Major Crimes Act (1885)

Before 1883, investigating and prosecuting crimes that happened in Indian Country was under the authority of tribal law enforcement and courts. In 1883, Crow Dog, a Brulé leader killed the leader of another tribe and was prosecuted by his tribal court. Dissatisfied with the sentence which they thought lacked severity, the federal government decided to prosecute him as well. Crow Dog petitioned the Supreme Court which recognized and reaffirmed the authority of tribes over crimes that occur on Native lands: they stated that tribal governments had the

¹¹ The term Indian Country refers to "all land within the limits of any Indian reservation under the jurisdiction of the United States Government, [...] all dependent Indian communities [...], and all Indian allotments, the Indian titles to which have not been extinguished." (18 U.S. Code §1151)

right to operate as independent sovereigns. The general public, however, rejected the ruling and asked for everyone to be prosecuted in the same legal system: that of the United States (Deer). Two years later, Congress passed the Major Crimes Act which provided a list of crimes that were to remain under the jurisdiction of the federal government. This list includes murder, assault with intention to kill, manslaughter, and rape. Such crimes committed in Indian Country must be investigated by the Federal Bureau of Investigation and prosecuted in federal courts by United States Attorneys (Smith).

It has been argued that the federal government passing the Major Crimes Act was tautological, in that they asserted that they had the right to prosecute Native Americans for crimes that happened on their lands because they said so (Jones and Ironroad). Discussing the reasons behind the passing of the Major Crimes Act, Sarah Deer is not convinced by the suggestion that it was done as a way to better protect Native Americans from violent crime. She writes that we cannot rule out the idea of it being more of a power grab than an act of benevolence.

After the passing of the Major Crimes Act, some tribal governments continued to prosecute the crimes that were listed as “major.” However, because they had become the “domain of the federal government” (Deer 37) not all tribes kept on dealing with these crimes, trusting that the federal government would do so. Less than a century later, jurisdiction would be transferred again.

b) Public Law 280 (1953)

The 1950s is known as the termination period, a period during which the government passed a set of policies the goal of which was to finally assimilate all Native Americans into mainstream American society. Special relationships between tribes and the federal government were ended; Natives were strongly encouraged to move to urban areas; and the federal government cut the funding of many services for Native communities, including “the justice systems in Indian Country, leaving many tribes, who did not have their traditional systems intact, with no law enforcement at all” (Smith 31).

In 1953, Public Law 280 weakened Native sovereignty by granting states¹² the jurisdiction over crimes committed by Native Americans on tribal lands. Until Public Law 280, tribes had been dealing with the federal government on all sorts of affairs, but for the most part,

¹² Six states originally: California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska. Since then, the following states have joined the list: Nevada, South Dakota, Washington, Florida, Idaho, Montana, North Dakota, Arizona, Iowa, and Utah.

they had not had to depend on or respond to state governments. The issue with the passing of Public Law 280 is that “neither states nor tribes consented” (Deer 38) and state law agencies were not given the resources which would have been necessary to enforce crimes on reservations. The situation became even more problematic when the federal government decided that tribal courts in PL280 states would no longer receive funding (Deer).

In the 1978 Supreme Court case *United States v. Wheeler*, it was ruled that while crimes committed by Native Americans in Indian Country could be prosecuted in state courts, they could also simultaneously be prosecuted by tribes who had an established justice system (Pauls): this is commonly referred to as “concurrent jurisdiction” (Smith 32). Since the 1960s, the central focus of Indian activism has been self-determination: in this context, and because they were motivated by the principle of concurrent jurisdiction, many tribes have developed their own courts. Public Law 280 also establishes a necessity for state and county law enforcement to collaborate with tribal law enforcement. This is not always simple because of the remoteness of some reservation towns that can be hours away from any state or county police precinct. Moreover, local officers in surrounding border towns are not always willing to provide assistance since:

[...] the federal government does not compensate state governments for law enforcement on reservations, and tribes generally do not pay local or federal taxes, [therefore] states have little vested interest in providing “protection” for Indian tribes. (Smith 33)

Historically, states and tribal nations have not had great relationships. Indeed, there have been regular conflicts over issues of “natural resources, taxation, gaming, and child welfare” (Deer 38). In the perspective of Native Americans, state governments are political entities that have routinely challenged their rights and it is therefore understandable that victims of crime might not want to turn to and depend on such entities to find justice. The termination policies of the 1950s have been abandoned but PL280 remains in many states and, in these states, law enforcement agencies have not always prosecuted crimes committed on reservations.

c) **Indian Civil Rights Act (1968) and *Oliphant v Suquamish* (1978)**

Regarding criminal convictions, since the enactment of the Indian Civil Rights Act of 1968, the severity of a punishment a tribal court can sentence a criminal to has been very limited. In the 1960s, the era of social justice movements, Congress focused on occurrences of tribal court abuses. Sarah Deer finds this decision to “plac[e] a cap on tribal sentencing authority” (Deer 39) a little curious since she argues that not only were there other issues

Congress could have focused on at the time, but there were as many abuses in the state and federal courts as there were in tribal courts:

[i]nstead of concentrating on the racial discrimination and political disenfranchisement suffered by Native people in the state and federal systems, Congress focused on overstated abuses by tribal court systems – a legitimate problem, to be sure, but abusive tribal governments were no more or less common than abusive state governments. (Deer 39)

Until recently, the maximum penalty a tribal court could enforce on a perpetrator was a year in prison (Smith). In terms of crimes committed against Native women for instance, some can be prosecuted by tribes but they but cannot imprison the defendant for more than one year per offense. The Tribal Law and Order Act of 2010, the objective of which was “to strengthen tribal law enforcement and the ability to prosecute and fight crime more effectively” (Rosenthal), extended the maximum penalty per offence from one year to three years in prison and multiple offenses can amount to a maximum of nine years in prison (Folsom-Smith). Even if the limit on sentencing was partially addressed in 2010, another problem adds to the jurisdictional maze and remains very problematic today: the fact that tribal courts do not have the authority to prosecute non-Native criminals who commit crimes in Indian country. This stems from a precedent that was established by the Supreme Court in 1978.

In 1978, a Supreme Court case was conceivably more consequential as it stripped tribes of their sovereignty to a greater extent: *Oliphant v. Suquamish Indian Tribe* made it impossible for a tribe to prosecute non-Native perpetrators of crimes committed on Native land (Smith; Deer). If the victim and the perpetrator are both non-Native, an officer of either county or state police has to make the arrest. If the victim is Native, a federally certified agent has to be called (Crane-Murdoch). In any case, tribal police officers cannot arrest a non-Indian who commits a crime in Indian Country (Smith); in fact, “the harshest enforcement tool a tribal officer can legally wield over a non-Indian is a traffic ticket” (Crane-Murdoch). A resolution of the 2013 reauthorization of the Violence Against Women Act (or VAWA) was designed to partially correct this by making it possible for tribes to prosecute non-Native perpetrators of domestic violence under certain conditions. Since the work of Native advocates such as Sarah Deer has pushed towards the creation of this resolution, it will be further discussed later in this dissertation.

In any case, the decision in *Oliphant v. Suquamish* “has created a practical vacuum of justice for victims who have the misfortune of being attacked by a non-Indian” (Deer 41). A critical consequence of this decision is the message it sends; what transpires is that, in Indian

Country, crimes go unpunished: “[p]edophiles and sexual predators [...] commit crimes within Indian country because the vulnerability of the citizens and the jurisdictional gaps” (Deer 41).

Even if tribes recovered jurisdiction over non-Native criminals, they still would not be able to prosecute major crimes because of the Major Crimes Act and it is major crimes that we talk about when addressing the MMIWG2S crisis. Rape and murder fall under the jurisdiction of the federal government and unfortunately, the federal government does not always honor this responsibility.

2) Continuing Federal Complicity: Further Neglect From the Federal Government

Besides having created laws and policies that fail to protect Native women from violent crime, the federal government tends to fail in three other ways: in failing to prosecute “major” crimes, in failing to fund tribal law enforcement agencies and courts, and in failing to offer meaningful and valuable apologies (Deer).

Because of the Major Crimes Act, the violent crimes of the MMIWG2S crisis cannot be prosecuted at all in tribal or state courts. Only the federal government can deal with rape or murder. The problem is that United States attorneys tend to be reluctant to prosecute cases involving crimes that occur in Indian Country:

[...] the Justice Department, which is responsible for prosecuting the most serious crimes on reservations, files charges in only about half of Indian Country murder investigations and turns down nearly two-thirds of sexual assault cases. [...] Federal prosecutors in 2011 declined to file charges in 52 percent of cases involving the most serious crimes committed on Indian reservations [...]. The government did not pursue rape charges on reservations 65 percent of the time [in 2011] and rejected 61 percent of cases involving charges of sexual abuse of children [...]. (Williams, “Higher Crime, Fewer Charges on Indian Land”)

Failure to prosecute major crimes in Indian Country means that perpetrators of violence against Native women are not systematically held accountable: “[...] when comparing the numbers of Native women who are experiencing rape with the number of prosecutions, we find a significant disparity” (Deer 41).

Prosecutors who turn down cases of crimes that happened on reservations say they do so because they “lack admissible evidence” (Williams, “Higher Crime, Fewer Charges on Indian Land”) but Native communities report that they are seldom made aware of why the crimes are not prosecuted. When the federal justice system declines cases, tribal courts can take over the investigation and possibly prosecute criminals, but they usually wait quite some time

until they can access evidence, sometimes more than a year (Smith). In cases of kidnapping and murder, unfortunately, such a long waiting period highly reduces the chances of solving the crime. Oftentimes, evidence is never even handed over with the justification that the FBI investigation might be reopened at some point (Williams, “Higher Crime, Fewer Charges on Indian Land”). Sarah Deer adds that because there is no transparency in why and how prosecutors choose to proceed with cases and refuse others, victims feel abandoned and might prefer not to report a rape.

Deer emphasizes another issue: “tribal nations are notoriously under resourced” (42) and it has a serious impact on their ability to enforce laws and maintain justice. She summarizes what women whom she has helped over the years have told her in this sentence: “even if jurisdiction is restored, my tribal government doesn’t have the money to implement a comprehensive antirape strategy” (Deer 42). Multiple reports issued by the federal government have called attention to this problem, such as *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* issued by the United States Civil Rights Commission in February 2003. This report found that

[t]here are fewer law enforcement officers in Indian country than in other rural areas and significantly fewer per capita than nationwide. In addition, per capita spending on law enforcement in Native American communities is roughly 60% of the national average. (Deer 42)

There is a clear inequality between tribal justice systems and other justice systems in the United States that result in impaired ability to fight against crime effectively. Some tribes successfully prosecute crime in spite of all these limitations but there seems to be a real need for reform.

Finally, the federal government still fails to protect Native women because it has yet to provide a meaningful apology for the harm it has caused to generations of Native Americans. It has not yet been officially recognized that colonization is the root cause of suffering for Native people, and it therefore remains complicit (Deer). There have been two¹³ official apologies offered by the government of the United States but neither of them has meant much to Native Americans. In 2000, Kevin Gover was Assistant Secretary of the Interior for Indian Affairs and he gave a speech in which he apologized for the harm caused by the BIA since its creation in 1824. There are many reasons why his apology does not carry much weight. For instance, the White House never endorsed his statement. More strikingly, Gover is Native American himself – a citizen of the Pawnee Nation of Oklahoma – and it does not make much sense for a Native American to be the one apologizing for crimes that were committed against

¹³ Three if we include an apology made to Native Hawaiians in 1993 (Deer)

his own ancestors and still puts his family and friends in danger today. Sarah Deer suggests that it would be similar to having a Jewish person apologize for the Holocaust. The second official apology was provided by President Barack Obama in December 2009 in the form of a rider attached to the Department of Defense Appropriations Act of 2010. Deer finds this apology to be of even lesser value because it blames individual United States citizens instead of the federal government for the harm done to Native Americans.

These two attempts to make amends seem to have carried a symbolic meaning only and neither of them mentioned sexual violence. In fact, Deer asserts that never has the federal government acknowledged the intricate link between sexual violence and colonization and she holds that “an apology that falls short of accepting true accountability provides the foundation for the assaults to continue” (Deer 47). The federal government has harmed Native Americans for centuries, tried to annihilate their culture, and continues to put them in an inferior position by failing to adequately correct its wrongs. Therefore, it is not surprising that their descendants should not trust this entity or feel like they can rely on it. As a consequence, trust has to be built and not only will it take time, but there will especially need to be concrete measures put in place. Until then, settler colonialism will remain an ongoing structure and will not be considered as a historical event. A meaningful apology must recognize the ongoing harm and must be accompanied with reform (Deer).

Although efforts have been and are being made through the passing of legislations that are making it more adequate, the justice system and its jurisdictional complexity in regards with Indian Country is defective and causing harm. The current situation cannot be disconnected from the legacy of oppression settler colonialism is responsible for: Native courts do not have the sovereignty to prosecute serious crimes and those who can – United States attorneys – often decline to prosecute them; in some cases, tribal police has to work with state, local or federal justice systems but these systems do not always help when needed; tribal courts can only sentence criminals with convictions of reduced severity; and last but not least, they have no power over non-Indian criminals who commit serious crimes on their lands. There is total impunity for non-Indian criminals in Indian Country. It is in this context that women, girls, and two-spirit people are disappearing and being murdered.

Mary-Kathryn Nagle refuses to call this system “broken.” She underscores that this legal framework was constructed in the era of termination of Indian tribes; thus “it was not designed to protect Native women, girls, and two-spirit people” (The House Committee on Natural Resources). In the words of Andrea Smith, it is “undeniable that U.S. policy has codified the ‘rapability’ of Native women” (Smith 33). Sarah Deer speaks of “wide gaps created by a system

originally designed to destroy, not heal” (Deer 43). The current legislation fails to protect Native women, girls, and two-spirit people who live on reservations from Native criminals, and it also fails to protect them from non-Native criminals. In some reservations, non-Natives come in large numbers. Indeed, many Native lands that are rich in oil and natural gases have attracted extractive industrial corporations. In these reservations that have witnessed resource-based booms, floods of mostly young and male workers that have no connection with the local communities, a lot of money to spend and who usually share trailers in what are commonly called “man camps,” tend to lead to an increase of violent crime, sex trafficking and rape cases (Beck). Because they work a lot and do not have much entertainment or romantic opportunities, they are “prime customers for traffickers of sex and drugs” (Brown). It happened for instance in the area surrounding the Fort Berthold Reservation in North Dakota after the Bakken oil boom of the mid-2000s. In such places, because of the current justice system, tribal police are unable to protect women from non-Native criminals who come to live in their homelands.

“Descriptions of these camps are eerily similar to the frontier dynamic as chronicled in the history of gold and oil” (Deer 78). The jurisdictional complexities put Native women in danger today, but they have been experiencing violence since the first contact. Although settler colonialism has brought about violence for all Native Americans, women have been impacted in specific ways and this still has consequences today. The next part of this dissertation explores the intricacies of colonization and gender.

C. Colonization: A Gendered Process Which Has Been Particularly Violent to Women

Now that we have discussed the current legal context that makes Native Americans – and more specifically Native American women, girls, and two-spirit people – particularly vulnerable to violence, we will consider how gendered a process colonization has been in the United States. In order to do so, we must first go back to pre-Columbian times when Native American women led lives that were very different to those of European women and understand how, in fact, this difference posed a threat to white settlers. As we will see, this part of American history has not been well documented.

1) Notions of Gender in Pre-Colombian Societies

“Even today, our understanding of the history and culture of American Indians is too often derived from unsympathetic, culturally biased and inaccurate reports” Franck W. Porter

III wrote (8). Native American women have often been misrepresented by historians. Overall, the role and importance Native women had in tribal societies before colonization was not well recorded and history books forgot to cite the names of significant historical Native female figures:

At best, Americans know the names of a few famous American Indian women, such as Pocahontas, Sacagawea, Maria Tallchief, or Maria Martinez. [...] Americans have a very limited knowledge and understanding of Indians, [...] because of inadequate school textbooks [...]. (Green 15-16)

The history of Native people has mostly been recorded by white men who had interests in war, business transactions, and diplomacy. As a consequence, they mainly wrote about men who had important roles, but did not pay attention to the women, although they were viewed in most tribes as equally important as the men. History told by Native Americans is very different, but it has been left aside for a long time as tribes based history recording on oral traditions:

You have to remember; our ancestors did not have a written language. Anything that was written [...] was written by others [...]. For a long time, no one really knew our history, until basically the 1960s. (*Native American Activist Madonna Thunder Hawk 2'37*)

Focusing on history told by Native Americans allows us to have a more accurate idea of women's roles in American Indian societies and to become aware of how colonization of the United States by Europeans transformed their lives and the positions they used to have in tribal societies (Green).

First, it is important to note that there were many diverse tribes in the North American continent before the arrival of the colonists. It is difficult to estimate how many tribes there were in pre-Columbian North America. However, linking ethnicity to language gives us an idea on the diversity of peoples living on the continent at the time: there were between 300 and 500 languages spoken in North America at contact so we can estimate that there were approximately the same number of tribes. Their political and religious organizations varied as well as their social systems (Pauls). We must therefore be very careful to avoid generalization when describing the roles of women in Native societies.

Nevertheless, the image of the Native woman in general, regardless of tribal diversity, is quite distinct from European symbolism:

An American Indian woman is primarily defined by her tribal identity. In her eyes, her destiny is necessarily that of her people, and her sense of herself as a woman is first and foremost prescribed by her tribe. The definitions of woman's roles are as diverse as tribal cultures in the Americas. In some she is devalued, in others she wields considerable power. In some she is a

familial/clan adjunct, in some she is as close to autonomous as her economic circumstances and psychological traits permit. But in no tribal definitions is she perceived in the same way as are women in western industrial and postindustrial cultures. (Allen 31)

The image of the woman itself tends to be very positive in tribal mythology. In many tribes, it is believed that “their origin as a culture stems from the female” and that “feminine spirits [are] central to everyday life” (Green 21). The image of the Native woman is far from the Christian idea of Eve, described in the Bible as the temptress who incites Man to sin. It also stands out from the virgin mother or the Madonna, a passive individual whose sole purpose is to give birth (Allen). On the contrary, the Native woman is “viewed as the source of life, providing sustenance and protection as well as certain cultural values, such as truth” (Green 21). Incidentally, most ceremonies cannot be held without the presence of women and their occult powers are linked to their hormonal cycles. Many tribes like the Lakota people believe that the power of a woman is at its strongest at the peak of her fecundity. Depending on their purpose, ceremonies require women at different stages of their lives: the energy of unmarried and virginal women is pure and therefore very strong, but mature women who have had children or who are post-menopausal are also essential to certain types of rituals (Allen). Even in tribes that worship a majority of male gods and spirits and where Native men are important, the body and mind of Native women is held in high respect and her roles in society are celebrated (Green).

In their relationships with men, Native women usually maintained autonomy and power. Rayna Green writes that, although marriages were often arranged, divorce was easily attainable: furthermore, if a couple separated, the man would leave the house and the children would usually remain with their mother. Women enjoyed “a great deal of power and authority within their families” (24) since many tribes were matrilocal and matrilineal. In tribes that were matrilocal, a newlywed couple would live with the family of the woman or somewhere close. In matrilineal tribes, children inherited personal property and the right to hold office from their mothers. Furthermore, women tended to enjoy a certain degree of freedom over their bodies and their decisions: “[i]n some tribes, adult women were free to seek out sexual alliances with whomever they chose” (Green 37). For that reason, the concept of the illegitimate child did not exist in Native American cultures: “[i]f a girl gets pregnant, the baby is still part of the family, and the mother is too” (Allen 35).

A man was expected to hold his partner in high respect. For instance, it was customary for a Paiute man to take care of his partner during the last months of pregnancy and to take care

of their newborn child with her, as Sarah Winnemucca Hopkins wrote in her autobiography in 1883. A Paiute man who did not participate in taking care of the child and who did not pay attention to his wife's health was considered to be an outcast (Green). Tamra Jerue, current executive director of the Alaska Native Women's Resource Center, stated that many Native language groups of Alaska had "no words or description for violence within a family home" (The House Committee on Natural Resources 41).

Additionally, it is worth noting that sexual assault was rare among tribal societies. The Hupa people of Northwestern California did not even have a word for rape in their language (Lumsden). Frequently, women and children were made prisoners by rival tribes during wars, but they were not sexually abused. As a matter of fact, they were not even used as slaves but were usually adopted by families and assimilated into the tribe (Green). Although there is no trace of rape laws dating back from pre-Colombian times,¹⁴ there is anecdotal evidence that it was considered to be a very serious crime: "punishments in some regions included corporal punishment, banishment, and even the death penalty" (Deer 21). Sarah Deer underscores that while Anglo-American rape law has historically been developed in the patriarchal framework that women are property – rape was not a crime committed against a woman but against her father, her husband, her brother, or any other man to whom she belonged – Native American rape law acknowledged the agency and independence of Native women. The laws of the Muscogee nation¹⁵ state that a Native woman who was raped could participate in determining the sentence of the person who abused her:

And be it farther enacted if any person or persons should undertake to force a woman and did it by force, it shall be left to woman what punishment she should satisfied with to whip or pay what she say it be law. (Deer 17)

The fact that a survivor of sexual violence could "say law" shows how victim centered most tribal justice systems were. Additionally, we have evidence that rape was considered to be a serious crime since, in many cultures such as that of the Iroquois, men who had raped a woman could not access positions of leadership and were therefore held accountable for their behavior (Deer). Anecdotes from the oral tradition of many tribes allow us to consider that sexual violence was rare.

¹⁴ Before the arrival of Europeans, Native American tribes did have legal systems in place, but they were not written down. Laws were oral. Sarah Deer writes that "for many Native people, reducing laws to writing weakened their power by limiting accessibility to a few and losing the value or rhythm and intonation" (Deer 16).

¹⁵ Sarah Deer is a citizen of the Muscogee Nation. In *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (2015), she analyzed some of the earliest criminal laws written by her ancestors in 1825 when they were encouraged by federal officials to write them down.

Even early colonists noticed the quasi-inexistence of sexual violence among Native groups. In 1722, French settler Diron D'Artiguette wrote that young Native women were "the mistresses of their own bodies" (Deer 20). Other settlers were quite surprised to find out that white prisoners were hardly ever raped. As an illustration, Smith quotes the words Brigadier General James Clinton said to his soldiers in 1779: "Bad as the Indians are, they never violate the chastity of any women, their prisoners" (Smith 18). Women also wrote about their surprise when they understood that Native people would not molest them. In many cases, they chose to remain in the tribes: "[b]etween 1675 and 1763, almost 40 percent of women who were taken captive by Native people in New England chose to remain with their captors" (Smith 20).

Not only was it rare for Native women to be sexually assaulted by members of their community but they also had important roles that granted them a status equal to that of the men. For the most part, men and women did not perform the same type of labor but there was a significant gender balance. First of all, women were often in charge of agriculture: they grew food and medical plants which is why they were known as "the mistresses of the soil" (Green 27). They fed and nurtured their tribes and for that reason they were valued members of society. Several European army officers noted that Native women enjoyed better privileges than white women and they connected this with their role as agriculturists: "[...] unlike white women who demanded rights, Indian women earned them because they engaged in 'manly labor'" (Green 50). Paula Gunn Allen adds that:

In times past, as in times present, women carried enormous burdens with aplomb. We were far indeed from the "weaker sex," the designation that white aristocratic sisters un-happily earned for us all. (34)

Along with working in the fields, Native women were skilled craftspeople: they built houses and boats and crafted all types of objects that were then traded (Green; Rountree). They were indisputably important in the economy of their tribes. They were experts in the tanning and dyeing of pelts the men would bring back from hunting expeditions, which they sold in large numbers to whites when they started to explore and colonize the continent (Green).

The importance of women in pre-Columbian Native societies went beyond agriculture, handicraft, and trade. Although healers tended to be men, women took care of pregnancies and child births and, thanks to their knowledge of plants, they would give nutritional advice and prepare medicines. Moreover, they could either appear in councils as representatives of women and children or they were trusted with the power of naming the leaders of tribal councils. They customarily decided what was to be done of prisoners, could veto decisions to go to war, and there were sometimes female chiefs: this was the case for instance in Iroquois society which

was fairly female-centered (Green; Smith; Deer). Women fighting in wars was a rare thing, but it did happen on some occasions. Green mentions women who rushed to the battlefield to fight in their fallen husbands' or brothers' place. She adds that, in these cases, the women who took up arms "were later given the privilege of fighting or earned war titles that gave them the privilege of singing and dancing with warriors forever after" (24).

The lives women led in pre-Columbian North America stood in great contrast with that of women in Europe at the time. Smith discusses the high degree of patriarchy embedded in the social organization of European countries and compares it to the autonomy and power women enjoyed in Native American tribes. In Europe, society was based on misogyny and violence towards women. She highlights the fact that women who did not depend on men and had certain autonomy and power were vilified. She writes that, in England, it was forbidden for women to express a political opinion and, if they talked about taxation in 1664 for example, their tongue would be nailed to a tree. She also adds that at the same period, "in some English towns, as many as a third of the population were accused of witchcraft" and therefore "targeted for destruction" (18). Many women were accused of being witches because they were healers and would make herbal medicines, which, on the contrary, was one of the respected roles of Native women.

Compared to European societies, Native communities were overall more egalitarian and more peaceful, which Smith argues many colonists perceived fairly quickly. She quotes St John de Crevecoeur's *Letters from an American Farmer*, first published in 1782, in which he noted that many whites were attracted to Native communities and decided to live among them when, asymmetrically, there is no record of one Native American individual settling among whites: "[t]housands of Europeans are Indians, and we have no example of even one of these Aborigines having from choice become Europeans!" (Smith 18).

Allen considered the serious possibility that, upon finding out not all women were mistreated, white women would no longer accept the mistreatment they were receiving from white men. Therefore, colonizers realized early on the threat Native women posed on the development of a patriarchal society in North America and it became necessary to break down the power of Native women (Monchalin *et al.*). The arrangements of Native societies and more specifically their gender balance had to be deconstructed by colonists if they wanted to recreate the European model in the Americas.

2) *The Need to Import Patriarchy to Colonize and Settle A New Continent*

As demonstrated before, colonization has been extremely violent for both Native women and men. However, colonization has been a gendered process and Native women have been the targets of violence in specific ways. Green writes that:

After the invasion of North America, Indian women's lives, like those of their male counterparts, changed immediately. Of course, death from disease was blind to gender, but in other ways the coming of Europeans to the Americas affected women differently than it did men. The economic, political, and social status of the former suffered immeasurably (33).

To Allen, colonizers knew that subjugating Native women was necessary if they wanted to subjugate Native peoples as a whole. In order to do so, they had to establish a form of hierarchy among Native societies, and they did so through what Smith calls "patriarchal gender violence," which she defines as "the process by which colonizers inscribe hierarchy and domination on the bodies of the colonized" (23). Colonizers wished to limit the powers women had in Native communities because they threatened the patriarchal order that worked well for them. From the beginning, they simply refused to negotiate with women leaders. As for Native Americans, they found the absence of women from European decision-making quite surprising (Green). Over the years, the social, political, and economic powers Native women used to enjoy before contact progressively declined.

When in the 1880s, Senator James R. Doolittle noticed that colonists invaded Indian territories and killed buffalo herds on which the survival of many tribes depended, he thought it would be safer for Native Americans to be gathered in what we now call Indian reservations (Green). Although they were meant to be protecting them, reservations felt more like prisons to most Native Americans, especially since many of their traditions were then on forbidden, such as dances, ceremonies, and songs. The lives of women around that time changed substantially. In some tribes, "women who had once been central to their tribe's rituals experienced a diminution in social status" (56): as an example, Green mentions the Sioux women could no longer perform their traditional Sun Dance. For women to make medicines from plants and make use of their healing skills was seen by colonizers as obscure and a sign of savagery and was therefore prohibited. More importantly, the main traditional activities for which Native men and women were honored and respected were taken away from them. Being confined to a reservation lessened the opportunity for men to hunt like they used to, and consequently, the tanning skills of the women and their ability to prepare food from big game

were no longer needed. On top of that, the men were taught how to farm in accordance with the Western model, but farming had mostly been the responsibility of the women and what had made them important in their communities: “when the government tried to make farmers out of Indian men, many women were deprived of their role as agriculturists” (Green 48). In the Western mind, Native women were being freed from what was seen as slave labor: Native women were often described as the servants of the men. Thomas Jefferson wrote in 1785 that Native women of Virginia were “submitted to unjust drudgery” and that “it is civilization alone that replaces women in the enjoyment of their natural equality” (Jefferson 117–18). As for William Clark a hundred years later, he described Native women as being “merely beasts of burden” (Green 48). Yet, contrarily to what these two men and many white Americans thought, by taking away from Native women what they had been honored for in their culture, white settlers were actually making them more vulnerable to violence and oppression and reducing their quality of life.

The off-reservation boarding schools for Native Americans that have already been discussed in this dissertation were critical in instituting gender hierarchy among Native Americans. In boarding schools, boys and girls who arrived at a very young age were taught how to perform gender in the Western way. Because a Western standard of masculinity was promoted, boys were discouraged from caring for their future children and wives, like the men before them typically did (Green), and they were mainly trained to do manual labor and farming (Smith). Girls learned all kinds of skills related to domestic work in order to become dutiful housewives (see figure 1). Smith writes that:

The primary role of this education for Indian girls was to inculcate patriarchal norms into Native communities so that women would lose their place of leadership in Native communities (37).

Most if not all boarding schools strictly segregated boys and girls whose experiences there were therefore very different. The girls were surveilled very closely – much more than the boys – and they usually could not even go outside in the school yard without being monitored (Lomawaima). Educating Native American women on domesticity in such confining environments allowed white settlers to annihilate what they saw as a threat to patriarchy; it allowed the installation of Native women in an oppressed position of society:

Analysis of the roots of domestic education for all American women makes clear the underlying federal agenda, which was to train Indian girls in subservience and submission to authority (Lomawaima 229).

Boarding schools were successful in their design since Native communities were deeply transformed as a consequence. The young adults who returned to their original tribes had never been introduced to traditional practices and could not speak a word in their families' languages. Some never came home, either because they died away in the residential school or because many girls were married to white men (Green). In any case, their lives were altered, and some forgot about the powerful social positions of their mothers and grandmothers.



Figure 1. Photograph taken at the Indian School in Santa Fe (New Mexico) around 1904, of a group of girls playing with dolls. Girls in this school were “far more confined than the boys” (Green 68).

Sarah Deer writes that “the federal agenda was clear: [...] indoctrinate the dominant paradigm of the patriarchy into Native women” (Deer 70). She describes boarding schools as institutions where Native girls were commodified. We also know from testimonies of survivors that violence in the form of both corporal punishment and sexual abuse was very common. Deer argues that Native girls and women were being trafficked in boarding schools and that, in fact, they have been sexually trafficked throughout the centuries, ever since the arrival of the first colonists on the continent.

3) How Native Women Came to Be a Commodity: Historical Overview of the Trafficking of Native Women

In the first stages of colonization, white male explorers and settlers used Native women to their advantage in different ways and with various motives. First, for a trader to have a Native woman by his side was a real asset for multiple reasons; they knew which plants could be eaten; they were able to craft tools and provide shelter; they could be used as translators and

informants; and they generally had knowledge of the land, its peoples, and their customs. To be accompanied by an Indian woman was reassuring for many traders: it made them feel safer on Indian lands (Green).

The Shoshone woman called Sacagawea is one of the best-known examples of Native women who were used by explorers. Born in 1788, she was captured as a child by the enemy tribe of the Hidatsas and sold into a nonconsensual marriage to a French-Canadian explorer named Toussaint Charbonneau. Although we know little about her life, her story has been told over and over in popular culture: novels, paintings, songs, films, theater plays, and more. Yet originally, the only written sources that mention her are the journals of the Lewis and Clarke expedition¹⁶ (Barbie). The Charbonneau couple and their infant son were part of the expedition. In *Sacagawea: the Making of a Myth*, Donna Barbie analyzes Captain Meriwether Lewis's words and stresses the extent to which he depicts the woman as being nothing but a useful tool. He and other members of the expedition regarded her a "savage" woman who had little if any emotion and intelligence. Lewis even used the word "object" to refer to her, and, when she fell ill, he emphasized how crucial she was to the expedition:

This gave me some concern as well for the poor object herself, then with a young child in her arms, as from the consideration of her being our only dependence for a friendly negotiation with the Snake Indians on whom we depend for horses (Barbie 61).

In describing her as a "mere tool of the expedition" (Barbie 61), Lewis reifies Sacagawea and this is strengthened by the fact he denies her any type of emotion. He writes that she does not need anything more than food and clothes to be satisfied: "if she has enough to eat and a few trinkets to wear I believe she would be perfectly content anywhere" (Barbie 61). Deprived of what makes her human, this woman-object becomes the property of the colonizers who need her to explore and conquer uncharted territories.

Deer argues that making Native women a commodity has been "legal throughout most of [the] history" of the United States and even "encouraged by dominant culture" (Deer 62). She delves into the sexual exploitation of Native women from the arrival of Europeans on the continent. She argues that Native Americans have been enslaved from that point on, and that when you are a slave, somebody else owns your body and you no longer enjoy any autonomy over it. For that reason, "sexual exploitation is a logical result of enslavement, and trafficking

¹⁶ The Lewis & Clarke expedition (1804-1806), also known as the Corps of Discovery Expedition, was a two-year exploration of the Western part of the United States and the first-time explorers went all the way to the Pacific Coast. The exploration was commissioned by President Thomas Jefferson shortly after the 1803 Louisiana Purchase with the goal of mapping the newly acquired territory (Barbie).

flows naturally from the combination of slavery and sexual violence” (Deer 64). Of course, as the country was built, so were laws forbidding rape. However, in reality, they seldom protected Native American women or Black women. The laws did say that all women deserved protection; yet, from an Anglo-European point of view, Native women fell outside that “circle of protection”¹⁷ since their cultures generally allowed them the freedom to engage in consensual sexual activities however they pleased. In the eyes of the settlers, that made them less respectable than white women and they saw this as an excuse to use them sexually: “rape of Native women, like the rape of all the non-white women, was not truly considered rape and received a little (if any) response from the legal system” (Deer 64). As a consequence of a failure to enforce rape laws, sexual exploitation of Native people developed as if it were legal. Deer argues that because “colonial legal systems historically protected (and rewarded) the exploiters of Native women, girls, and two-spirit people [they] therefore encouraged the institutionalization of sexual subjugation” (Deer 62).

When exploring the West, and especially during the Gold Rush in California, settlers would often use Native women for sex: “[d]ynamics of the Gold Rush in California during the late 1840s quickly deteriorated into wholesale abduction and sale of Native peoples” (Deer 67). Violence was a common tool to maintain them in an exploited position. Deer quotes the advice of a man who purchased a Native girl in 1868:

The girl, when sold to a white man, is generally skeary for a while and will take the first chance to run away... Should you take her again, and whip her well, and perhaps clip a little slice out of her ear, then she will stay. (Deer 65)

Deer writes that there is ample evidence that Native women were murdered, abducted, raped and used as sex slaves. An account published in 1915 on the history of Humboldt county in California clearly states that it was common for white men to kidnap Native women to use them as sex slaves in the 1800s. Deer quotes a telling excerpt of this account:

Bands of white men, consisting of three or four depraved retches, would often catch a young squaw or two and detain them for several days or weeks at their cabins and then permit them to make their way home as best they could. (Deer 67-68)

¹⁷ Lawrence Friedman quoted in Sarah Deer’s *The Beginning and End of Rape*. Friedman argued that “the law really protected only ‘respectable’ white women (and their menfolk). Women who were not ‘respectable,’ or who were black, or Native American, were effectively outside **the circle of protection**. Of course, the words of the statutes never said as much, but that was the practical result; it was rare for poor or black women to seek or get justice after rape” (Deer 64).

A Lassik woman called T'tcesta was interviewed by ethnologists in the early twentieth century and provided a rare first-person account of such an experience. She told them about how a white man kept her in his cabin and raped her for such a long period of time that she had multiple pregnancies and miscarriages of which she even lost count. She testified because she wanted to tell history from her point of view, aware of the importance of speaking out for her people:

I hear people tell 'bout what [Indian] do early days to white man. Nobody ever tell what white men do to [Indian]. That's reason I tell it. That's history. That's truth. I seen it myself. (Deer 68)

Removing people from their environment and taking them to an unfamiliar place is central to human trafficking and it is a strategy that is used by today's human traffickers. The history of Native American peoples is one of many removals and relocations. Both during their deportation to foreign places and upon their arrival in reservations, Native women were put in vulnerable positions and often abused. A Creek Woman transcribed a series of stories remembering her grandmother's memories of the Trail of Tears: "sometimes, as weeks went by, the soldiers would tear the clothing off young girls twelve years of age... or young mothers and molest them" (Deer 69). Because the living conditions in reservations were poor, soldiers would often trade off life necessities such as clothes and foods for sexual favors. An Indian agent of Montana wrote in 1885 that "the Indian maiden's favor had a money value, and what wonder is it that, half-clad and half-starved, they bartered their honor... for something to cover their limbs and for food for themselves and their kin" (Deer 65).

Another way Native women came to be commoditized was through marriage. Many white men, either unaware of or unconcerned about the matrilineal practices of most Indian tribes, sought out alliances with Native women in order to acquire the friendship of their male relatives or even their lands. In Oklahoma, as late as the twentieth century, white men married Native women of prominent families of the Osage Nation after oil was discovered on their territory. In 1910, an Oklahoma City newspaper published an article entitled "Dusky Maidens are in Demand" informed its readers at the time that:

[...] dusky maidens of the Yakima Indian reservation are receiving no end of attention from white suitors. Many a mixed blood marriage has been made lately because of the money that Indian maidens bring their husbands. (Deer 66)

This article reveals how Native women were seen as a way to acquire land and power before or even if they were seen as human beings. Some of them were murdered by their white husbands who wished to inherit their wealth since, in Osage tradition, land revenues were reserved to the

women, including possible oil revenues (Green; Deer). Native Americans usually thought Europeans would honor the status of women and the tribal practices of matrilineality, but Europeans firmly believed that through marriage, men acquired control over women, their property, and the children (Green).

Whether they were taken as wives or sexual companions, Native women were “a necessity of life in the New World” (Green 38). One should not assume that Native women never willingly took white men as their husbands or partners, but there is substantial evidence that most were captured, sexually assaulted, enslaved, and humiliated. Rayna Green argues that there was another way in which Native women were valuable to white settlers in their plan to assimilate the Indigenous populations. In the nineteenth century, when the number of white settlers progressively increased in frontier areas, having a Native woman as a wife or a sexual partner started to be frowned upon and discouraged: if white men brought their Native women and children to the East, “they encountered a world that abhorred racial mixing” (Green 40). However, in earlier stages of colonization, miscegenation was seen as an essential way to civilize Native Americans. Rayna Green argues that it was not the wars nor the diseases that led to the cultural destruction of Native peoples but what she calls the “sexual conquest of North America” as the growth of a “mixed-blood population changed forever the nature of Indian societies” (41). Bird asserts that “the dominant culture is perceived as actually elevating the oppressed by coupling with them” (79). Another consequence of rape on the bodies of Native women is that it reduced birth rates, since, in some communities, women chose to resort to abortions and restrict their fertility in other ways (Deer). Sarah Winnemucca, a Paiute leader who used the education she got in a boarding school to speak out for her people (Green), wrote in 1883: “My people have been so unhappy for a long time they wish now to disincrease, instead of multiply. The mothers are afraid to have more children, for fear they shall have daughters, who are not safe even in their mother’s presence” (Deer 112).

Smith’s main claim is that sexual violence was used by colonizers as “a primary tool of genocide” (3). In connection with the violence Native people have experienced for centuries, she sees the need to broaden the meaning we usually attribute to the term “sexual violence:”

[...] we cannot limit our conception of sexual violence to individual acts of rape – rather it encompasses a wide range of strategies designed not only to destroy peoples, but to destroy their sense of being a people (3).

Sexual violence was used by colonizers to take away Native peoples’ humanity and make them something that is less than human. It is in this context, where Indian women are made less than human, that colonization is facilitated: by possessing them using them as guides or assets,

getting hold of their lands, and creating new mixed-raced generations of people using their bodies. If we consider this in relation with the blood-quantum regime which claims that a minimum of one fourth¹⁸ of Native ancestry is required for one's identity to be officially recognized as Native American, it becomes undeniable that sexual alliances with Native women were in part motivated by the goal of transforming Native societies.

During the period of termination of the 1950s, which we can view as the final measure taken to assimilate Native Americans into American society, a program of relocation encouraged Native youth to move from reservations to urban areas. This program was presented as a generous opportunity; applicants were interviewed by BIA representatives in a serious manner that made it sound like it was competitive and valuable. Furthermore, with cutbacks on government funding for reservations, the quality of life in Indian country had deteriorated. For these reasons, the program was very effective: there were less than 8 percent of Native people living in urban areas in 1940 (Deer) and this number has today reached 71 percent (Lucchesi and Echo-Hawk). Unfortunately, since not much help was given to applicants once they had reached urban areas, a large majority of them remained unemployed – discriminated against because of racial prejudices – and most of them would have preferred to go back home if they had the financial means to do so.¹⁹ As a consequence, they often found themselves in vulnerable positions: “all these urbanization factors created the perfect opportunity for pimps and predators to gain a foothold in the lives of Native people” (Deer 73). We do not have empirical evidence of the extent to which Native American women who moved to urban areas have been impacted by sex trafficking, but we do have anecdotal evidence once again. A woman name Amabel Bulin testified in court in 1944 that alcohol was illegally sold to young Native girls in Minneapolis, which made them easy targets for sex traffickers (Deer). A report issued by the FBI and the Anchorage Police Department in 2010 concluded that traffickers attract Alaska Native women to catch them in sex trafficking rings: “about one-third of women, girls, and two-spirit people arrested for prostitution were Native, even though less than 10 percent of the city's population is Native.” It is clear that the federally encouraged migration of Native women from reservations to urban areas has put them in vulnerable positions. Although forced removals, assimilation, and termination policies are no longer a reality in the United States, Native women remain in these vulnerable positions.

¹⁸ At least one out of a person's four grandparents has to be a member of a recognized tribe for this person to be considered Native American.

¹⁹ A study led in 1965 revealed that about 75 percent of them would have preferred to go back to their reservation (Deer 73).

D. Conclusion

The arrival of Europeans in North America deeply transformed the lives of its Native peoples. The process of colonizing a country in order to settle it with new inhabitants is inherently violent for Indigenous people who occupy the coveted land and who therefore have to be relocated or eliminated. Because the Native people of today's United States had a fairly egalitarian social organization, co-habiting the New World with them was problematic for the patriarchal white settlers and the power of Native women soon appeared to be threatening. The nature of Native societies had to be changed entirely.

Violence against women has been a tool of colonialism in North America. The objectification and dehumanization of women allowed to reduce their worth and justify the acquisition of their bodies and the destruction of their power. Boarding schools taught them how to be the submissive wives of both Native and non-Native men in order to secure a hierarchical structure in a society settled on new lands but perpetuating the centuries old heteropatriarchal norms of European societies. Native women were used as instruments of colonization because of their usefulness in exploring and taming a new environment; were commoditized and used by the settlers in ways that profited them – including for sex – and were used in the creation of a mixed-blood population that progressively made humans of the United States less and less Indian and therefore less and less likely to claim ownership of the land.

Not only have Native women suffered from the violence of colonialism but the colonial history of the country itself still hurts them today because the violence has been fixed into laws as the political and judicial system was built. Policies and laws were designed so as to limit the authority of tribal nations and, as a consequence, it impacts their ability to prosecute crimes today, thus making it difficult to keep its citizens – especially its women, girls, and two-spirit people – safe. The federal government – Congress and the Supreme Court – are behind these laws and policies and have yet to acknowledge their flaws and correct them. Nonetheless, the U.S. government has provided a few weak apologies, which, without any proposition of reform, sound hollow and carry a symbolic meaning only.

Of course, colonization of their ancestral lands has brought Native Americans considerable pain, but they have continually found ways to resist. From the arrival of the colonists in the Americas to the late nineteenth century, Native Americans resisted military conquest with force and diplomacy. Most of what Anglo-Americans called “Indian uprisings” were in fact protests from tribes who could no longer bear witnessing their women and children being hurt by white settlers. Historians generally cited hunger and anger as Native Americans’

primary motives in such conflicts, but they were often trying to protect their women as best they could. For instance, the U.S.-Dakota War in Minnesota of 1862 – commonly referred to as the “Sioux uprising” – broke out after crimes committed by white men against white women were left uninvestigated by the Office of Indian Affairs (Deer). Aside from keeping women and children safe, tribal nations actively fought for the enforcement of treaties and combatted assimilation policies that were meant to destroy their culture (allotment, boarding schools, termination of tribal rights, displacement of children, forced sterilizations, etc.). From the 1960s, the focus of Native American activism has been sovereignty and decolonization (Pauls).

Since 1492, Native women have continually fought for themselves and their kin. As a striking example of resilience, we can think for instance of the women who spent their youth in boarding schools and used the Christian education they got there to spend the rest of their lives advocating for the rights of their people (Green). Susan LaFlesche Picotte (1865-1915), the first Native woman to ever earn a medical degree, and her sister Suzette LaFlesche Tibbles (1854-1903), both spent their early years in Indian boarding schools and then fought against the general Allotment Act (or Dawes Act) of 1887 and for the enforcement of treaties. Furthermore, Susan used her medical knowledge in the Omaha reservation of Nebraska to treat diseases that were rampant there and to raise awareness on alcohol abuse that destroyed the population. Suzette went on a lecture circuit around the country to “tell people the truth about the Indians’ condition” (Green 73). She joined her sister in advocating against alcohol consumption on reservations when she found out it was used to manipulate Natives to sign over lands and goods.

Today, many Native women fight against the MMIWG2S crisis and a major part of this dissertation focuses on the work that they do. The first challenge that most of them are met with is that they tackle an issue that has long been invisible to a major part of the U.S. population. The next ambition of this dissertation is to focus on the reasons behind this invisibility and the ways in which Native activists choose to share the stories in order to raise awareness.

II. Dealing with an Invisible Crisis

The *Merriam Webster* dictionary defines the word crisis as “a situation that has reached a critical phase” (“Crisis”). Yet, the problem of missing and murdered Indigenous women, girls, and two-spirit people, very often referred to as a crisis, has been invisible for centuries and although it has recently attracted more attention, it still critically lacks visibility. The MMIWG2S crisis is also often called an “epidemic” (Gambino; Golden; Haaland; Lucchesi and Echo-Hawk). In fact, Sarah Deer does not think the word “epidemic” should be used in this context because she argues that it “depoliticizes rape” (Deer x). On the one hand, she acknowledges that it works well to describe the urgency of the problem. She recognizes that using such a word attracts attention – which is much needed here – and notes that an epidemic affects a large number of people and this is the case with MMIWG2S. An epidemic is something that must be solved quickly in order to limit the damage; therefore, it has to generate broad preoccupation. On the other hand, an epidemic is natural – it appears on its own in nature – whereas the MMIWG2S crisis was caused by humans. Using the word “epidemic” makes it sound like it is no one’s responsibility: it “deflects responsibility because it fails to acknowledge the agency of perpetrators and those who allow the problem to continue” (Deer x).

In any case, this chapter investigates how a situation can be so critical and urgent as to be called an epidemic, and yet remain quasi-invisible. It also examines the strategies that advocates of the MMIWG2S crisis put in place in order to lift the veil and raise awareness on the issue.

An analysis of how Native Americans have been generally represented, focusing on how powerful narratives dating back from the early years of colonization have resisted time, appears to be a pertinent start to this chapter. We will see how the creation of negative stereotypes has consequences on Native Americans today, especially when representation is so unrealistic that it conveys the idea that almost all Native American tribes have disappeared or when it blames them for what they experience by attributing them all kinds of flaws and sins.

Next, we will pay attention to more accurate representation produced today. As an example of better depiction of Native women, we shall review a documentary that was made by Native women about Native female activists. Furthermore, even if it is partly or entirely fictional, realistic portrayal of the crisis can make a difference and we will see that with a film and a play that both raise awareness on the MMIWG2S crisis.

The whole point of raising awareness on a topic is to alert people and the authorities that change is needed in order to find deep-rooted solutions to the crisis. However, to convince

governments and the general public that Native women are going missing and getting murdered at alarming rates and that it hurts Native communities immensely, we have to have an idea of the scope of the crisis: numbers are needed. More and more data has been collected on MMIWG2S since the late 1990s, but Native women argue that the information we have at this point is still not satisfactory enough. After a discussion on the limits of federal data collection, we will consider why Native activists favor Indigenous data collection while paying a close look to the Sovereign Bodies Institute, an Indigenous organization that has been mapping cases of MMIWG2S for a few years now.

A. Stereotypical Representation of Native Women Brings Them Harm

A large part of the violence endured by Native Americans has been justified and normalized through the creation of narratives. For the most part, images and fictions that were created to represent Native Americans over the centuries have been constructed “by and for the white gaze” (Bird 61). Often represented as the bloodthirsty savage or the silent wise old Indian, the common representation of Native Americans has been very limited and usually hurtful to Native communities. The common stereotypes on Native Americans originated with early ethnographers who dehumanized Native Americans in order to provide a justification to their elimination and to the assimilation process that tended to be hidden behind a benevolent narrative typical to colonialism: bringing civilization to an inferior group in order to elevate their quality of life as a central justification to the conquest of their territory (Bird). According to Edward W. Saïd, who famously wrote *Orientalism* (1978) and is often regarded as the founder of postcolonial studies, the European thinker who culturally discriminates against non-European societies thinks he or she knows better than said non-European societies and rests the idea that he or she can intervene in how they organize their communities and live their lives on that justification. White settlers of North America were quick to dehumanize Native American tribes, and one of the most effective ways to do so was to over-sexualize them in order to lower them to the status of animals, or beasts. Sexual representations affected both Native American men and women but in different ways which will be examined closely in this dissertation. Negative representation of Native Americans and in particular of Native American women still has consequences today and explains, in part, why Native women, girls and two-spirit people are unsafe.

1) *Dehumanizing Native Americans to Justify the Conquest*

The work of early anthropologists and ethnographers in the study of Indigenous peoples of North America was problematic because they observed them with classic ethnographic techniques that distanced them from the object of their study (Bird). What was learnt about Native Americans mostly rested on their cultural practices, the ways in which they dressed and how they behaved from an outside perspective. Little effort was made to find out what their personalities were, why they did the things they did and what their beliefs were. As a consequence, they were usually stripped of their emotions and of any complexity that made them human. The typical stereotype of the stoic and unemotional Indian comes from this:

[...] a central stereotype of American Indians is their stoicism and lack of emotion, conditioned by a century and a half of stern, unsmiling photos, and descriptions of people behaving with programmed ritualism. Objective ethnography produced accounts of people devoid of human emotion because to write of emotion was “unscientific,” not to mention uncomfortable. Current popular culture perpetuates this image. (Bird 63)

Bird mentions an imprisoned Cheyenne character of the TV show *Dr Quinn, Medicine Woman* (1993-1998) who falls in that category and perpetuates the stereotype, noting that the viewers of the show she interviewed had opposing views on how this character represents Native Americans: white viewers tended to see his stoicism as a sign of strength whereas Native American viewers found the image reductive and indicated that it violated the dignity of a character who “was not allowed to show normal emotions” (64).

Andrea Smith and Rayna Green provide another illustration of how Native Americans were dehumanized through representation. They mention two ads of the late nineteenth and early twentieth centuries that associated Native Americans with filth, a recurring image that reinforces their inferiority to white settlers. In 1885, Procter & Gamble made an ad for their Ivory Soap claiming that it was instrumental in making Native Americans “civilized”:

We once were factious, fierce and wild,
To peaceful arts unreconciled;
Our blankets smeared with grease and stains
From buffalo meat and settlers' veins.
Through summer's dust and heat content,
From moon to moon unwashed we went;
But Ivory Soap came like a ray
Of light across our darkened way.

And now we're civil, kind and good
And keep the laws as people should.
We wear our linen, lawn and lace,

As well as folks with paler face.
And now I take, where'er we go,
This cake of Ivory Soap to show
What civilized my squaw and me
And made us clean and fair to see. (Smith 9)

This ad stands as an example of how Native Americans were described as dirty savages who needed to be tamed and civilized by white settlers. It clearly associates their way of living to impurity and to inferiority and conveys the idea that white settlers had to intervene in order to teach them better, more appropriate lifestyles. This resonates with Saïd's theory of orientalism and of the benevolence of Europeans towards groups they think they have to help. Smith argues the image of the dirty Indian also evokes a metaphor of the Native body as being "pollution" (9) on the lands the colonizers wish to acquire.

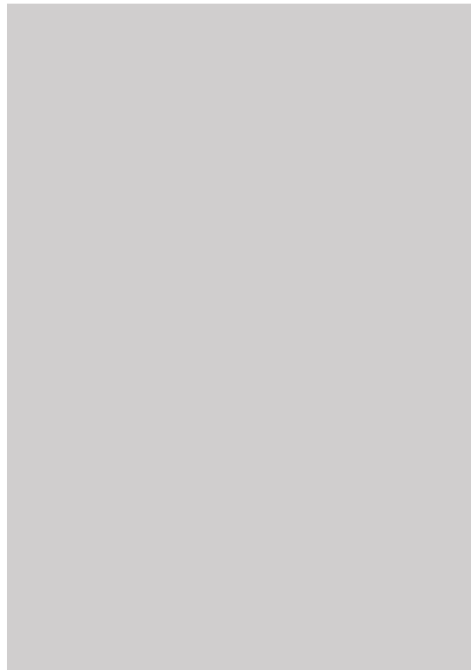


Figure 2

An ad from the early twentieth century for Wildroot Dandruff Remedy expressed a similar message in associating the cleaning of one's body with a Native American woman (Fig. 2). However, this ad is quite different as it also exploits the typical image of the Indian princess, another stereotype that originated from white imagination with the construction of different sexualized identities. Andrea Smith underlines the connection between uncleanliness and sexualization: "because Indian bodies are 'dirty,' they are considered sexually violable and 'rapable,' and the rape of bodies that are considered inherently impure or dirty simply does not

count” (10). To support her argument, she points out the case of prostitutes who are not always taken seriously when they wish to press charges for sexual assault. In discussing the impurity associated with Native bodies, she also quotes the words of a minister of Virginia of the early seventeenth century, Alexander Whitaker, who associated Native Americans with sexual sin, mostly because they did not cover their bodies in the usual European way. The bodies of Native Americans were very early on associated with sexual sin.

2) *Gender Construction and Sexualization*

Along with taking away their ability to feel emotions, reducing the members of a group to a sexual representation and attributing them what are considered deviant forms of sexuality also puts them in an inferior rank as human beings. Bird writes that:

Just as emotions tend to be purged from the ethnographic record, so does sexuality. The classic ethnography contains information about incest and marriage rules, but it provides little sense of people who are active sexual beings. Frequently, American Indian sexuality was classified as somehow inferior or more primitive than the refined expressions of Western love. (63)

She explains that Native American men and women were attributed an “animal sexuality” that stresses their primitiveness and makes them “both exotic and erotic” (65) in the common imagination. More importantly, because ethnographers denied them any ability to experience passion and love, Native Americans have been sexualized separately: that is to say Native men and Native women have mainly been represented in romantic and sexual relationships with white individuals – male and female – but not together. In regards with sexuality, three major stereotypes particularly stand out: the “sexual brute” (Bird), the princess, and the “squaw.”

a) **The “Sexual Brute”**

In the eighteenth and nineteenth centuries, a genre of literature called captivity narratives attracted many American readers. They appeared to be first-person accounts of white women being captured by Native Americans and “forced to undergo untold savagery” (Smith 21), but in truth, these tales were usually written by white men. Smith gives the example of the story of Mary Jemison who was abducted by the Seneca in the early nineteenth century. Her story was told by James Seaver of New York who, disappointed by the lack of savagery on the part of her abductors and believing she was somehow protecting them by hiding the truth, took the liberty of including violence, quoting what he said were authentic sources. The authentic source was in fact Jemison’s cousin and Seaver used his words attributing them to Mary.

Such narratives have characterized Native American men as being a sexual threat to white women. Smith contends that by representing Native American men as sexual predators to white women whose purity and innocence had to be protected, white men were in fact hiding reality, which tended to be reversed: “Historically, white colonizers who raped Indian women claimed that the real rapists were Indian men” (Smith 26). The imaginary rape of white women by Indigenous men serves to erase the real rape of Indigenous women by white men. To have a better idea of how relevant this reasoning still is, she analyzed the newspaper coverage of sexual assaults in Native communities from 1998 to 2004 and found out that cases where the perpetrator was a Native American man were largely covered whereas she encountered no article on cases where a Native woman was raped. This racist belief that white women need to be protected from the sexual appetite of men of other races and ethnicities has also been problematic for African American men who have been stereotyped as potential sexual predators as well. Similarly, it was “in fact black women [who] needed protection from white men” (Smith 27). Smith points out the fact that Native American men also commit sexual assault, but we have already discussed that, in pre-Colombian Native American societies, gender violence was quite rare and that laws that punished it were rather serious.²⁰ Smith proposes that we see the rape of Native women by Native men as a consequence of the patriarchy white settlers introduced Native communities to and of the intergenerational trauma of the boarding schools:

Of course, Indian men do commit acts of sexual violence. After years of colonialism and boarding school experience, violence has been internalized within Indian communities. However, this view of the Indian man as the ‘true’ rapist serves to obscure who has the real power in this racist and patriarchal society. (27)

In regards with the MMIWG2S crisis, the stereotype of the sexually violent Native American man is still problematic as it makes less obvious that the perpetrators can be and often are non-Native. A report issued in 2016 by the National Institute of Justice revealed that Native women were 3 times as likely to experience sexual violence at the hands of an interracial perpetrator than white women and that 97 percent of female Native victims of violence experience it at the hands of a non-Native person (Rosay).

The ways in which Native American women have been sexualized are worth analyzing as well because they also are very harmful today and play a part in the violence Indigenous women, girls, and two-spirit people experience, especially at the hands of non-Natives.

²⁰ See **I. C. 1. Notions of Gender in Pre-Colombian Societies** (pp. 24-25)

b) The Princess

Native American women were first represented on postcards that were usually based on photographs of unnamed women (Bird). Contrarily to Native men who tended to be named individuals (e.g., Geronimo, Sitting Bull, Crazy Horse, etc.), Native women in the collective white imagery remained faceless, apart from rare examples such as Pocahontas and Sacagawea. Anonymity is still a problem today for Native American women, especially in the MMIWG2S crisis, as most of the victims are not spoken about in the media and when they are, it tends to be in a disrespectful way²¹ (Lucchesi and Echo-Hawk). The images of the kind, beautiful princess and of the filthy “squaw” both rest on anonymity, objectification, and sexualization, and both are detrimental to Native women.

In early stages of colonization of the Americas, the image of the Indian queen was widely used, especially in visual art forms like drawings, paintings, and etchings (Green). The Indian queen was often represented as a fleshy woman whose body was fairly exposed in order to portray the exoticism of the Americas and the fertility of the lush lands that awaited European conquest. *America from the Four Continents* engraved by Adriaen Collaert II in the late sixteenth century is a famous example of the representation of the Indian queen (Fig. 3).



Figure 3. Adriaen Collaert, after Maerten de Vos. *America, from the Four Continents*. N.d. 21.3 x 25.6cm. Collection of the Metropolitan Museum of Arts.

²¹ The issue of disrespectful media coverage of cases of MMIWG2S will be further discussed as the report that exposed it was written by two Native women activists – Annita Lucchesi and Abigail Echo-Hawk – whose work is reviewed in **II. C. 1) Federal Data Gathering**.

The image of the Indian queen then evolved in that of the Indian princess, which is, to this day, best epitomized by the very famous Pocahontas (Bird). The Indian princess, like the Indian queen before her, stands for the exotic and virgin lands of America that are destined to be acquired by white men. Typically, the Indian princess finds herself attracted to them and is never romantically involved with Native men, which would be problematic according to Bird: “[a]fter all, if the princess represents the virgin land that will be possessed by the white man, it would be somewhat inconvenient if she already owed her allegiance to a Native prince” (72). This explains in part why Native American men and women have been represented as the sexual and romantic partners of white settlers, but never of each other.

The role of the Indian princess is usually to save the white man from the savage Indians, sacrificing herself if she has too. Bird notes that in many Hollywood films, she dies serving her purpose (e.g., Delmer Daves’s *Broken Arrow*, 1950). The princess has Indianness in her but siding with whites against the savagery of her own people makes her noble and almost takes her to the level of White Christians. Her symbol “became a crucial part of the creation of a national identity” (Bird 72) as it serves as the foundation of a myth according to which Native Americans welcomed European settlers and “the destiny they brought to them” (72). The Indian princess is a guilt-reducing image that the American public has held onto over the centuries. It has been central to the justification of the dominance established by white settlers on Native Americans and has been used again and again in plays, novels, films, poems, and paintings ever since (Bird).

Nonetheless, most Americans do not know the real history of Pocahontas. The tale they know is derived from the story of John Smith who started writing what had happened to him in the early colony of Virginia seven years after Pocahontas had passed away and long after any eyewitness could confirm his account (Rountree). In his account, John Smith romanticizes the supposed sacrifice Pocahontas was ready to make when she allegedly threw her body on top of his to prevent her father from executing him. The idea that was promoted in Smith’s version is that a good Native woman was ready to lose her life in order to save a good European man from her evil people. Yet, indigenous people have a very different recollection of the events : after having captured him, the tribe had decided to adopt John Smith as one of their own and Pocahontas was appointed to be his Indigenous mother. She put her body on top of his in a ritual officializing his entry into the tribe. There was nothing romantic going on between Smith and Pocahontas, who was between 10 and 12 years old when she first met him (Rountree). Smith’s version is the one that has prevailed over the centuries: widely embraced in the nineteenth century, it was recently strongly revived in the form of a Disney animated film in

1995. In this recent version, Pocahontas rejects a Native man whom she refuses to marry and falls in love with the Englishman: once again, the film erases the possibility of romantic relationships between Native Americans. She also fairly easily accepts “the inevitability of progress” (Bird 76) and teaches Smith the importance of nature, “implying that she had a profound impact on how the nation developed” (76). In Terrence Malick’s 2005 historical drama *The New World*, the story is more accurately depicted, but still very central to the movie is the Pocahontas-Smith romance (Fathima).

Bird mentions the novel *Savage Longings* (1997) that was written by best-selling twentieth century romance author Cassie Edwards, in which a white hero named Charles Cline saves a Cheyenne princess who has been kidnapped by trappers. She falls in love with her savior and has to choose between going back to her people or marrying the man she loves. The synopsis of the novel itself displays the typical elements of the Indian princess tale:

[...] beneath the fierce sun, she burned to succumb to the sweet temptation of his kiss. But the strong-willed Cheyenne princess was torn between the duty that demanded she stay with her tribesmen and the passion that promised her unending happiness among white settlers. Only the love in her heart and the courage in her soul could convince Snow Deer that her destiny lay with Charles. (Edwards)

Her good and selfless character is revealed in the difficulty of the choice she has to make: she is loyal to her people and, was it not for this man whom she fell in love with, she would have done what was expected of her. However, she makes the decision to leave her tribe to marry the white man and she lives a happy life with him. Her brother also marries a white woman and the novel is centered around interracial relationships, never portraying two Native individuals in a romantic relationship.

“In whatever context, the American Indian maiden is almost always seen alone – not as the partner of the warrior, who prefers White women anyway” (Bird 77). The image of the Native princess who never falls in love with the Native man thus strengthens the image of the “sexual brute” created in and promoted by captivity narratives. When considered together and thought of in relation with the MMIWG2S crisis, these two stereotypes are particularly problematic because they advertise two ideas that disconnect the violence women, girls, and two-spirit people experience from the legacy of colonial interests and from what the statistics say – that most perpetrators are non-Native. The first idea that emerges from these stereotypes is that, if there is violence in Native communities, it has nothing to do with white people: it is because Native men are violent with women. The second, perhaps even more dangerous, mental construction is that Native women are attracted by white men and it creates the generalization

that Native women are interested in sexually getting involved with white men. A third stereotype comes to intensify this imagery: that of the “squaw.” The line between the princess and the “squaw” is very thin: when the former gets sexually involved with a white man, she becomes the latter (Bird).

c) **The Squaw**

In her article entitled “Native American Women: Where Are They Today?”, Kelly E. Yasaitis compares the dichotomy of the princess and the “squaw” to the Western symbolism of the “lady” and the “whore” (71). She also points out that the word *squaw* came to be used in a derogatory and sexual way by French trappers in Canada to designate Native women by referring to their genitalia. They demeaned the word that originally meant “married” or “mature woman” (Green 14) in Algonquian. Today, all Native nations find the word “squaw” offensive, racist, and misogynistic, especially if it is used by a non-Native person. The common description of the “squaw” is that of a faceless woman who is “bloodthirsty, lazy, filthy, and prone to drunkenness” (Bird, 74), at the absolute service of her savage husband and whose only purpose is to give him children, reducing her therefore to her sexual availability and her reproductive organs. This image originated with early Europeans who described Native women as being “very libidinous and drawn inexorably to white men” (73). Like the princess, she is most of the time depicted as sexually accessible to white men. The main claim that the “squaw” is inferior to the white woman in the fact that she was not able to feel the same emotions and that she neglected her children served as an excuse to use her: “the overwhelming image of the “squaw” is indeed that of a sexual convenience” (74).

The image of the “squaw” is also largely exploited in the media. For the most part, her “graphically obscene dimension” (Bird 75) has been left aside and is not manifested in movies, but her anonymity and lack of interest is salient in the countless unimportant Native female characters Western movies have. Like the princesses, the “squaws” that appear in these movies often die, and they are presented in relationships with white men too. When they are the companions of Native men, they are portrayed as their servants (Bird). A 1985 ad for Virginia Slims cigarettes relies on the supposed oppression Native American men exercised on their women (Fig. 4). The totem represents eight Native women whose names reveal the kind of labor they have to execute for the men (e.g., Little Woman Who Weaves All Day, Woman Who Plucks Feathers For Chief’s Headdress, Princess Wash and Scrub, etc.). At the center of the sign, a white woman dressed in accordance with the mainstream American fashion standards of the 1980s is told that she has come a long way: “You’ve come a long way, baby.” Like many

cigarette manufacturers, Philip Morris used the women's liberation movement to promote their product.

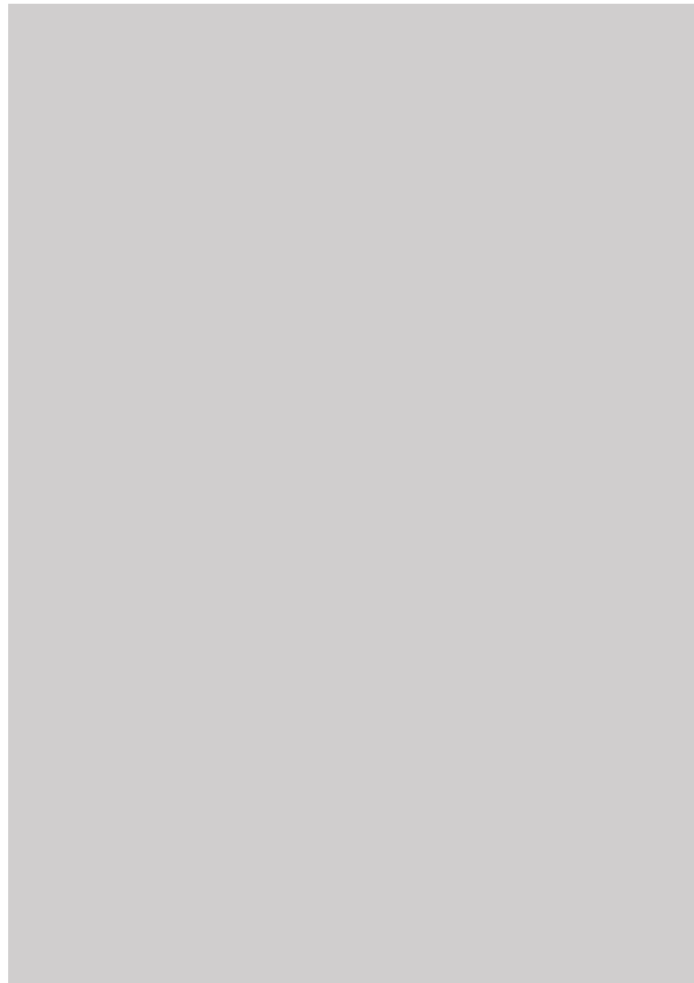


Figure 4. Ad for Virginia Slims Lights, Philip Morris Inc., 1982

In this particular ad, they compare women who are commonly thought to have been oppressed in pre-contact Native societies to a typical white woman of the late twentieth century. On the one hand, the Native women are reduced to their menial labor which they all appear to be doing reluctantly. All of these women are “squaws:” the fact that they are represented as small and in the background denotes their lack of importance and, although they are given pseudo-names, they remain anonymous. On the other, the white woman who stands at the center and in the foreground looks very confident and content. With her skirt, high heels and feminine silhouette, she embodies independence and fulfillment. The caption at the top of the totem reads: “Virginia Slims remembers one of many societies where the women stood head and shoulders above the men.” A possible understanding of this sentence is that, in Native societies, a woman alone could not reach the status and importance of a man but that a certain number of them put together might be enough. In this picture however, the eight women standing on each

other's shoulders are still represented as being smaller than the white woman, implying that she is the ultimate example of the freed and powerful woman. This ad implies that Native women needed to be liberated from the domination of their male counterparts, thus erasing the importance and respect they actually enjoyed in reality²². Resting upon the arguments of Paula Gunn Allen, Andrea Smith argues that "the real roots of feminism should be found in Native societies" and not in "the destruction of supposedly patriarchal Native societies" (Smith 24) like this ad suggests.

Another example of representation of the "squaw" is mentioned by Andrea Smith, and this one happened to be highly degrading and capitalizing on the over-sexualization attributed to the Indian "squaw." In 1982, Mystique, a company who produces unlicensed pornographic video games, made *Custer's Revenge*, in which the goal of the main character, famous historical figure of the Civil War general George Armstrong Custer, is to rape a Native American woman. After many women's rights groups criticized the videogame for promoting rape and making it appear socially acceptable, it was taken off the market, but the media attention allowed Mystique to sell it in higher numbers than their other pornographic games. Although the woman in the video game is tied to a pole, the creator of the game, Joel Miller, claimed that Custer is "seducing her, but she's a willing participant" ("Atari Trying to Halt X-Rated Video Games"). The president of American Multiple Industries who owned Mystique, Stuart Kesten, stated that their "object [was] not to arouse, [their] object [was] to entertain" ("Atari Trying to Halt X-Rated Video Games"). The colonial view that Native women exist for the sexual desires of white men is more than obvious in this video game which was created less than forty years ago. It clearly promotes the rape of Native American women and the words of its creator blur the lines of consent in perpetuating the dangerous idea that, although it looks like rape or sexual assault, the women might somehow actually be consenting.

The stereotypes of the princess and the "squaw" oscillate between "erotic fascination and revulsion" (Bird 72). The media are keeping these stereotypes alive and Bird suggests that since they have existed for a long time, "they have become entrenched in White mythology" (78). She adds that they have been naturalized and will therefore be hard to deconstruct. Her opinion is shared by many others:

These distorted stereotypes of Indigenous women have become embedded and normalized within North American discourses, literature, media, institutions, and societal structures [...] These images serve to maintain, reiterate, and perpetuate colonial narratives that Indigenous women are exotic

²² See I. C. 1) *Notions of Gender in Pre-Colombian Societies* (p. 26)

“others” to be used at others’ disposal. [...] Colonial ideologies of women's sexuality, particularly Indigenous women's sexuality, underpin the violence Indigenous women face throughout history into present day. (*Monchalin et al.* 216).

Today, the eroticized image of Native women is so commonplace in our society that it is unremarkable – the image of a hypersexual Indian woman continues to be pervasive in American culture. For example, A popular Halloween costume is a racist rendition of “Poca-hottie,” and an entire fetish porn industry has developed around the image of the “rez-girl” – an erotic woman who is perpetually sexually available. (Deer 62)

Sexual stereotypes attributed to Native women create a culture in which people receive the message that sexual violence perpetrated on Native women does not matter as much therefore marking their body as “inherently violable” (Smith 12) and “marking them for death” (*Monchalin et al.* 213). Annita Lucchesi, a doctoral intern at the Urban Indian Health Institute and Native activist fighting against the MMIWG2S crisis whose work will be analyzed in this dissertation, says the “one unifying factor” causing the crisis is “colonialism and ongoing colonial occupation [that] teaches people whether Native or non-Native [...] to undervalue Native women, to see us as less than human, to see us as exotic and sexy and easy to use and abuse” (*The Search: Missing & Murdered Indigenous Women - Fault Lines* 8'51). In mainstream media, Indigenous women tend to be portrayed as exotic and erotic and as desiring non-Indian men. These narratives are putting Indigenous women, girls, and two-spirit people at serious risk of victimization.

Not only are the media reviving the same narrow stereotypes over and over again, but they are also limiting the representation of Native Americans to images of their ancestors. They forget to acknowledge the fact that Native Americans, like every human on the planet, have evolved over the centuries, and their representation being limited to images of their ancestors makes it impossible to visualize what their lives look like in present day America.

3) Representation of Present-Day Native Americans in the Media and Consequences

Portraying individuals that have been “frozen in time” (*Leavitt et al.*) is a serious issue of present-day representation of Native Americans in the media. The few Native characters that can be found in popular culture are depicted as eighteenth and nineteenth century figures, “as teepee dwelling, buckskin and feather wearing, horse riding people” (*Leavitt et al.* 40). American Indians living in twenty-first century United States are rarely represented and when they are occasionally mentioned, they tend to embody substance abuse and poverty. In their

study on contemporary representation of Native Americans in the media, Leavitt, Covarrubias, Perez and Fryberg searched the terms “Native American” and “American Indian” on Google and Bing and analyzed the results: on both search engines, more than 95.5 percent of images were historical. The controversy around the name and mascot (fig. 5) of the Washington Redskins football team is quite telling of the popularity of the historical Indian image, especially since many Americans support the use of the mascot although more than half of Native Americans find it offensive²³ that an image of their ancestor is used as a mascot when most football teams have animals as their logos (e.g., the Miami Dolphins, the Denver Broncos, the Philadelphia Eagles, the Jacksonville Jaguars, etc.).

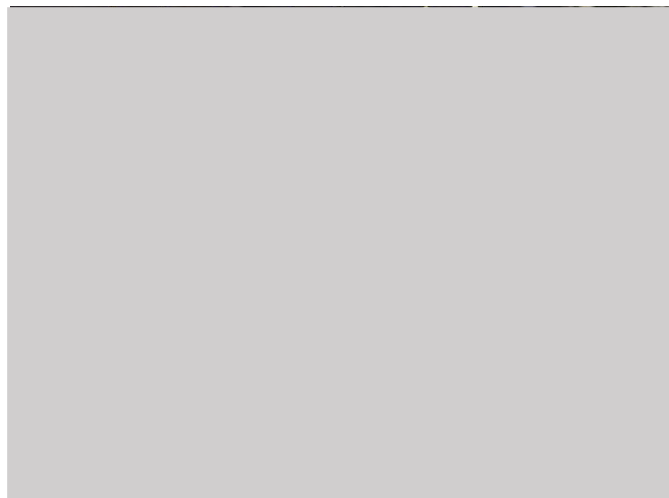


Figure 5. A fan holding a sign with the logo of the Washington Redskins during a game in December 2019.

Not only is the representation of Native Americans predominantly negative and limited to historical figures therefore being very limited in quality, but it is also restricted in quantity. In July 2019, the U.S. Census Bureau estimated that Indian Americans, Alaska Natives and Native Hawaiians represented 1.5 percent of the U.S. population (“U.S. Census Bureau QuickFacts: United States”). In reality, when tribes that are not officially recognized by the government are taken into account, this number comes close to 4.1 percent (Leavitt *et al.*), which equates to about 13.5 million people.²⁴ A UCLA study revealed that in 2016, Native Americans made up only 0.5 percent of Hollywood characters, making them the least represented minority in films (Hunt *et al.*) (fig. 6). In a country such as the United States where 98.9 percent of households

²³ According to a 2020 UC Berkeley survey of 1,000 self-identified Native American adults varying in age, gender, and socio-economic situation representing 50 states and 148 tribes (Anwar).

²⁴ 4.1 percent of 330 million people, the U.S. population according to the *census.gov* website.

own a television set and 92.6 percent of the people watch television, the quantity of images representing a group is clue of its importance in society. Underrepresentation sends Native Americans the message that their group does not matter much. Furthermore, because they do not see themselves represented in the media, they “are deprived of messages and strategies for how to be a person” (Leavitt *et al.* 40). Representation on television and in films provides directions to an individual on the good ways to lead their life and it gives them ideas of what they can do. Native Americans seldom see Native characters “in mainstream public spaces [...] from many professional positions, such as teachers, professors, doctors, and lawyers” (Leavitt *et al.* 41) and they therefore do not imagine their own lives in such spaces.



Figure 6. “Share of Film Roles, by race, 2016 (n=1,352)” UCLA study.

Underrepresentation combined with inaccurate representation is psychologically harmful to Native Americans. In 2008, the impact of negative stereotyping of Native Americans was the object of a psychological study in which Native high school and university students were asked questions on their future (Fryberg *et al.*). Half of them were shown images referring to the most common stereotypes such as Indian mascots of sports teams, Disney’s Pocahontas and negative stereotypes (e.g., substance abuse rates, school dropout rates, etc.) before they were asked about their ambitions. A majority of these students answered the questions without confidence and tended to depreciate themselves and their accomplishments. On the other hand, students of the control group who had not been shown the images tended to be more positive. The experiment concluded that exposure to negative stereotypes on their minority has a negative impact on Native Americans. Such reductive images can lead to self-stereotyping which is when:

[...] members of underrepresented groups may be motivated to identify with any available representation simply because one representation is better than no representation (i.e., absolute invisibility). The one representation, no matter how unfavorable or inaccurate, provides answers to the “Who am I?”

questions that people are motivated to answer and provides a reference point around which to negotiate one's identity with others. (Leavitt *et al.* 46)

Although misrepresentation puts them in “psychological disadvantage” (Leavitt *et al.* 42), many are able to notice that what is portrayed on screen is far from their reality and that of their relatives. However, the rest of the population hardly ever has direct in-person contacts with a Native person. Their likelihood of seeing one in the media being also limited, they have little choice but to base the way they think of Native Americans on available representation, that is to say on the stereotypical images that were created by colonizers which are inherently violent (Leavitt *et al.*): “where personal knowledge is lacking, media have additional power as agents of enculturation” (Bird 78).

More and more Native directors are making films that fight against preconceived ideas by providing realistic representation of Native Americans and among them, many are women.²⁵ The UCLA study on diversity representation in Hollywood showed that Native women are particularly affected by underrepresentation. In 2018, for its 23rd year, the Red Nation International Film Festival had 22 women directors showing their films, which is rare for film festivals (Fathima). During an interview, Native American filmmaker and actress Jonelle Romero mentioned the virtual absence of Native women from American television:

If we're not seen and heard, then we don't matter. It dehumanizes us [...] Primetime networks like NBC, CBS, ABC, and Fox haven't hired Native actresses for episodic television in 15 years. So America has not seen our face. (Fathima)

Native Activist and writer Rebecca Nagle claims that the virtual absence of Native Americans from television along with the typical representation of historical Natives sustain a common belief that they belong to the past and have almost all disappeared today. She argues that it actually helps audiences deal with the colonial past of their country and that acknowledging the existence and suffering of Indigenous peoples is too uncomfortable for mainstream media viewers:

It's much harder to confront that narrative [of the colonial past] when we acknowledge the contemporary Native people still living in the United States today [...]. Part of the narrative that there are no longer any Native people is part of the way to avoid what the country has done [to Native Americans] and continues to do. (Fathima)

²⁵ Some of these more accurate depictions will be examined in the next part of this dissertation.

If acknowledging how violent their country was to Native Americans in the past is uncomfortable for the majority of the population, acknowledging that the system is still harming them and specifically women and girls probably is too. It is in this context of broad denial, in a country the government of which still has not officially apologized, that the MMIWG2S crisis remains invisible. However critical it might be, an issue hurting a community that is thought to no longer exist can hardly worry the general public or the government. Being underrepresented and left aside is all the more so problematic for Indigenous women, girls, and two-spirit people. When victims of the MMIWG2S crisis disappear, Annita Lucchesi and Abigail Echo-Hawk argue that “they disappear not once, but three times – in life, in the media and in the data” (Lucchesi and Echo-Hawk 2). Lucchesi and Echo-Hawk analyzed media coverage of 506 cases of MMIWG2S and found that only 1 in 4 case was mentioned in local, regional, or national media and less than 5 percent of cases were covered by national or international media. Furthermore, 10 out of all 506 cases amounted for almost 70 percent of all media coverage.

The media is failing to adequately discuss the violence Native American women, girls, and two-spirit people suffer from, which renders it invisible and prevents the general public from getting an accurate understanding of the gravity of the so-called “epidemic.” Providing more accurate representation of Native American women seems to be an important part of the work of addressing the MMIWG2S crisis.

B. Shedding Light on the Realities of Native American Women With more Accurate Representation

In this section, we will focus on a documentary, a film, and a play, which were made in 2017 and 2018. We will see how they aim at portraying Native Americans with more realism and authenticity, while also raising awareness on violence against Native women.

1) Warrior Women by Christina D. King and Elizabeth Castle

Warrior Women is a documentary made by Native American women that came out in 2018 and provides a realistic presentation of what it means to be a Native American woman in the late twentieth and early twenty-first centuries, while presenting women involved in Native activism. At a showing in Clermont-Ferrand in October 2019, when asked why issues such as forced sterilizations, missing cases and sexual assault were barely mentioned, co-director Christina D. King answered that the goal of the documentary was to break away from the typical

representation of Native women on screen and to accurately portray the women she grew up with and was surrounded by in her Seminole tribe of Oklahoma:

I grew up seeing biased images of Native Americans in the media: sad, beaten down individuals, characterized by their victimization. This is not what I saw around me growing up: family, community, laughter, hope, happiness, and freedom. (King)

The purpose of the film is to show Native American women without defining them by their traumas, but rather by their strength. Far from the typical representation of Native women, *Warrior Women* presents two strong activists who fight for their people, Madonna Thunder Hawk and her daughter Marcella Gilbert of the Lakota tribe. Madonna Thunder Hawk started her activist work in the 1960s. In the 1970s, Madonna Thunder Hawk was very inspired by the occupation of the island of Alcatraz. In fact, this is when she started to be convinced that if Native Americans gathered they could actually do something, but she knew that their “struggle was back home with [their] people” (Castle and King). She was an important member and leader of the American Indian Movement (or AIM) and co-founder of Women or All Red Nations (or WARN), an organization established in 1974. Madonna never stopped fighting for the rights of Native people ever since. She fought for the enforcement of a treaty in Mount Rushmore in 1970 and 1971, and recently, she was among those protesting against the construction of a pipeline on the Standing Rock reservation, although she is now almost 80 years old. She stayed for months living in a tent in spite of very difficult weather conditions, with thousands of other activists. Before the Covid 19 pandemic broke out, she would travel all around North Dakota to talk with the tribal governments of the state’s nine Native American tribes. She would discuss their rights with them and encourage them to be more assertive and “not to be afraid to ask for what is right and what is theirs” (Castle and King).

The documentary touches upon the topic of boarding schools. We learn that Madonna spent her early years in an Indian boarding school like her mother did before her. She shares how oppressed she felt there: how the children were taken away in buses; how they were then stripped out of their clothes and had to put on government issue clothes; and how they were locked in their rooms and isolated. She explains that there was no paternal or maternal figure there, and no one to hug. This was an overall negative experience for Madonna but this is not where the story ends. In the 1970s, she founded the We Will Remember Survival group or Survival Schools to provide an education to Native youth who dropped out or “were forced out” of school (Castle and King). While Indian boarding schools taught children how to no longer

be Native American, Survival Schools do the opposite: they teach children about natural resources, the rights of their people and the spiritual practices of their ancestors.

Madonna's daughter Marcella suffered from the ripple effect of Indian boarding schools: she argues that because her mother and her grandmother grew up without loving and affectionate parental figures, they were never really emotionally available to her when she grew up. Marcella did not go to a boarding school but she still suffered from it. However, she "broke the cycle" (Castle and King) with her own children as she tries to be as actively involved with them as she can. Influenced by the work of her mother whom she accompanied to every meeting, event and protest during her childhood, Marcella is a graduate of the We Will Remember survival schools and uses her knowledge today as a professional nutritionist to "reintroduce sustainable traditional foods and organic farming to her reservation as an expression of the most fundamental form of survival and empowerment" (*Featured Perspectives — Warrior Women*). Both Madonna and Marcella used their painful life experiences to fuel their strengths and now work every day to improve the lives of members of their community and of other Native Americans.

Another topic brought up in *Warrior Women* with a focus on Native women's strengths rather than their traumas is sexual violence. A relative of Madonna's shares that, for older white guys in the streets in the 1940s and 1950s, "if you were Indian, you were fair game; whether you walked alone or with children, it did not make any difference" (Castle and King). She then shares the following anecdote:

One day, one of [our] closest friends was raped and the police refused to do anything about it because the perpetrator was a white man. A girl found him in the bar where he was drinking, flirted with him and lured him outside where a group of girls beat him and threatened him [...]. There were no more rapes in the town after that. (Castle and King)

We do not know whether "the police" she refers to is tribal police, state police or federal police. In any case, this anecdote echoes many issues: the fact that tribal police cannot prosecute a white man who rapes a Native woman on a reservation; the fact that state police do not always put much effort in investigating crimes occurring on reservations; and finally, the fact that the FBI turns down more than half of cases of sexual violence on reservations.²⁶ In this case, the friends of the victim made the decision to take the matter into their own hands and, in the documentary, they relate this event on an unapologetic tone. Like most screenings of the

²⁶ See the description of how the current justice system, with its jurisdictional complexity, fails to protect Native women in **I. B. The Creation of a Justice System that Fails Protect Native Women From Victimization**

documentary, the one in Clermont-Ferrand in October 2019 was followed by a discussion with Christina D. King, one of the directors. She expanded on the topic of sexual violence and trafficking by explaining to the audience what “man camps” are. She stated that in North and South Dakota, when drilling companies set up camps for workers on or close to Indian country, the rate of missing and killed women increases by 30 percent. The violence that surrounds such camps is illustrated in a recent film that came out in 2017: *Wind River*.

2) *Wind River* by Taylor Sheridan

The film *Wind River* is of interest in our analysis as it illustrates how violence against Native women is connected to the exploitation and extraction of natural resources on tribal lands and discusses the jurisdictional maze with a high degree of realism. The action takes place on the *Wind River* reservation of central Wyoming, where the body of an eighteen-year-old Native woman is found frozen in the snow by Cory Lambert – played by Jeremy Renner – a big game hunter who works for the Fish and Wildlife service. He is disheartened when he quickly recognizes Natalie, the friend of his teenage Native daughter who went missing a few years before. Jane Banner – played by Elizabeth Olsen – is a young rookie FBI agent sent to the reservation from a few states away because she was the closest agent available. She is confronted to a world she knows nothing about. Although it is obvious that Natalie was raped, and even if she was found shoeless miles away from any habitation or road, the medical examiner concludes that she died of a pulmonary hemorrhage due to the cold. As a consequence, agent Banner cannot legally carry on with the investigation. She is frustrated but she knows that there is no chance of anyone finding out what happened to Natalie if she leaves: “I know I’m not much, but I’m all you’ve got” (Sheridan, *Wind River*). Therefore, she chooses to stay and asks Cory to help her follow up on a lead. Upon finding out that Natalie had a white boyfriend who works on an oil-drilling rig not far from where her body was found, the duo and a small group of tribal police officers decide to pay a visit to the camp. The workers assume that everybody in the group is tribal police and that therefore none of them has the authority to ask them questions or ask to enter their trailers. Indeed, because of the decision in *Oliphant*, tribal police officers have no authority over non-Native individuals, even if they allegedly committed a crime. If the atmosphere is already incredibly tense, Jane reveals she works for the FBI and the scene escalates into a shooting.

What happened to Natalie is then revealed. She was visiting her boyfriend in his trailer one night when all his roommates had gone out for drinks. When they came home early and drunk, one of them had inappropriate sexual comments and made advances to Natalie, which

resulted in a fight between that man and her boyfriend. The altercation turned into a group fight which ended in very dark circumstances: Natalie was raped and her boyfriend was beaten to death. She still managed to escape but, since she had to run for miles in the cold, she died before she could find any help.

The film provides a realistic depiction of how difficult it can be to fight crime on reservations by creating a heavy and somber atmosphere. First, it expresses the remoteness and loneliness of the reservation with shots where the only elements we can see for miles are snow, rocks, trees, and wild animals. The environment is hostile and desolate. The cold temperature is lethal – -20°F at night – although the scene takes place in spring. In an article on crime on the real Wind River reservation, Timothy Williams writes that it is “the size of Rhode Island and Delaware combined” (Williams, “Brutal Crimes Grip Wind River Indian Reservation”). The desolation of the landscapes parallels the overwhelming sorrow most characters carry. Cory and his ex-partner Wilma still grieve the loss of their daughter whose body was found after too long for a coroner to identify what had caused her death. As can be expected, Natalie’s parents are devastated as well: her mother moans in her bedroom, cutting herself, while her father confesses that he does not even know how to start grieving. Natalie’s brother Chip, who fell into drug dealing, feels intense anger when he tells Cory: “it’s this place, man. Look what it takes from us. [...] You think this is who I wanted to be? I get so mad” (Sheridan, *Wind River*).

Taylor Sheridan who wrote and directed the movie made sure to tell things as they are and as a result, his fiction almost resembles a documentary. He chose to make a movie about an area he is familiar with: “I lived in North-West Wyoming with my family, so this is an area that I know. [...] I made a film that shows the reality as best I could” (Sheridan, *Wind River - Taylor Sheridan Q&A*). The use of a shaky cam in most scenes offers a visual effect close to what the human eye catches. Moreover, the images are rarely accompanied with musical soundtracks – apart for some climactic or emotional moments – so that it is the sound of the wind that prevails, and overall, a very heavy silence. The whole movie looks disturbingly real. Graphic scenes, close ups on corpses and crude depiction of violence do not appear to be free and for pure entertainment. This movie has a message, and it means to unsettle its viewers so that the message comes across.

The National Indigenous Women’s Resource Center²⁷ uses *Wind River* as a way to raise awareness on the MMIWG2S crisis. On a review of the film published on the NIWRC website, communications officer Princella RedCorn wrote that *Wind River* humanizes the crisis and

²⁷ From now on in this dissertation, the National Indigenous Women’s Resource Center will be referred to as the NIWRC.

makes it more palatable to a wide audience. Although she thinks “[t]he rape of a Native woman on screen is unbearable to watch” (RedCorn), she argues that “[p]eople need to have stories to relate to and humanize any issue. *Wind River* successfully humanizes missing and murdered Native women and the challenges of protecting and seeking justice for them” (RedCorn). She hopes that viewers walk away informed on the issue and willing to help end violence against Native women. NIWRC finds the film to be “a great educational tool to get a general audience interested in the issue” (RedCorn) but they believe that post-screening discussions are necessary for the audience to better understand concepts of jurisdiction and sovereignty and to learn about solutions that are being developed.

In the past few years, the NIWRC has hosted several events on MMIWG2S in which *Wind River* was screened and discussed in debates and questions-and-answers sessions. In February 2018, the movie was screened in its entirety at an event hosted by the NIWRC who had partnered for the occasion with the National Congress of American Indians, and many more organizations. The event was held on Capitol Hill in Washington D.C., which allowed many “Hill staffers” (Nagle, The House Committee on Natural Resources 22) to attend and learn more on the crisis of missing and murdered Native women. Many advocates from all over the country attended as well. In the 62nd session of the UN Commission on the Status of Women held in New York in March 2018, some selected scenes were shown and commented on by a panel, during an event that was co-sponsored by the NIWRC, the Indian Law Resource Center, the National Congress of Native Americans and the Native Women’s Society of the Great Plains (“Experts Call For Action to Address Violence Against Indigenous Women in Rural America”). The NIWRC also hosted screenings of the movie in universities to raise awareness in younger crowds: at the Haskell Indian University in Lawrence, Kansas in September 2017 – a month only after the movie had come out in theaters – and at the University of South Dakota, Vermillion in February 2018. All these events prove that organizations value *Wind River* for its educational ability and the discussions it can animate on the violence committed against Native women.

An important issue the film explains to its audience is the jurisdictional maze. First, because Natalie appears to have been murdered, the tribal police is powerless. Homicide is a major crime which must therefore be investigated by the FBI. A young FBI agent who knows nothing of the place is sent to the scene and she does her best to help, although she is unfamiliar with the people, the culture, and the limits of tribal law enforcement. Then, she becomes herself powerless when the medical examination concludes that Natalie died of natural causes. It is clear to anyone who saw Natalie’s body that her death was a homicide. Because there is

evidence of sexual assault, the investigation falls under the jurisdiction of the Bureau of Indian Affairs for which the tribal police chief works, but he does not have authority on the drilling camp where the crime took place because it is a lease of the Department of Energy on reservation land. They cannot investigate, nor can they proceed to making arrests. When Jane reveals that she is a federal agent right before the shooting, she is not mentioning that she in fact has no authority because Natalie's death was not classified as a homicide. She is actually bluffing. Sheridan qualifies this whole situation as a "loophole," while Elizabeth Olsen talked about "a system set up to fail" (*Elizabeth Olsen And Jeremy Renner Discuss The Film "Wind River" - YouTube*).

Her character is frustrated when she notes that the tribal police is under-resourced and unassisted. The chief tells her that they have only "six officers to cover an area the size of Rhode Island" and that they never get help: "This is not the land of back up, Jane. This is the land of you're on your own" (Sheridan, *Wind River*). Viewers of *Wind River* share Jane Banner's frustration as they discover with her the complexity of jurisdiction when linked to crimes committed against Native Americans. Because of this loophole, men of the oil-drilling rig knew they were out of reach and would get away with what they did. Furthermore, the man who raped Natalie suggested that he had the right to access her body. At the end of the movie, when Cory finally finds him, Natalie's rapist makes the following complaint "in this frozen hell [...] there's nothing to do, no nothing, ain't no women, no fun" (Sheridan, *Wind River*). This reasoning is revealing of the man's idea that he has rights on a Native woman's body in this particular situation: what he means is that, in Indian country, the laws by which he would abide in the rest of the United States do not really apply. Eventually, Cory leaves him to die in the snow, barefoot, just like his victim did.

Because the shooting ends in a bloodbath, and because Cory dispensed his own justice, there is no one left to interrogate and bring to court. In *Wind River*, the viewer is given some degree of satisfaction when we see the rapist getting punished for what he did, but in real life, most cases of MMIWG2S are neither investigated, nor prosecuted. Princella RedCorn writes that "this is the bleak and depressing reality." The movie ends on Cory and Natalie's father mourning their daughters while the following statement appears on the screen: "While missing person statistics are compiled for every other demographic, none exist for Native American women. No one knows how many are missing" (Sheridan, *Wind River*). This is important information to share with the viewers as it is true that the scope of the MMIWG2S crisis is still largely underestimated. In fact, Sheridan said in an interview that all the Native actors he cast for the movie – and he made sure that all Native characters would be played by Native actors –

know a friend or a relative who has experienced sexual assault. However, the data that is available on sexual violence committed against Native women still lacks precision.²⁸

In connection with the casting of *Wind River*, the two main characters – and therefore actors – being white could be seen as a drawback. Nevertheless, telling the story through two white characters makes it easier for a non-Native audience to be introduced to a world and a crisis they probably know nothing about. Jane is an outsider who has no knowledge of the ruthless environment she discovers, and so are most viewers. The viewer identifies with her and gets to witness how emotionally distressed she is when confronted to the sadness, anger, and grief of the reservation’s inhabitants. The NIWRC recognizes the interest of such characters in introducing the topic to non-Native viewers:

Having both Lambert and Banner, non-Native characters, as the film’s main characters, helps a non-Native audience relate and care about the story and “enter” the reservation, as complex issues are drawn out and briefly explained in the guise of unassuming entertainment. (RedCorn)

As for the choice of the actors, it was rather smart to cast famous actors Elizabeth Olsen and Jeremy Renner who both played in Marvel’s *Avengers* movies. Having the pair as the main actors of the film had the potential to attract a wide range of viewers who might otherwise never have watched a movie about the MMIWG2S crisis.

Another question that is worth being discussed is that of the screenwriter and director being a white man. It must be recognized that he provided an accurate depiction of a reservation and made a movie that has a message. He was motivated to make this film after he had heard of too many cases of murdered and missing Native women and thought it was necessary to educate the general public on the issue (Sheridan, *Wind River - Taylor Sheridan Q&A*). Furthermore, he created complex multidimensional Native American characters and avoided the pitfall of stereotypes. He accurately revealed how Native cultures reject patriarchal values through the relationship between Natalie and her father. Natalie’s father chose to trust his daughter whom he thought was old and mature enough to make her own decisions: thus, he allowed her to spend time with whomever she wanted, which Jane Banner is quick to criticize. Natalie is an interesting character on her own since she is a strong and brave young woman. The night of her death, she did not hesitate to defend her boyfriend against a group of men although she was outnumbered, and they were clearly stronger than her. After she managed to escape, she ran up to six miles barefoot in the snow, at night, in extremely cold temperatures,

²⁸ Data on the MMIWG2S crisis is the focus of **II.C. C. How to Evaluate the Scope of the Crisis.**

and that, according to Cory, “that’s a warrior” (Sheridan, *Wind River*). In spite of the good work Sheridan produced, the NIWRC remarks that future stories have to be told by Native women:

Missing from this narrative is the heart and healing power of Native women’s voice, the tireless, all-inclusive, and solution-driven work. This side of the story is ready to be addressed in future stories from and by Native women writers and directors who can materialize their voice, vision, and truth on film. [...] Native women are at the forefront, seeking justice through inclusive and healing ways such as engaging men, prayer circles, traditional healing practices and ceremonies, and relying on traditional Native culture for strength, healing, and resilience in the uphill battle for respect and treating women as sacred. (RedCorn)

We have previously discussed the centrality of Native women in pre-Columbian communities. What the NIWRC asserts is that even if colonial violence and assimilation efforts have had terrible consequences and diminished the power Native women had in their societies, they are still healers, prayers, and leaders in most communities. In addition, nobody can provide a more authentic and accurate understanding of what violence against Native women looks like and entails than Native women themselves. We will now focus on a story shedding light on the MMIWG2S crisis that was written by a Native American woman.

3) *Sovereignty by Mary-Kathryn Nagle*

In *Sovereignty*, Mary-Kathryn Nagle educates her audience on the legal obstacles to the safety of Native women and denounces dangerous stereotypes. She writes about two generations of Cherokee citizens. Half of the characters lived in the early nineteenth century on the original Cherokee territory in Georgia, and the other half are their descendants who live in Oklahoma nowadays. The story that takes place in the nineteenth century is actual history.

In the 1820s and 1830s, John Ridge and his father Major Ridge, influential members of the tribe fight against the pressure put by the state of Georgia and the majority of politicians in Washington D.C. who wish to acquire Cherokee lands and remove them West, which had just happened with the Choctaw and the Chickasaw. John and his friend Elias Boudinot with whom he went to college in Connecticut start a newspaper with the help of Samuel Worcester, a missionary who lives on Cherokee territory and introduced them to the printing press. This newspaper – the Cherokee Phoenix – is a true weapon for the tribe since it takes down the main argument for removal of Native Americans: the belief that they are not “civilized” enough. President Andrew Jackson asks the governor of Georgia to pass a law forbidding non-Natives to live on Cherokee lands and Samuel Worcester is arrested. John Ridge who has studied the United States constitution and who knows that the state of Georgia has no jurisdiction on

Cherokee lands, wants to challenge Worcester's conviction in the Supreme Court. It is mentioned multiple times by several characters of the play that *Worcester v. Georgia* was the first and last time that an Indian Nation ever won a Supreme Court case. Justice Marshall concluded that only the federal government had the right to negotiate with tribal nations and that therefore Georgia's statute was invalid.

In the play, John Ridge confronts Andrew Jackson after the Supreme Court gave their ruling, but it is soon very clear that the President has no intent of enforcing Marshall's decision. Because lands are progressively taken away from them and violence against Cherokee people is increasing – violence against women especially – John Ridge, his father and his friend Elias fear that they will have no choice but to sign a treaty and leave West. John Ross, chief of the Cherokee who has worked with them for years, refuses to give up his lands and threatens to kill anyone who will. John Ridge decides to run for chief but John Ross cancels the election. The Ridges and others end up signing a treaty after all, the Treaty of New Echota of 1835, which leads to the forcible removal of Cherokee people known as the Trail of Tears. In Oklahoma, John Ridge, Major Ridge and Elias Boudinot are brutally murdered for what is seen as an act of treason.

Among the contemporary characters, there is Sarah Ridge Polson, a direct descendent of John Ridge. In her first appearance, she is in the Oklahoma cemetery where her great-great-great-grandfather was buried. She is a graduate law student from Yale and has just come back to interview for a job at the Cherokee nation Attorney General's office. Jim Ross – direct descendent of John Ross – hires her but is quite surprised that she would want to work on the reservation since she could find a job anywhere with her academic background. She tells him that she wants the Cherokee nation to implement a new clause introduced in the Violence Against Women Act reauthorization of 2013: a Special Domestic Violence Criminal Jurisdiction clause (title 904) which allows tribal nations that meet certain requirements to prosecute non-Native perpetrators of domestic violence. While she works closely on the matter, going to Washington D.C. multiple times to meet with the Department of Justice, she meets Ben, a police officer of the Special Victim's Unit, also freshly arrived on the reservation after he was hired by the state because “when it comes to SVU, he's the best” (Nagle 26). They met through Mitch, another lawyer whom Sarah and her brother Watie have known since childhood. Ben and Sarah soon move in together, get engaged and start preparing their wedding. One day, Sarah gets to the Attorney General's office and finds out that she and Jim have to go to D.C. once again but this time, it is to explain to the President why tribal jurisdiction is important. Jim has a feeling that this new president who “isn't as supportive of tribal jurisdiction as the one

[who] sign[ed] into law in 2013” (Nagle 108)²⁹ is considering taking it away. Ben is not thrilled to learn that Sarah is once again going to Washington D.C. for a few days with her boss, with whom he imagines her having an affair. In fact, he goes as far as telling her not to go. His fiancée goes anyway but when she comes back, he barely even lets her announce the happy news that she is pregnant as he is filled with anger and paranoia. He drank too much and gets violent: he batters and rapes her. At work the following day, Sarah tells Jim she wants to press charges, which she can do since her tribe now has the jurisdiction to prosecute crimes of domestic violence. Ben is sentenced by a tribal court to three years in prison but decides to bring the case to the Supreme Court as he thinks a tribal court should not be allowed to send him to prison. For a moment, Sarah considers dropping the charges because she fears the Supreme Court might take away tribal jurisdiction in the whole country at once, but Jim convinces her not to, and he suggests she should make the argument in the case, which she ends up winning.

The play ends at the same place it started: in the cemetery. Sarah brings her baby to the cemetery where their ancestors are buried while, simultaneously on the stage, John Ridge’s wife buries her husband in the middle of the night. He was just murdered, and she asks Samuel Worcester to mark his grave so that his children and generations after that can find him. Mary-Kathryn Nagle wanted the two worlds to coexist “since at any given moment we are a reflection of our past and present, and we project that into our future” (Nagle 9). The parallels between the two worlds are constant – scenes often alternate between the past and the present – and this is a clever way to highlight the connection between violence against Native women and the colonial past of the United States. In act I, scene 5, John Ross informs Major Ridge that Georgia guards have been instructed by the governor to rape Native women who get in their way:

JOHN ROSS: Two more.

MAJOR RIDGE: When?

JOHN ROSS: Just last night. [Beat.] Governor Forsyth’s instructed – he’s actually ordered the militia to violate our women. Any woman who does not obey their command –

MAJOR RIDGE: On Cherokee lands?

JOHN ROSS: They say this is Georgia. (49)

The guard who comes to arrest Samuel Worcester clearly states it as such when he threatens to rape John Ridge’s wife:

²⁹ Although he is not directly mentioned it, it is former President Donald Trump who is clearly alluded to. The “one [who] sign[ed] into law in 2013” is former President Barack Obama.

JOHN RIDGE: She's my wife.

GEORGIA GUARD: Your wife? [*To SARAH*]³⁰ You know, we've been instructed to violate Cherokee women who do not obey our commands. (80)

In fact, it appears rather obvious that they use sexual violence committed against Native women as a tool of colonialism, since this is what ultimately leads some Cherokee men to sign the treaty.

There is no doubt that *Sovereignty* was meant to be an informative and educative experience for its audience. It mentions for instance matrilineality since it is central to Cherokee culture. Matrilineality is explained in act I scene 10 when Ben meets Sarah's father. Ben – and the audience with him – learns that children inherit their status and affiliation to a tribe through the mother. Sarah's father also tells him that you do not have to have Cherokee blood to be Cherokee. This stands in great contrast with Andrew Jackson's conception of racial elimination which he discusses in act II scene 14, using the metaphor of an apple pie: the more you cut slices in the pie, the less you can distinguish the pieces of apple. Similarly, in his opinion, the more Native Americans have children with whites, the less Native they will be. He ends his monologue on a more straightforward note:

ANDREW JACKSON: [...] Pretty soon there will be nothing left of your race other than a handful of Americans who claim to be a fraction of who you are. And they won't be citizens of Cherokee nation. They'll be citizens of the United States. It's inevitable. Someday, this country will lose its Indian flavor. (187)

By explaining, about one hundred and eighty years later, that you do not need to have Cherokee blood to be Cherokee, Sarah's father invalidates Andrew Jackson's philosophy entirely.

Legal concepts that are central to the MMIWG2S crisis but not easily understood by everyone are also explained in the play. Act I scene 2 provides, right from the beginning, a clear illustration of the problems that arise from the jurisdictional maze. Ben, Mitch and Watie are at the bar of the casino when a drunk man asks Watie, whom he calls a "redskin," to get out of his way. He quickly gets violent, yet no one has the authority to arrest him so they have to let him go even though he punched Watie. Watie – a tribal police officer – knows he cannot do anything but Ben – a state police officer – was not aware of the jurisdictional loophole:

BEN: Shit. You're right. We don't have jurisdiction. [*BEN backs off*] He's all yours.

³⁰ John Ridge's wife is also called Sarah. In fact, Sarah Ridge Polson was named after her.

WATIE: I can't.

DRUNK MAN: Lemme go!

BEN [to DRUNK MAN]: Shut up! [to WATIE] What do you mean you can't?

WATIE: I'm tribal police.

BEN: So arrest him.

[...]

WATIE: I can't arrest a non-Native who attacks a Native.

BEN: Says who.

WATIE: The U.S. Supreme Court.

DRUNK MAN: Yeah. I got rights!

BEN: So you're telling me no one has jurisdiction?

WATIE: The Feds. They can arrest him.

BEN: But they aren't here.

WATIE: They never are. (22)

Ben is astonished that none of them can proceed to an arrest – “So crazy to be standing there—you know, two sets of police, and neither one of us could do anything” (27) – and the audience probably feels the same way. The audience is then educated on *Oliphant v. Suquamish* and Nagle acknowledges how alien these words might sound to someone who hears them for the first time by introducing some humor in the dialogue:

SARAH: Because of *Oliphant*.

BEN: An elephant?

MITCH AND SARAH: *Oliphant*.

MITCH: Supreme Court Case.

WATIE: Oh no. Two attorneys in the same room.

SARAH: In 1978 the Supreme Court said Tribes can no longer exercise criminal jurisdiction over non-Indians who come onto tribal lands and commit a crime.

BEN: That's just wrong.

SARAH: Tell that to your United States Supreme Court. (27-28)

Ben first finds the word *Oliphant* to be funny because it sounds like the word “elephant.” When he understands what it refers to and finds out the consequence *Oliphant* has on Native Americans, he is outraged. In that sense, the character of Ben serves a similar purpose to that of Jane in *Wind River*: he is the outsider who discovers how problematic the issue of jurisdiction is and he mirrors the frustration the audience develops when confronted to such levels of

violence and injustice. The word jurisdiction and the VAWA acronym are also explained. By making all these concepts, as well as by introducing history figures in a simple way, Nagle makes the topic understandable to both her non-Native and Native audiences that have not heard of them in the past.

Another significant strength of the play is its realistic rendering of domestic violence. With the characters of Sarah and Ben, Mary-Kathryn Nagle reminds the world that domestic violence is not totally black and white as she highlights that both aggressor and victim can be anyone. Although he sometimes says or does silly things – such as urinating on an electric fence (act I, scene 6) – Ben seems to be a decent person all throughout the first act. Besides, he works for the state police in the Special Victims Unit: thus, he spends his days investigating “cases that involve some of [the] most vulnerable victims” (“Units Of The Criminal Division”). Nagle provides the example of someone who chose to help victims for a living but who victimizes someone else: one does not preclude the other.³¹

The audience even gets an idea of what goes on in Ben’s head: although his perception is blurred with paranoia and alcohol, he is convinced that he is the one protecting Sarah from Jim, her boss. In that sense, Ben performs the role he subconsciously heard mainstream American culture tell him he should embody. Indeed, he is the white savior who saves the selfless Indian princess from the savage Indian brute.³² Sarah, on the other hand, does not need anybody’s help; thus, she is not the Indian princess. She is a very smart and sensible woman, a lawyer who graduated from Yale Law School. She even works with victims of domestic violence whom she represents in courts. She is familiar with domestic violence but sometimes there are just no sign that someone you love will become violent.

Not only does *Sovereignty* portray complex and multidimensional characters, but it also denounces the prejudiced behaviors of non-Natives. Ben clearly states that tribal governments and tribal courts are inferior to state and federal courts and he bases his argument on stereotypes of Native Americans that were frozen in time.³³ Ben calls the court that sentenced him a “fake court” (157) and tells Mitch that a domestic violence sentence from a tribal court “doesn’t count” (150). This is how he justifies such a statement:

³¹ In *The Beginning and End of Rape: Confronting Sexual Violence in Native America*, Sarah Deer asserts that, although it is rather rare, perpetrators can be people who work for the government. In fact, Deer provides a list of government officials who, from 1990 to 2015, have committed a crime – usually sexual assault – against Native people: they mostly were BIA teachers, investigators, employees, jailers, police officers, and IHS doctors and medical staff. She knows that these are isolated cases, but she argues it is demoralizing to Native people and it makes them lose trust in federal agencies.

³² See Bird’s theory in **II. A. 2) Gender Construction and Sexualization**

³³ See Leavitt *et al.*’s study in **II. A. 3) Representation of Present-Day Native Americans in the Media and Consequences**

BEN: I mean, you can't tell me these courts are legitimate. Some elder climbs to the top of the mountain, smokes tobacco, comes back down with a decision. Seriously. What's that.

MITCH: You were tried before a jury, not on a mountaintop.

BEN: A jury full of Indians! How do you think they made their decision? I bet you they prayed. (157)

What is striking with Ben is that he has experienced a trial in a tribal court and, as Mitch reminds him, the trial was similar to one he would have gotten anywhere else in the country: he was trialed in front of a jury. Yet, Ben is still basing his judgement on his prejudiced views of Native Americans. Ben not only has limited views on tribal governments, but he also has limited views on Native women, and this is in part what fuels the violence that Sarah endures. If we rewind the story and go back to act 2, scene 2 when Ben has started worrying about Sarah having an affair with her boss and drinks beer in the casino with his non-Native friend Mitch, we get a hint of the bias he has had toward Native women all along:

BEN: Is this something Indian women do?

MITCH: I'm sorry?

BEN: Do they run around - you know - like this?

MITCH: I'm not sure what you mean.

BEN: You kissed one. Did she turn around and kiss every other kid on the playground? (126)

This dialogue reveals the assumptions he has on Native women which have drilled into his mind because of the omnipresence of over-sexualized images of Native women in American culture. Ben asks Mitch if what people say about Native women is true: do they have loose morals? As we have seen before, such a narrative is harmful for Native women as it justifies the sexual violence of which they are often the targets.

Finding reasons why a victim somehow got what they deserved is called victim blaming and Nagle illustrates the concept very well with Ben's words. No matter how many "kids" she might have "kissed" "on the playground," never would Sarah ever deserve what Ben does to her. This also denounces a culture in which, if you are not the perfect victim, you are less worthy of justice or media attention. The language used by the media covering cases of MMIWG2S is often violent in that it often blames the victim and finds excuses to the perpetrator by highlighting how women, girls and two-spirit people might have had been involved with drugs, alcohol, sex-work, gangs and crime (Lucchesi and Echo-Hawk). Even *Sovereignty's* fictional

character Sarah, who could qualify as “the perfect victim,” was blamed in the media after the play was performed in the Bay Area:

[There are] a lot of people who aren't raging racists but they have all of this embedded, subconscious prejudice that they don't understand. They don't even know it's there because it's so deeply embedded in their psyche, yet it surfaces all the time. I'm just thinking of when I had my play *Sovereignty* out [...] and the *San Francisco Chronicle* sent their white lady reporter out to do a review of the play and she was like: “I don't think it's believable that the Cherokee woman protagonist would be in a relationship with a white man who would rape her because she is too smart.” And it's like “oh, so Native women who are in a relationship where they are beaten or raped by their significant other are just not smart.” There is this idea that it only happens to the women who aren't intelligent enough, didn't make the right choices; it's victim blaming. It's there at the foundational level. It's in the halls of Congress. It's in the background psyche of white journalists. (Nagle, *SBI Webinar*)

Victim blaming is extremely dangerous as it sends the message that a victim is partly responsible for the violence they experience. While her intent was to question the realism of the play, the *San Francisco Chronicle* journalist found a way to victim blame the “perfect victim” by suggesting that she was not intelligent enough to anticipate the violence she would ultimately experience.

On the contrary, Sarah is the perfect illustration of the women on which this dissertation focuses: she is a Native woman who has dedicated her life to making her reservation safer for other Native women, and for herself, by working hard to make Cherokee Nation implement section 904 of VAWA 2013. Ultimately, she finds herself in the position where she wants to prosecute a non-Native perpetrator of domestic violence who hurt her on Native lands and she can, because now Cherokee nation has the jurisdiction to do so, and she has herself to thank for it. When Ben challenges the tribal court's decision and brings it to the Supreme Court, she hesitates to drop the charges, but Jim convinces her otherwise:

SARAH: I changed my mind. I have to fight this. If he can erase my sovereignty over my body, he can erase the sovereignty of my nation. (173)

Jim even suggests she should be the one making the statement in the Supreme Court, which she does, and they win the case. Sovereignty is the story of a Native woman who fights for herself and does not need any savior. This type of representation is what is needed: it inspires Native women as it does not portray them as helpless victims but rather as survivors, and even warriors.

The playwright herself is an inspiring Native American woman. She is a lawyer at Pipestem Law, a firm that is specialized in tribal sovereignty and handles a lot of MMIWG2S cases (*SBI Webinar*). She is also a playwright: she has written and staged plays with her fellow students every year she was at Tulane Law School. *Sovereignty* premiered in January 2018 at the Arena Theater in Washington D.C. (Collins-Hughes). In 2018, another one of her plays was produced at the Oregon Shakespeare festival. Aside from being a full-time lawyer and a highly engaged advocate of the movement for missing and murdered Indigenous women, she was also running the Yale Indigenous Performing Arts program in the same year. Like Sarah in the play, Mary-Kathryn Nagle was present at the 2013 ceremony during which President Obama signed reauthorization of VAWA and she told the *New York Times* that it was a very emotional moment for her (Collins-Hughes). In *Sovereignty*, Mary-Kathryn Nagle wrote about her ancestors since she is a direct descendant of the Ridges: “[i]t’s my family onstage. It’s the story that was told to me from the time I was this big. I’ve carried it in me my whole life” (Collins-Hughes). *Worcester v. Georgia*, the 1832 Supreme Court case is a victorious story her grandmother told her when she was growing up and which made her chose her career path.

C. How to Evaluate the Scope of the Crisis

Native women have been sharing their stories for a long time now: the MMIWG2S crisis is a human rights crisis that they “have been documenting and explaining for generations” (Deer xx). However, in such a crisis, numbers are needed because they allow people to visualize its scale. Having data and gathering information of MMIWG2S is also crucial to convince legislators they should prioritize the issue. Deer writes that “numbers are powerful players in American politics” (Deer). However, many Indigenous advocates of the movement argue that the data that has been gathered by the federal government so far is too poor to support the identification and implementation of long-lasting culturally appropriate solutions. In regards with the MMIWGS2 crisis, it is often said that there is no one-size-fits all solution. Data has to be as detailed and comprehensive as possible, and it is thus posited in this part that it must therefore come from the people who are closer to the violence: survivors, families, and Indigenous communities in general. We will first consider the limits of federal data gathering before we can understand the benefits of Indigenous data collection.

1) *Federal Data Gathering on Violence Against Native Women*

Violence against Native women became a national concern for the first time in 1999 when the Bureau of Justice Statistics, a subdivision of the Department of Justice, issued a report entitled *American Indians and Crime*. It revealed that Native Americans, and especially Native American women, suffer from a disproportionate level of violence (Deer). This is when headlines on MMIWG2S started to appear in “mainstream newspapers such as the New York Times and [when] the Washington post visited reservations to interview Native women” (Deer 1). Since then, other reports have come to the same conclusion, and overall, they essentially reiterate the same statements, echoing what Native women have been declaring for generations (Deer). After Amnesty International published its *Maze of Injustice* report in 2007, media attention intensified. Deer argues that even if these surveys did not bring anything new to the table, only confirming what Native people had known for a long time, they were needed to alert the rest of the country. However, she asserts that “national numbers are flat; they lack dimension and stifle future exploitation” (Deer 14).

A reason why the first surveys were rather deficient is that they consisted in counting cases filed by the police. Because Native people represent a small percentage of the population, and since they are often misclassified,³⁴ it is highly probable that police files minimize reality. Furthermore, since only a fraction of crimes is reported to the police, relying on cases that are filed by law-enforcement is not optimal (Deer). Deer reveals that many of the Native women she has met in her career as an advocate are reluctant to report rape and discourage their daughters to do so: “‘it only makes things worse’, they explained” (Deer xii). Moreover, a recent study carried out by Indigenous women – to which we will pay a closer attention in a few paragraphs – pointed out that law-enforcement fails to keep rigorous track of cases of violence against Native women.

The Bureau of Justice Statistics then started to implement a better approach in their National Crime Victimization Survey (NCVS) and their National Violence Against Women Survey (NVAWS): the method was to randomly call households all over the country and ask them questions about violence. This approach still has drawbacks since it cannot account for homeless people living in the streets or in shelters, and “Native people are overrepresented in the homeless population” (Deer 5). Furthermore, not all victims feel comfortable enough to share what happened to them to a stranger over the phone. This is even more true of Native

³⁴ Because many Native Americans have adopted Hispanic or Anglo European sounding names during colonial times, they are often classified in systems as Latinx or Caucasian/White.

Americans who have grown mistrustful of non-Natives and federal agents because of centuries of violence and perceived indifference:

Imagine living in a world in which almost every woman you know has been raped. Now imagine living in a world in which four generations of women and their ancestors have been raped. Now imagine that not a single rapist has ever been prosecuted for these crimes. That dynamic is a reality for many Native women. (Deer 12)

For all these reasons, statistics that are compiled today by federal agencies are likely to be low estimates of violence against Native women.

In 2016, the Department of Justice issued a report entitled *Violence Against American Indian and Alaska Native Women and Men: 2010 Findings From the National Intimate Partner and Sexual Violence Survey*.³⁵ The data was collected using the phone interview technique on a sample of “2,473 adult women and 1,505 adult men who identified themselves as American Indian or Alaska Native, alone or in combination with another racial group” (Rosay 5). Authors of the report recognize its limitations: it is noted for instance that the questions were asked in English and Spanish but did not include any Indigenous language. There is also a mention to “the continuing stigma associated with disclosing victimizations,” which we have discussed before (Rosay 5). Nonetheless, this report claims to have many strengths as the authors call it “the most thorough assessment on the extent of violence against American Indian and Alaska Native women and men” (Rosay 5).

This report found that more than 4 in 5 Native women have experienced violence in their lifetime. The types of violence are detailed as such:

- 56.1 percent said they were sexually assaulted
- 55.5 percent said they were physically abused by an intimate partner
- 66.8 percent said they were psychologically abused by an intimate partner
- 48.8 percent said they were stalked

The report concludes that Native American women are 1.2 times as likely to experience violence as non-hispanic white women. A strength of this report is the attention it pays to the race of perpetrators. The report reveals that Native women experience violence at the hands of an interracial perpetrator (i.e., someone of a different race) much more often than white women do (fig. 7). Additionally, Native women experience interracial violence (i.e., violence perpetrated by a non-Native person) much more often than they experience intraracial violence (i.e., violence perpetrated by a Native person), although it must be noted that they do suffer

³⁵ The report was already mentioned in **II. A. 2 a) The “Sexual Brute”** (p.43)

from violence perpetrated by Native Americans as well: 97 percent of victimized Native women are victimized by at least one non-Native perpetrator whereas 35 percent are victimized by at least one Native perpetrator. Native women are the only group that suffers from interracial violence at higher rates. For women in general in the United States, it is much more common to experience intraracial violence than to experience interracial violence: “this is an anomaly in American criminology; violent crime in America is almost always intraracial” (Deer 6). The report discusses this anomaly by indicating that *Oliphant v. Suquamish* is the reason why Native women experience high rates of interracial violence:

[I]n the 1978 *Oliphant v. Suquamish* Indian Tribe case, the Supreme Court had ruled that Indian tribes did not have criminal jurisdiction over non-Indians. Despite having high rates of interracial victimizations, Indian tribes had no authority to criminally prosecute non-Indian offenders, even for crimes committed in Indian Country. This created a jurisdictional gap that provided immunity to non-Indian offenders and compromised the safety of Indian women and men. [...] While the results on interracial and intraracial victimizations in this report are not surprising, they provide strong support for Indian nations’ sovereign right to prosecute non-Indian offenders. (Rosay 47)

This report links violence against Native women to the colonial past of the country by highlighting that the relationship between Indian nations and the federal government, and more specifically the fact that the federal government impaired tribes’ ability to dispense justice as a sovereign nation.



Figure 7. Rates of interracial and intraracial violence by race, National Institute of Justice study.



Figure 8. Slide from PowerPoint presentation. Statistics showed to the audience by Annita Lucchesi during her presentation on MMIWG2S and data sovereignty in Vancouver in June 2019.

Among the statistics that exist on MMIWG2S, there is one that was issued by the Department of Justice in 2000 in the *Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women* and that has been used over and over again almost anytime the crisis is mentioned: more than one in three (34.1 percent) Native women will be raped during her lifetime (Tjaden and Thoennes 22). Annita Lucchesi is highly critical of these numbers. At the Feminists Deliver conference in Vancouver in June 2019, as she was giving a presentation on MMIWG2S and data sovereignty, she shared with the audience some of the most repeated statistics (fig. 8), including the well-known “one in three.” She asked how many people had heard about these statistics and how many of them knew where they came from. Since nobody answered, this is what she said:

They come from the federal government. Most of them are from the Center for Disease Control. What year were they published? What kind of methods were used? Who do they talk to? Where did they get their information from? How do they do it? Nobody knows. I’m an expert and I don’t know. We have these numbers that just float there, with no context and we’re expected to just take them at face value. (*Feminists Deliver - Annita Lucchesi Keynote*)

She recognizes it sounds extreme, but she likes to call the production and dissemination of these numbers “data terrorism” (Feminists Deliver) because, for the most part, they terrorize her people. She has noticed that such statistics frighten Native women and especially teenagers who constantly fear they or their friend, sister, mother, cousin, etc., will be one of the one in three. As a consequence, these young women’s lives are “shaped by safety planning in a way that they should not be” (Evering). She thinks these statistics are not helpful in the sense that not only do

they fail to provide solutions, but they also add another layer of violence: “it becomes a way of policing Indigenous women’s bodies and behaviors in ways that the settler state wants us to behave” (Evering). Lucchesi explains that Native girls end up making life choices based on these statistics:

They are scared and they are constantly saying: “What can I do to make sure I’m not one of the one in three? What can I do to protect my sister or my friend? Maybe if we go to the bathroom together. Maybe if we don’t drink. Maybe if we don’t talk to boys. Maybe if we dress a certain way. Maybe if we go to college.” But the reality is that it doesn’t matter how good you are, how you dress, whether you go to college or not. You can still end up targeted for violence. (*Feminists Deliver - Annita Lucchesi Keynote*)

It places the responsibility of avoiding violence on the potential victim, rather than focusing on the person who commits the violent act or the system that fails to prevent it. Lucchesi adds that repeating these statistics leads to the normalization of violence against Native women, since hearing or reading it everywhere has the effect of making it sound normal (Evering).

With Abigail Echo-Hawk (Pawnee), Chief Research Officer at Seattle Indian Health Board and the Director of the Urban Indian Health Institute in Seattle, Annita Lucchesi published in 2018 a report entitled *Missing and Murdered Indigenous Women & Girls: A snapshot of data from 71 urban cities in the United States*. In this report, they disclose that the kind of data that is gathered by the police and reported in the media is poor, and they list the reasons why. They state that “awareness is rising but data is still missing,” and they talk about a “data crisis” (Lucchesi and Echo-Hawk 2). The goal of their research was to document MMIWG2S cases in urban areas, and they chose to gather information from three different sources – the police, families, and the media. In their research, they quickly discovered discrepancies between these three sources.

An issue they noticed when getting names and cases from law-enforcement agencies is that they tend to underreport and racially misclassify victims. Oftentimes, because they have Hispanic names, Native Americans are misclassified as Latinxs.³⁶ For some old cases, a capitalized “N” inscribed next to a victim’s name – abbreviation of *Native* – was mistaken for the word *Negro* and vice versa. There has also been confusion between American Indians (i.e., Indigenous people of North America) and Indian Americans (i.e., Americans with ancestry from India). Echo-Hawk and Lucchesi also note that members of tribes that are not officially recognized by the government – or that were terminated and have lost their status – were

³⁶ “Latinx (adj.): Relating to people of Latin American origin or descent (used as a gender-neutral or non-binary alternative to Latino or Latina)” (Steinmetz). *Latinxs* is the plural form of this gender-neutral word.

therefore classified as white or they were not racially classified in police files. Finally, many cases that families affirm to be homicides are not classified as such, but rather as overdoses, suicides, accidents, exposure, etc.³⁷ Lucchesi told reporter Amara Evering examples of such issues of misclassification:

I've seen law enforcement come up with bizarre gray area loopholes to say: "Oh, she just walked into the woods and lay down and died," or "It's true she was experiencing domestic violence, and it's true she told the nurse that her husband beat her up before she went into a coma, but she was also an alcoholic, so she probably just fell over drunk and gave herself her own head injury." That's the kind of narrative that we get from law-enforcement. (Evering)

Lucchesi and Echo-Hawk argue that such misclassifications are consequences of racial stereotyping and they blame the media for maintaining negative and violent images of Native Americans.

Apropos of the media, they found that many outlets fail to cover MMIWG2S cases accurately and respectfully. They noticed that articles are often focused on reservation-based violence, forgetting women, girls, and two-spirit people who experience violence in urban areas and perpetuating two stereotypes: that all Native Americans live in Indian country, and that it is Native men who hurt Native women in reservations. They found that more than 95 percent of the 506 cases they focused on were never covered in national or international media. In addition, the top 10 percent received 62 percent of all coverage. Many cases were written using what Echo-Hawk and Lucchesi call "violent language" and link to victim blaming:

For the purposes of this analysis, UIHI defined violent language as language that engages in racism or misogyny or racial stereotyping, including references to drugs, alcohol, sex work, gang violence, victim criminal history, victim-blaming, making excuses for the perpetrator, misgendering transgender victims, racial misclassification, false information on cases, not naming the victim, and publishing images/video of the victim's death. (Lucchesi and Echo-Hawk 19)

They identified 46 media outlets that have used violent language to refer to MMIWG2S cases.

The report made the following conclusion:

If we rely solely on law enforcement and media for an awareness or understanding of the issue, we will have a deeply inaccurate picture of the

³⁷ This might remind the reader of Natalie from *Wind River* whose death can be considered a homicide since she had to escape her abusers in the snow in the middle of the night in extremely cold weather. Nonetheless, the medical examiner concludes that she died due to the cold. Natalie is a murdered Indigenous woman; however, her name would not be among the statistics because of how her death was classified in law-enforcement files.

realities, minimizing the extent to which our urban [Native women and girls] experience this violence. (Lucchesi and Echo-Hawk 20)

Data that is gathered today by the federal government does not permit a comprehensive visualization of the crisis. It fails to take into account women that live in urban areas, women that are homeless or live in shelters, women that do not feel comfortable sharing what happened to them, and women who experience violence but are racially misidentified. Besides, it fails to account for external factors that can be connected to violence, such as the proximity of extractive industries and man camps, the impact of having a MMIWG2S in your family, Native youth who are or have been in the foster care system or in a juvenile detention center, etc. Like many other advocates of the movement, Sarah Deer is convinced that, “when Native women design studies that reflect their own concerns, then the research will truly advance change” (Deer 14). The next part discusses the reasons why Indigenous data gathering can not only fill the gaps of federal data gathering, but also empower Native communities.

2) *The Case For Indigenous Data Sovereignty*

To compensate for these gaps, Native women have taken the matter into their own hands and started logging cases of MMIWG2S into databases. This is the case of the Sovereign Bodies Institute,³⁸ a non-profit organization that launched in January 2019. They are affiliated with Seventh Generation Fund for Indigenous Peoples, Inc., an organization which was founded in the 1970s and the goal of which is to “respond to the needs of grassroots Indigenous communities and initiatives” (Seventh Generation Fund) in order to promote Native American tribes’ self-determination and sovereignty. The SBI board, staff and partners are all Indigenous people coming from the United States, Canada and Mexico and the board is entirely made of women. SBI collects cases of missing and murdered Indigenous women, girls and two spirit people in an independent database which has reached 2,448 names for the United States and 4,773 in total (including Canada, Latin America, and Pacific Islands).³⁹ It must be noted that this is an impressive number, but we will see that SBI’s priority is not necessarily the quantity of cases they log, but rather the quality of the information they gather. The oldest case logged in the database occurred in 1864; however, two thirds of the cases are from the year 2000 to present day (see Appendix B). Although there are other organizations that work to document

³⁸ From now on in this dissertation, the Sovereign Bodies Institute will be referred to as “SBI”.

³⁹ The SBI sent me an aggregate of their most recent data by email. Our email conversation can be found in Appendix A and the statistics can be found in Appendix B.

the MMIWG2S crisis, this dissertation goes over the work of the SBI to demonstrate the strengths of Indigenous data collection.

SBI was founded by none other than Annita Lucchesi, who serves as the organization’s executive director now but was a master’s student when she began collecting the names of MMIWG2S for her thesis. Most of the information on the Sovereign Bodies Institute provided in this dissertation comes from the Feminists Deliver conference in which she gave a presentation in Vancouver in June 2019 and has been mentioned before. Some of the statistics are also taken from the 2019 conference. This is why, she explains, the SBI was created:

Our goal is to think about what we can do differently than the government forms of generating statistics and numbers about violence against our people that are not helpful to us. The question we ask is: “what would it mean to generate data that heals or empowers or mobilizes, rather than terrorizes and paralyzes?” That’s the goal that we have, not just around MMIW, but also gender and sexual violence in our communities in general.

a) Collecting Valuable Information

Lucchesi argues that the information they collect at SBI is of higher value as it allows to shed light on some specificities of violence against Native women. When they log in a new case, they will go over a broad list of information that they try to obtain (see fig. 9).



Figure 9. Slide from PowerPoint presentation. Type of information logged in the SBI database.

In the *Feminists Deliver* conference, Lucchesi shared a few examples of information that matters but is not necessarily analyzed in federal studies. The SBI has found that some victims in the cases they logged were mothers. They also noted that many MMIWG2S had another MMIWG2S in their families. Lucchesi gives the name of Angel Aubrey, from the Hupa nation, whose mother was killed when she was very young. Angel's brother, who was three years old at the time, was with their mother when it happened, and he was alone with his mother's body for a whole night. Years later, when their tribe's newspaper decided to include their mother's name in an article honoring MMIWG2S, they asked for the family's permission and only Angel gave hers as they could not reach her brother. When he eventually found out about the article, he was so triggered and so upset that he shot and killed his sister, in daylight, on the main street of their reservation. Finding out that some of the victims are mothers (12 percent according to the SBI data base – see Appendix B) and noticing the consequences it can have on family members, the SBI has shed light on the need for services dedicated to assist children whose mothers go missing or are murdered.

Also often disregarded in federal studies are the questions of who finds the body and is the body cared for in a respectful way. Lucchesi is saddened and angered to share that it is often families and community members who find the bodies. In the case of Henny Scott, a fourteen-year-old Cheyenne girl from Montana, the police did not start looking for her as soon as her family reported her being missing, stating that she was “a runaway who [would] come back when she feels like it” (*Feminists Deliver - Annita Lucchesi Keynote*). When they finally filed a missing person's report, Henny was already dead, and it was members of her community who found her body. In another case in Minnesota, it was the victim's family who found her body which was in horrific condition. The reason why researchers at SBI document who found the body is that they wish to take into account the consequences it has on families and communities:

One of the teaching we got from Henny's case is that there is an impact on our communities every time it's one of us who has to find the body. [...] That has an impact on us. We don't have grief counseling; we don't have support services. How do you heal somebody who's seen their relative in that state?
(*Feminists Deliver - Annita Lucchesi Keynote*)

Furthermore, when a body is not taken care of with respect, it matters too, as it sends the message that what happens to Native bodies is of little importance to the authorities. In Henny's case, although the BIA was notified of its location, it was left in the snow for a whole night and was not moved until the following day. Because they felt that such aspects of MMIWG2S cases,

which can be viewed as added violence, were not accounted for, researchers at SBI decided to register them.⁴⁰

Regional and locally specific factors also have to be taken into account. Some states have higher rates of violence against Native women: 55% of the cases logged in the SBI database occurred in the states of Washington (293), Montana (241), Arizona (225), New-Mexico (216), California (190), and Alaska (179) (see Appendix B). In the states of North Dakota, South Dakota, Montana, and Nebraska, where a pipeline⁴¹ has been under construction since 2013, there have been high numbers of MMIWG2S. In a report published in November 2019 in partnership with the Brave Heart Society entitled *Zuya Wicayuonihan: Honoring Warrior women*, Annita Lucchesi and the SBI called attention to the threat extractive industries and their “man camps” pose to Native women by revealing that 20 percent of cases of missing and murdered women in these states occurred in counties – or in areas adjacent to counties – where the pipeline was built. They have also found that 4 in 5 cases were never solved and charges were never laid (Lucchesi, *Zuya WiWicayuonihan*).

The same report paid a close attention to the prosecution of perpetrators of violence against Native women and noted that the likelihood of an alleged perpetrator being convicted depended on both their race and gender. Indeed, alleged white male perpetrators are less likely to be charged of a crime committed against a Native woman than alleged Latinx or Black perpetrators, and even alleged white female perpetrators:

[...] nearly two thirds of alleged murderers who were not held accountable are non-Native, and 94% of them are male. Two thirds of Black and Latinx alleged perpetrators were convicted or have pending charges, while 79% of Indigenous alleged perpetrators were convicted or have pending charges. [...] White women alleged murderers are twice as likely to be charged or convicted as white male alleged murderers. (Lucchesi, *Zuya WiWicayuonihan* 16)

Lucchesi made the following comment: “what was really upsetting about what we found is only one and two white men who are identified as alleged killers of a Native women are ever even arrested” (Evering). Their research proved that prosecution of murders and abduction of Native women is both “racialized and gendered” (Lucchesi, *Zuya WiWicayuonihan*).

⁴⁰ I asked the SBI the following question: “In how many cases did a family or a community member find the body of a missing loved-one?” They provided the following answer: “This question is a data point that we don’t track” (see Appendixes A and B). Although I did not get the chance to ask them about this particular point, I would assume that they do take note of who finds the body/organizes a search but that it does not appear in the statistics.

⁴¹ The Keystone Pipeline (also commonly referred to as the KXL pipeline) was first proposed in 2008 by the Canadian oil company TC Energy as a way to carry oil from Canada to the Texas gulf Coast. The permit was approved by Obama in 2012 but he revoked it in 2015. In 2017, the Trump administration reversed this decision. In January 2021, newly elected President Joe Biden revoked the permit. (Shear)

Another element the data gathered by SBI revealed is that only 4 percent of cases are related to domestic violence (*Feminists Deliver - Annita Lucchesi Keynote*).⁴² This information is of high value since it shows that the domestic violence jurisdiction that was restored to tribal law enforcement in the reauthorization of VAWA in 2013 can only solve a small fraction of the problem:

If we focus on those numbers [domestic-violence related cases and sexual assault] it shows that those forms of violence are actually a very small part of the larger issue of MMIW. They are important, they do matter, 100%, but if we rely solely on domestic violence or sexual assault programming to address this issue, we're never going to fix it, because so much of this is outside of that scope. (*Feminists Deliver - Annita Lucchesi Keynote*)

Such information highlights that policy makers must broaden their perspectives. The SBI also notes an important connection between MMIWG2S and the foster care system, since 77 percent of people who were in the foster care system were also victims of sexual assault, domestic violence, or sex trafficking (*Feminists Deliver - Annita Lucchesi Keynote*). They are also able to assert that more than half of cases occur in urban areas (54 percent – see Appendix B) and that it is therefore not just an issue Natives who live on reservations face. This is something that Native communities know already, but the data the SBI has gathered will be useful in convincing non-Natives and policymakers of their seriousness:

What's helpful about the database is that it proves things we already know. For example, we know that our youth who end up in foster homes are more likely to be targeted for all sorts of violence. That's pretty powerful proof that helps us when we go into courtrooms or advocate for policy changes, we can say, definitively, the data we have shows that the system is failing our kids. (*Feminists Deliver - Annita Lucchesi Keynote*)

Thanks to their database, the SBI is able to assert that 88 percent of cases are unresolved and that the medium age of MMIW2S is 26 years old (see Appendix B). Victims tend to be young, and most cases remain mysteries. This proves how urgent finding solutions is. Being able to bring hard facts to the decision table gives power to Native communities and advocates but Indigenous data gathering empowers individuals and communities in other ways.

b) Empowering Native People and Communities

Annita Lucchesi is herself the example of a woman who has been empowered by the project she developed, as she was herself a victim of domestic violence and sex trafficking. She

⁴² This is the data they had in 2019. In 2021, this number rose to 9 percent (Appendix B).

tells her story explaining that there were multiple layers of violence involved. Her abuser grew up in a violent home from which he ran away as a teenager, becoming homeless. He was still a teenager when he was convicted for having beaten up a friend and was sent to an adult jail, where he shared a cell with a forty-year-old serial killer. In prison, there was little chance he would obtain a GED upon which his release depended because he did not know how to read, and the GED teacher asked for sexual favors in exchange of a passing grade. Lucchesi says that it is in large part because this person was failed by the system that he ended up abusing and trafficking her, as well as trafficking her best friend, who is now missing. The man Lucchesi was sold to raped two fifteen-year-old girls and was convicted for this. She illustrates the ripple effect of a violent system by listing all the victims in this story:

Imagine if the system was set up to support victims. Imagine if the system was set up in a way that he wouldn't have been put in that adult prison to go on and reoffend. Or if the system had been set up to make me feel safe in coming forward and saying what happened to me so that it could have prevented what happened to those girls. Because of the failures of the Child Welfare system and all of the other governmental systems attached to it, they created six more victims: me, my best friend, her son, those two girls, and that man now has a son who is also in the system. (*Feminists Deliver - Annita Lucchesi Keynote*)

This is the kind of interconnection that has been missing from federal data and that SBI captures. It is in fact her own story that motivated her to map cases of MMIWG2S when she was finishing her master's in cartography. Surprised to find out that no consistent data existed in Canada and the United States, she started listing cases after cases on a spreadsheet and she is still doing it today, six years later.

So that's how the database got started. It was a bit narrow because I couldn't afford WIFI so I was working at a coffee shop. I had a broken hand. My abuser shattered all the bones in my left hand. The first couple hundred entries in the database were typed with a broken hand but that's the spirit of the work and that's how I got started. [...] I am not a data scientist. That was not my expertise. I was just a girl with a spreadsheet and a really deep frustration that if I had been killed, there was no guarantee my story was going to be part of making sure that it didn't happen to other women and girls and that there was no safe home to care for that story in a good way and to make sure that my family wasn't alone in carrying my grief and carrying my story. So that's what the database aims to do. (*Feminists Deliver - Annita Lucchesi Keynote*)

One of her professors told her that "Indians don't make maps" (Evering) and did not want to approve her research. She argues this comment was laughable, but she is not really

surprised. For her, it is proof of colonial attitudes. This is what she says of the federal government and of their research on MMIWG2S:

[...] their data is poor because their data collection methods are poor. Their analysis of it is poor because they are unqualified. But they like to say they are, and they like to tell us we're not because it's a way for them to assert colonial domination over us. (*Feminists Deliver* - Annita Lucchesi Keynote)

It is fair to say that she proved her professor wrong: Native Americans can make maps. In fact, SBI does much more than just mapping cases of MMIWG2S. The word “body” in Sovereign Bodies Institute stands for human bodies, but also for bodies of water, national bodies, or celestial bodies. They promote the strong ties that they see between bodily sovereignty and tribal sovereignty⁴³ and the movement expands across borders. One of the strengths of SBI's database is how it unites Indigenous peoples of North and South America in documenting a shared struggle, and Lucchesi considers that it belongs to each and every Indigenous person of the continent:

I really like to tell people SBI is something owned by Indigenous communities all across this continent. I serve as executive director but all of the data, all of the work that we do is in service of the community. [...] It's really important to me that, wherever I go, I go as a diplomat for SBI and I say “hey, this belongs to you, so if we're not doing something that you like, or if there's something you think we should be doing that we're not, this is the time to tell us, because this is something that we all own collectively. (*Feminists Deliver* - Annita Lucchesi Keynote)

She points out that Native Americans have always been diplomats. Building relationships has been a successful way for them to log in cases that would have remained invisible otherwise. For instance, they used an old list of people who were sentenced to death in Canada for having murdered a woman and they wrote down the names of women who were or were assumed to be Indigenous. Then, they called tribes from different regions to ask if these names could have matched someone who had been murdered or who had gone missing in prior generations. This technique took a lot of time and effort, but they managed to gather forty cases, and this only worked because they developed relationships with tribes in Canada. This is a telling example of SBI's strategy to document cases of MMIWG2S, which Lucchesi calls the “by-any-means-necessary technique” (*Feminists Deliver* - Annita Lucchesi Keynote). They do ask access to police records all over the continent and they also use media articles, but they tend to vary

⁴³ This might remind the reader of what the main character of the play *Sovereignty* – Sarah – says when she decides she must not drop the charges against her abuser: “If he can erase my sovereignty over my body, he can erase the sovereignty of my nation” (Nagle 173).

sources, using social media and historical archives for instance. As for victims and families, SBI get the word out that they are building a database but wait for them to reach out whenever they are ready to share their stories.

Another way in which Native people of SBI are empowered lies in the decision they made to select who they share their findings with. They have on multiple occasions refused access to the Canadian federal government and to the FBI:

We don't do it. Families ask us not to and frankly, it's their job. If they don't want to track violence on this issue they shouldn't have jurisdiction over it. Great, give us back jurisdiction. [...] This is the power of Indigenous research, of data sovereignty: to have some power in these rooms where we've never had power before. It's pretty fun telling the FBI no four times. (*Feminists Deliver - Annita Lucchesi Keynote*)

They also choose not to share any information with tribes that have a known abuser in leadership, and generally, they do not share information with organizations that are not Indigenous – although they might provide them with “aggregate numbers or statistics upon request” (Sovereign Bodies Institute, “Request Data From The MMIW Database”). Any request is deliberated over by the board of SBI who is entirely made of Indigenous women, among whom serves Professor Sarah Deer.⁴⁴

Finally, SBI selects who they receive funding from, and they accept no money from any “colonial government of any kind” or “anyone associated with resource extraction”: “[a]nything that has to do with violation of sovereignty of our peoples, we don't want anything to do we it” (*Feminists Deliver - Annita Lucchesi Keynote*). Rejecting a system and entities that have been harming them is another way in which they feel empowered.

c) Promoting Culturally Appropriate Practices to Fight Against Violence and Honor Victims

⁴⁴ As part of my research on the SBI, I contacted them in 2021 with the hope of possibly getting some information on the work that they do on the one hand, and on the data as well. I quickly received an automated answer in which I was informed that due to the pandemic, important delays had to be expected. I expected to be politely told that, as a foreign student who has no connection with any Indigenous researcher or association, I would not be given access to any data. Indeed, Annita Lucchesi made it clear at the *Feminists Deliver* conference:

In terms of academic research, we don't provide any data to non-Indigenous researchers, period. You have to be Indigenous and you have to have a dedicated care plan for both you and the data throughout the duration of your work and that has to be approved by our board. (*Feminists Deliver - Annita Lucchesi Keynote*)

However, in late April 2021, they replied that they would be happy to help me by sharing their most recent statistics. The questions I had about the SBI were sent to Annita Lucchesi but I have not yet received an answer from her. The data they shared with me are statistics; however, they would not have shared raw data out of respect for the victims and their families.

A final force of Indigenous-led organizations such as SBI is that they can do things in their own way and therefore choose to promote and revive cultural practices in fighting violence against Native women. Not only does Lucchesi think it is crucial that all Indigenous people of the continent guide SBI in improving the database, but she also says that the spirits of the missing and murdered also serve as guides: “[...] we also track what these spirits tell us to track and what their stories tell us to track” (*Feminists Deliver - Annita Lucchesi Keynote*). Professor Deer explains that when a name is added to the database, there can be the need for cultural ceremonies such as feasts (Deer, The House Committee on Natural Resources).

Among the Indigenous people with whom SBI has agreed to share access to the database, there are researchers who use the data in connection with Native American cultures. For instance, SBI works with Lorelei Williams of the Skatin Nation (British Columbia, Canada), a survivor of physical and sexual violence, who created Butterflies in Spirit, a dancing group made of families of MMIWG2S. They work on dance as a form of healing, and perform at gatherings and events to raise awareness (*Feminists Deliver*). SBI also supports other women who work on similar healing projects that promote for instance pottery or traditional tattoo revitalization. These programs are centered around victims and families, and on how they can be helped after having experienced trauma.

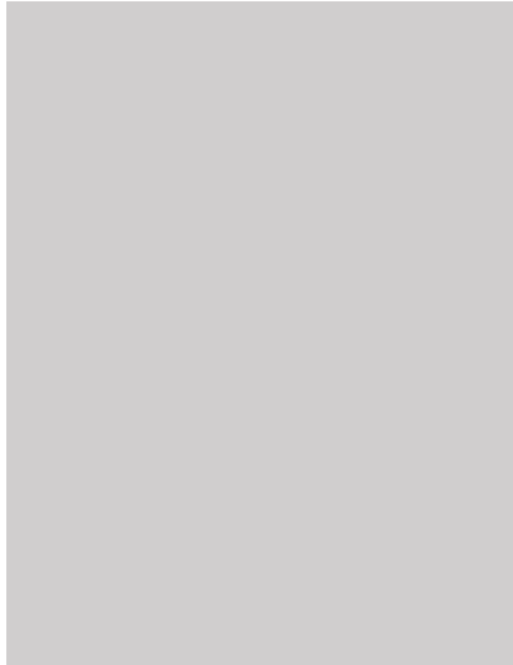


Figure 10. Illustration of a Native woman wearing a ribbon skirt in which Lucchesi and Echo-Hawk shared their study’s finding.



Figure 11. Agnes Woodward made and handed out 150 ribbon skirts for a gathering in November 2019.

In 2018, Lucchesi and Echo-Hawk chose to present the results of their study on MMIWG2S in urban areas in the form of the ribbon skirt (see fig. 10), “a form of cultural clothing that represents the sacredness of American Indian and Alaska Native women and the deep connection their bodies and spirits have to the land” (Lucchesi and Echo-Hawk 7). Lucchesi explains that women and girls have been making these skirts all over Indian country (see fig. 11) and they have attributed meanings to specific colors: police brutality, trafficking, domestic violence, sexual assault, foster care, girls under the age of eighteen, etc.

SBI also support the Lady Bears basketball team who have been Montana State champions two years in a row and who wanted to raise awareness on MMIWG2S. They colored their shoelaces red and wrote names from the SBI database to carry these women, girls, and two-spirit people with them in all their games across the state. But they did not stop there:

Now they are starting to make ribbon skirts, not only for themselves but for opposing teams and other girls at their school to teach about the sacredness of women and to teach about sisterhood. They’ve made a documentary and a podcast. They’re amazing: they’re thirteen-year-old girls, taking over the world. We get to root for them and support them and kind of give them that nudge by helping them use the data in these ways. (*Feminists Deliver - Annita Lucchesi Keynote*)

The main idea behind Indigenous data collection is that, although numbers matter, names that have been gathered in the database are not just numbers, they are people with stories, names, faces, friends, and families. In Minnesota, for instance, the Minnesota Indian Women’s Sexual Assault Coalition (MIWSAC) made a living memorial called the *Barrette Project*. The memorial was an assemble of traditional beaded barrettes that were each accompanied by a testimony from a Native woman, girl or two-spirit person who experienced violence.

The exhibit thus contains elements and images of honor, beauty, and strength while simultaneously offering up difficult truths. [...] [MIWSAC created] a platform for Native women to tell their stories on their own terms and these perspectives, I believe, carry more significant information than any statistical report. (Deer 10-11)

Living or deceased, missing, or found, MMIWG2S are cared for by Native organizations who want they sacredness to be valued and remembered. A woman in Lucchesi’s family told her that these women are “warrior women” who “gave their lives so that [Native Americans] could fight for other women, so they have the right to live free from violence” (Evering). Warrior women seems to be a title that is given again and again to Native American women.

D. Conclusion

The MMIWG2S crisis is difficult to solve because it has been invisible for a very long time. Indeed, because of narratives that have been promoted on Native Americans and more precisely on Native American women since the early-colonial period, they have been and still are today put in boxes: the stereotypes that prevail are for the most part connected with violence. They also tend to link Native Americans with the past, which has the consequence of undermining their importance in the United States today.

Since the beginning of the twenty-first century, concern has gradually grown as studies and media articles started to warn governments and the public of this particular crisis that harms Native American women, girls, and two-spirit people. Representation is not necessarily better nowadays, as Native Americans are still the mascots of sports teams, or absent from television and films. Recent mainstream works of fiction tend to perpetuate myths such as that of the Indian princess, for instance. Yet, Native artists – and non-Native artists who position themselves as allies – are producing works that provide more accurate representation today and raise awareness on the violence experienced by women. Such works are very valuable, and were they to be created by more Native women and offered to larger audiences, they could make a change in making the MMIWG2S crisis more visible.

However, what has the potential of yielding policy change – which is needed since it is laws, Supreme Court decisions, and lack of resources that block tribal governments from being able to prosecute all criminals – is data. As we have seen with the example of the Sovereign Bodies Institute, Native American activists have taken the matter in their own hands and started to document the crisis in ways that make sense to them: they collect information that is more detailed and relevant to the specificities of violence against Native women; they collect the data in ways that are appropriate in their cultures and that respect their values; and finally, they are empowered in the process, which allows them to explore healing opportunities, and proving the rest of the country that you can be Native American and do quality research. In fact, their message is that you can be Native American and do anything. They also find connections and create relationships with Indigenous people of the whole continent in order to document an issue that tends to be common to all of them.

Raising awareness and documenting the MMIWG2S crisis is highly important but it is only a part of what MMIWG2S advocates do. They also fight every day to change federal, state, and tribal laws, while, at the same time, helping survivors and families on the ground. They really are at the front lines.

III. Working with the Federal Government and Promoting Self Determination

With Native voices being increasingly heard on the violence Native women face in the United States today, a point has been made that long-lasting, culturally appropriate, and Native-centered solutions have to be found and implemented. However, finding solutions to a problem that is deeply rooted in settler colonialism can be very arduous, especially since settler colonialism is described by many scholars as a structure that is still very much in place, rather than an event of the past. As a consequence, solving the MMIWG2S crisis will inevitably involve some degree of decolonization. Vedan *et al.* defines decolonization as follows:

Decolonization is the process of deconstructing colonial ideologies of the superiority and privilege of Western thought and approaches. On the one hand, decolonization involves dismantling structures that perpetuate the status quo and addressing unbalanced power dynamics. On the other hand, decolonization involves valuing and revitalizing Indigenous knowledge and approaches and weeding out settler biases or assumptions that have impacted Indigenous ways of being. (Vedan *et al.*)

We have seen that violence against Native women is partly caused by the failure of the criminal justice system to protect them, especially from non-Native perpetrators. Although there are other factors as well, including racial and gendered prejudices, correcting the flaws of the criminal justice system is thus central to solving the MMIWG2S and it must involve reform of federal legislation.

This chapter argues that it is important Native Americans should have a central role in finding and implementing solutions to the crisis, even though, because of “unbalanced power dynamics,”⁴⁵ they might be limited in doing so and have to find ways to collaborate with the federal government.

We shall first pay attention to Native advocates that have been voicing their concerns on Capitol Hill so as to ask for lawmakers to address the crisis through the passing of legislation. However, we will examine how uneasy it can be for minorities to seek help from a political body that is to blame for the suffering of their ancestors and still shows sign of structural racism to this day: there are in fact arguments against and in favor of Native Americans turning to the federal government for federal reform on issues it is in part responsible for. In order to see for ourselves whether it is rather fruitful or rather pointless, we will pay attention to a House

⁴⁵ To adopt the words of Vedan *et al.*

hearing held on the issue of MMIWG2S during which female Native advocates offered ideas on how to solve the crisis, and we will then review the impact their testimonies have had on a recent text of law that is specifically addressing the violence Native women face.

Our final focus shall be set on how “Indigenous knowledge and approaches” can be valued and revitalized. A presentation on the grassroots work that is provided by organizations such as the National Indigenous Women’s Resource Center and by one of their partners shall illustrate the engagement of Native activists providing concrete support to survivors of violence and families of MMIWG2S on the ground. We will then focus on the legitimacy of tribal criminal justice systems and wonder whether a restoration of criminal tribal jurisdiction over non-Natives for all types of crimes is imaginable in the future. Finally, we will concentrate on what reform at the tribal level can look like and the advantages it can have.

A. Bringing the Issue to Congress

Can and should Native Americans engage with the federal government to fix problems that were for the most part caused by colonization? This is the question Professor Sarah Deer raises in the eighth chapter of *The Beginning and End of Rape*. Her own words are as follows: “do tribal nations compromise or weaken their own sovereignty by the mere process of seeking federal legislative reform?” (Deer 96). In this part, we will discuss whether and how solutions to address the MMIWG2S crisis can be developed by the federal government. Professor Deer’s analysis debates why there might be arguments against seeking federal reform to address issues that affect Native Americans, but it also demonstrates that the voice of advocates can have some weight on Capitol Hill and lead to some degree of change. We shall then review a congressional hearing from March 2019 during which four Native women involved in fighting against the MMIWG2S crisis – including Professor Deer herself – testified in the House of Representatives, starting by listing what they think participates in causing Native women to disappear or get murdered, following up with their recommendations on what Congress should do. Finally, we will go over a very recent bill that was officially signed into law in October 2020 and that was specifically designed to address violence against Native women, girls and two-spirits. By comparing a former version of the bill to the one that Congress voted into law, we will consider the impact the voices of Native women advocates have had on the drafting of the law. Comments by advocates Sarah Deer and Mary-Kathryn Nagle on how and why the text was edited shall provide us with insights on the extent to which their advice was integrated in the act.

1) The Dilemma of Federal Reform

According to Professor Deer, there is a school of thought among Native Americans that opposes engaging with the federal government as a way to solve problems linked with colonialism. A main reason for such an opposition is that it can be seen as a sort of surrender: it can send the message that Native Americans accept both past and present sufferings caused directly or indirectly by a body of government that has not yet offered meaningful apology and reparation.⁴⁶ To these people, the best way to move forward in protecting their families and friends, their lands, and revitalizing their cultures and languages is to build strong alliances between tribal communities. Considering her speech in the Feminists Deliver conference during which she expressed SBI's refusal to work with any colonial entity and their intentions to build connections with Indigenous tribes of the whole continent, it could be assumed that Annita Lucchesi belongs to this school of thought.⁴⁷

Another common argument against federal reform to address issues that affect Native Americans is that the “federal legislative process can be patronizing and paternalistic” (Deer 96). A telling example of that would be the name Senator Daniel Akaka of Hawaii chose for the new provisions for VAWA when he introduced them in 2013: SAVE Native Women Act which stood for Stand Against Violence and Empower Native Women Act. Although his intentions were probably very good, Deer insists that Native American women do not need to be saved by anyone, since they can and will save themselves. She writes that “any federal legislation, by definition, institutionalizes and endorses the United States as a protector of women – and this is a cession that some are not willing to make” (97). Furthermore, she adds that federal reform of the justice system tends to value punitive measures, which is not a popular approach to justice in most Native American cultures. Finally, there is a common fear that federal reform might lead to more federal presence on tribal lands, which most tribes want to avoid as it could be another obstacle to tribal sovereignty.

In spite of all this, Deer argues in favor of engaging with federal lawmakers in order to address the MMIWG2S crisis. First, she argues violence against women has had far more devastating effects on tribal communities than federal reform could. She states that women are central to many tribal communities so if more than half of them⁴⁸ has been traumatized by sexual assault, the community suffers: it “inhibits their ability to contribute productively to the community” (Deer 13). The MMIWG2S crisis has the disastrous effect of paralyzing whole

⁴⁶ See **I. B. 2) Continuing federal complicity.**

⁴⁷ See **II. C. 2) The Case For Indigenous Data Gathering.**

⁴⁸ 56.1 percent of Native women are sexually assaulted (Rosay).

communities. Thus, her belief is that working hand in hand with federal lawmakers, although it is far from being the only solution, is better than nothing. She acknowledges that federal reform can only bring about incremental change, and she discusses the passing of the Tribal Law and Order Act of 2010 (or TLOA) and the 2013 reauthorization of VAWA to illustrate this, but she argues that these changes should be celebrated since they are proofs that Native voices are starting to be heard. As discussed before, these recent laws have started to address the issue of the jurisdictional maze that makes Native women unsafe: the TLOA has lifted the sentencing cap that used to limit tribal courts in the number of years they could sentence a criminal to and the 2013 reauthorization of VAWA has restored some jurisdiction to tribal courts over non-Natives who commit domestic violence in Indian country.

Additionally, Professor Deer believes that laws that impact Native American lives will be passed by the federal government anyway, so they might as well be involved in the process to avoid any unintentional harm that could result from federal policymaking. She provides the example of the Sex Offender Registration and Notification Act of 2006 which allowed states to register and track offenders in Indian country without having consulted tribal leaders before. This act gave criminal authority to states and it was specifically problematic for tribes of non-PL280 states in which tribes had never been subjected to state authority in regards with criminal justice. Tribes who then argued against this act found themselves in the difficult position of criticizing a law aimed at protecting children from sexual predators, which some journalists accused them of. In order to prevent such situations, Native Americans have to engage with the federal government: this is a safer way to make sure that the laws that will be passed anyways take into account the specificities of all tribal nations and do not lessen the sovereignty they still possess.

Professor Deer cannot be the only one to believe that Native American voices are needed in Washington D.C. since

[...] organizations like the National Congress of American Indians and several tribal embassies [...] have established a physical presence in the nation's capital. It is becoming more and more difficult for Congress to move on legislation without hearing from at least one tribal organization about concerns. (Deer 99)

In 2004, the Senate created its committee on Indian affairs to invite tribal leaders, victims' advocates, members of the National Congress of American Indians and other Native voices to express their concerns about the MMIWG2S crisis and urge lawmakers to generate change. Deer argues that a pivotal moment was the publication of Amnesty International's *Maze of*

Injustice report in 2007, since the pictures and stories that were included in the document managed to convince lawmakers of the seriousness of the issue – which was humanized – and made them pay a closer attention to the high rates of violence experienced by Native American women, girls, and two-spirit people.

Deer sees a real link between strengthened presence of Native American voices on Capitol Hill and the positive change that was brought about in the TLOA and the 2013 reauthorization of VAWA. She insists that these laws should be celebrated and that they would possibly never have been passed without the constant and tenacious efforts of advocates who have voiced their concerns in Congress, whether it was in hearings or letters. An event that mattered in the movement to see the new provisions added to VAWA in 2013 was when Deborah Parker, who was chairwoman of the Tulalip tribes at the time, gave a speech in Washington D.C. to promote the positive effect special jurisdiction on domestic violence for tribal government over non-Natives would have. Her speech was then shared on her YouTube channel. As a survivor of child sexual abuse, she chose to tell her story and to directly address Congress, asking them to honor treaty agreements by allowing tribes to better protect their people.

Professor Deer is confident that the passing of the TLOA and the 2013 VAWA reauthorization show that Native voices carry weight in the federal government and can bring about positive change. She underscores that none of this would be possible without the women who have chosen to speak out and share their stories:

The Native women who have championed this legislation are heroes of the highest order; no one thought it could be done. [...] TLOA and VAWA represent a complete shift in federal policy and neither law would exist without the efforts of Native women. The grassroots movement to end violence against Native women has demonstrated that significant Indian law reform at the national level is possible – something that many had written off as impossible. The hard work of Native grass roots to make these changes is deserving of particular attention. (Deer 92)

Still, a lot remains to be done to make the country a safe place for Native women, girls and two-spirit people and the movement has not stopped in 2013. More advocates, family members and survivors have testified before committees and subcommittees with the hope of fixing inadequate federal legislation. The reader's attention shall now be brought on a hearing in which four Native women advocates provided valuable insight on the MMIWG2S crisis and identified what they think the federal government could put in place to address it.

2) *Advocating on Capitol Hill*

On March 14, 2019, the Subcommittee on Indigenous Peoples of the United States⁴⁹ of the House of Representatives held a hearing entitled “Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women (MMIW): Exploring Solutions to End the Cycle of Violence.” Representatives of the subcommittee, among whom was Debra Haaland, listened to four advocates: Professor and lawyer Sarah Deer of the Muscogee Nation; state representative from North Dakota Ruth Buffalo of the Mandan, Hidatsa and Arikara Nation; legal counsel and playwright Mary-Kathryn Nagle of the Cherokee Nation; and Tarma Jerue of the Anvik tribe, who serves as executive director of the Alaska Native Women’s Resource Center in Fairbanks.

After chairman Ruben Gallego made an opening statement in which he provided statistics on the crisis and quoted the names of a few missing and murdered Native women and girls, he introduced the witnesses and let them speak in turns. They were allowed five minutes each to make a statement but their prepared written statements, which included more details and information, were published on the subcommittee’s website, and added to the final written transcript. Towards the end of the hearing, they were asked questions by Members Ruben Gallego, Matt Cartwright, Raúl Grijalva and Debra Haaland. Further questions were submitted to the witnesses in the three business days that followed the hearing and they had up to ten days to answer them.

The four statements were rather similar since the witnesses began by listing what they think causes the MMIWG2S crisis and then mentioned what they think is needed in order to address it. However, because the four women come from different environments and have different occupations and perspectives on the crisis, there were specificities in each of their observations. Professor Sarah Deer, who has worked with the Sovereign Bodies Institute and who has written about the link between colonialism and gendered violence, was able to promote Indigenous data sovereignty and to explain the source of the mistrust Native Americans have towards non-Native law enforcement and governmental agencies. Mary-Kathryn Nagle, who works for the National Indigenous Women’s Resource Center, was able to talk about the work that the organization does in order to raise awareness on the crisis.⁵⁰ Ruth Buffalo spoke about four bills she has introduced in the North Dakota state House of Representatives with the goal of providing better training for police officers regarding cases of MMIWG2S, raising awareness on human trafficking in hotels, establishments and schools, and creating a state database for

⁴⁹ This subcommittee is one of the seven subcommittees of the House Committee of Natural Resources.

⁵⁰ That includes the multiple screenings of the film *Wind River*, which were mentioned in part **II. B. 2)** of the dissertation.

missing persons. Finally, Tamra Jerue sounded the alarm about how critical the situation is in Alaska, listing the added complications Alaska Native tribes face.

Overall, the causes and solutions the witnesses enumerated can be compiled into four categories: the jurisdictional maze and how it emboldens criminal behavior; indifference from government and law enforcement agencies that are fueled by assumptions on Native women; the lack of resources and lack of funding for tribal governments and law enforcement; and last but not least, issues around data collection and data access.

a) Legal Barriers and Issues of Jurisdiction

All four witnesses stressed out the fact that the legal system is built in a way that puts Native American people and especially women, girls, and two-spirits in danger. They argued that the decision of the Supreme Court in *Oliphant v. Suquamish* has erected considerable legal barriers that have the effect of sending the message to predators that they can hurt Native women with impunity:

Oftentimes, the attitude of people coming into our lands is that the lack of infrastructure, such as local police and services, normally in place that offer protection and justice systems to hold perpetrators accountable, do not exist in our tribal communities. A mixed message is sent that it is OK to commit crimes against Native people and there will be no consequences. (Jerue, The House Committee on Natural Resources 35)

Professor Deer finds the jurisdictional complexity very regrettable: she deplored the variety of legal questions that arise when a Native American person goes missing:

Did they live on the reservation? Did they disappear from the reservation? Did they disappear off the reservation? What agency has jurisdiction? Does the tribe have concurrent jurisdiction? We need to have some resolution to these questions. (7)

Deer and Nagle suggested that the *Oliphant* decision should simply be reversed in order for Native Americans to live safer lives everywhere in the country. In fact, it is the second recommendation Sarah Deer included in her written statement:

Restore criminal jurisdiction so that tribal governments can prosecute non-Indians who murder, kidnap, or traffic in Native people. [...] The Supreme Court's *Oliphant* decision requires a legislative fix. Tribal law enforcement and prosecutors should not be prohibited from protecting the people they serve. (11)

Nagle and Jerue discussed the problems of jurisdiction into more details when they stated the specific issues encountered by Alaska Natives. The issue in Alaska, where Native

American women experience disturbingly high rates of violence,⁵¹ is that the territory of 228 out of 229 tribes are not federally recognized as “Indian Country.” This is due to another Supreme Court decision, *Alaska v Village of Venetie Tribal Government* (1998), which stated that since they were described as being dependent Native communities in the Alaska Native Claims Settlement Act of 1971, all but one Native communities in Alaska could not be referred to as “Indian country.” This added layer of legal complexity makes it difficult for Alaska Native communities to benefit from any reform meant to address the MMIWG2S crisis. For instance, until the latest reauthorization of VAWA in 2019, they could not implement special domestic violence jurisdiction that the 2013 reauthorization offered to tribes. The first recommendation Tamra Jerue made in written statement was about this jurisdictional issue: “We call on the United States for a jurisdictional fix to the Alaska Native Indian Country issue [...]” (40). Not only do they see a problem in the legal system, but they also think the way law enforcement handles – or does not handle – cases of MMIWG2S is a central issue to the crisis.

b) General Perception of Indifference

Another issue the women raised was the general failure from government and law enforcement agencies to address the crisis. Even Debra Haaland mentioned while asking a question to Professor Deer that “law enforcement agencies and the FBI have continuously failed at investigating” (The House Committee on Natural Resources 53) cases of MMIWG2S. Mary-Kathryn Nagle reminded her audience that oftentimes U.S. Attorneys decline to prosecute violent crimes that occur on tribal lands, although it is under their jurisdiction as stated in the Major Crimes Act.

The women agreed on the fact that underlying assumptions about Native Americans and about Native women specifically are one of the reasons why action has not been taken sooner and why there still are law enforcement agents who tend to blame the victims and minimize situations, which usually results at best delays to investigate or, at worst, inaction. In her statement, Ruth Buffalo deplored that her and her people still have “to convince law enforcement that [they] are human beings and [they] deserve justice” (15). A very dangerous assumption is that Native American women end up in bad situations that they have caused themselves and that they are responsible for what happens to them. This narrative completely brushes aside the fact that they tend to be the targets of sexual predators and human traffickers because of historical reasons and structural racism. There are many added factors that are often

⁵¹ Alaska is among the top ten states with the most MMIWG2S cases according to the Urban Indian Health Institute (Lucchesi and Echo-Hawk).

taken out of the equation but do put Native women at risk: among them, domestic and dating violence, homelessness, being in the foster care system, the remoteness of the place where they live, as well as natural resources development and extractive sites were mentioned during the hearing. Most often, Native victims are not considered to be the “perfect victim,” and the women who testified in the hearing said this should be addressed. Tamra Jerue expressed that violence and suffering has sometimes become linked with Native communities as if it were normal:

In some places, law enforcement asked victims if the abuse they suffered was not typical “for their people.” In other places, the families of missing women have been told the women have a right to disappear, even when there is evidence of a crime or violence thus evidencing a lack of understanding of what our people face and very little sympathy and compassion to finding a solution. [...] The unspoken message sent when time and energy are not allocated to these incidents is that the treatment is typical, and acceptable. Our communities thus shun the law enforcement as meaningless and possibly causing more damage and pain than helping with any situation. (43)

A violent past and years of indifference from law enforcement have consequential damages: many Native Americans have a hard time trusting law enforcement and “that trust is going to take years and years and years to rebuild” (Deer, The House Committee on Natural Resources 47).

In order to correct biased behaviors and mentalities, the advocates recommended better training which would educate police officers and prosecutors on the specificities of MMIWG2S cases. They also argue that meaningful protocols should be developed in consultation with Native tribes which is what was being written at the time in Savanna’s Act, a bill that has since passed and which will be the focus of our next chapter. Sarah Deer gave an example of what these protocols could focus on: she suggested that the 24h or 72h requirement to wait when someone over the age of 18 is missing should be reconsidered, especially when the missing person is a Native woman or two-spirit person. Finally, the advocates argue in favor of a system that would target the associated factors that can put Native women at risk of victimization as a way to prevent more cases of MMIWG2S. However, they argue that addressing these factors cannot be done without enough funding allocated to tribal government and organizations that provide victim’s services.

c) Lack of Resources and Funding

Professor Deer insisted on the failure to adequately fund tribal justice systems which causes a true shortage of tribal police officers. She quoted a 2018 report from the U.S. Commission on Civil Rights to let the audience know that a

[Bureau of Indian Affairs] analysis found that an additional \$337 million in funding was needed in 2016 to bring Indian Country law enforcement staffing levels up to par with those of county government law enforcement, nationwide (currently Indian Country has 1.91 police officers per 1,000 residents. (Deer, The House Committee on Natural Resources 10)

She mentioned that only 6.14 percent of their budgetary needs are met by the federal government. She explained that the lack of resources and staff is even more problematic in PL280 tribes, the budgetary needs of which are only funded at up to 1.22 percent.

Additionally, Mary-Kathryn Nagle insisted on the need to fund victims' services. She explained that it is better to help people who we know are vulnerable to victimization before they become a victim, and before the violence escalates to homicide: "victim services are essential to prevent the future disappearance or murder of a Native woman" (33). There is a big disparity in the resources tribal governments and organizations are allocated to develop and provide services to their residents because, until 2018, tribes did not have direct access to the Crime Victims Fund created in the Victims of Crime Act in 1984. Nagle listed all the types of services she thinks would benefit from more funding and ultimately help addressing the crisis:

tribally run or Native-based shelters and sexual assault services, services designed to address sex trafficking, tribal housing, legal services, comprehensive medical and forensic services, mental health services, services for Native children and youth affected by domestic and sexual violence, other culturally appropriate programs and services, and technical assistance supporting tribal response development are absolutely vital to any meaningful response to violence in tribal communities. The current funding available in Indian Country is inadequate to address these needs. (26)

Tamra Jerue agreed on the fact that more services have to be provided to Indigenous women and she specifically called attention to homelessness: "when Indigenous women do not have adequate and safe housing they are placed at risk" (40). She was once again able to speak about the situation in Alaska, where some tribal communities simply do not have any form of law enforcement. In some cases, it is volunteer medics who intervene although they do not necessarily know how to preserve a crime scene. In the village of Kake, it is the village leader who usually serves as first responder since he used to be a police officer during his youth. Since Alaska is a PL280 state, it is the state's responsibility to fund law enforcement, justice systems and victims' services but they are severely underfunded. In urban areas of the state, Alaska

Natives have access to more services but the situation is very critical there as well; and Jerue stated that Anchorage has been described as the most violent city of the United States. She urged the federal government to pay a serious attention to the funding discrepancy and asked them to continue funding Indigenous women's organizations such as the Alaska Native Women's Resource Center and increase funding for tribal law enforcement through the Indian Tribal Support Act.

d) The Data Crisis

Every person who spoke during the hearing – even the Members – agreed on one matter: there is a real issue with data. Chairman Gallego attempted to express how serious an issue the crisis is by providing some numbers, but he recognized that these numbers lack precision:

In reality, these numbers are much larger because Indigenous women are often unrepresented in national and local data. A lack of comprehensive data to quantify the number of missing and murdered women in Indian Country is just one factor contributing to this crisis. (The House Committee on Natural Resources 1-2)

It is fair to argue that the government is aware of this issue but what stood out from this hearing is that the data problem is twofold. First, there is the problem with statistics that are missing and without which a proper assessment of the crisis is impossible – this is the one the lawmakers seem to be aware of. Ruth Buffalo told the audience: “[...] data tells a story. Without data, there is no clear evidence that a problem exists.” The invisibility of the crisis fuels the indifference from authorities and law enforcement that the advocates denounced as well. To address this issue, Professor Deer recommended that the government require federal law enforcement agencies to accurately log in information on cases of MMIWG2S so as to avoid racial misclassification, and to share this information by annually publishing the data, which the Tribal Law and Order Act of 2010 requests them to do. She also said that since there is no “formal government-funded national database that carefully and deliberately tracks cases of MMIW” (8), the federal government should consider assisting Indigenous-lead organizations such as the Sovereign Bodies Institute that do this work in whichever ways these organizations think would be helpful. As for Ruth Buffalo, she suggested the creation of a national inquiry which would hold hearings throughout the United States in both rural and urban areas to allow communities and families who have suffered lost to share their stories. Tamra Jerue expressed once again that the situation is worse in Alaska where she said she desires to see a baseline study analyzing how “the situation may be different than what the National Institute of Justice

reported in their *Violence Against American Indians and Alaska Native Women and Men*” report (41).⁵²

The second pressing issue with data is that most tribal governments and tribal police officers do not have access to national databases although “Indian tribes have raised this issue for years” (Nagle, The House Committee on Natural Resources 25). In 2015, the Department of Justice created a program called TAP (Tribal Access Program) which now allows eligible tribes to enter information in federal databases. In theory, they now have access to the National Crime Information System which allows them to access and log in information on known criminals, filed protection orders, missing persons lists, sex offender registrations, lists of people who are forbidden to purchase a firearm, and much more useful information. However, Mary-Kathryn Nagle explained that “[a]s of September 2018, TAP ha[d] been deployed to 47 Tribal Nations out of 573 federally recognized Indian Tribes” (25) which she said was far from being enough. According to the Department of Justice website, this number has now gone up to 90 tribes out of 573 (“Tribal Access Program (TAP)”). During the hearing, Mary-Kathryn Nagle argued that a funding stream should be allocated to the expanding TAP to the remaining tribal nations. Tamra Jerue explained that 228 out of 229 tribes in Alaska cannot access the Tribal Access Program. In her recommendations, she asked for the system to be extended to tribal communities in Alaska, which started to happen in December 2019 when the Department of Justice included the Tlingit and Haida tribes in the program (“Thirty Tribes Selected for Expansion of Program Enhancing Tribal Access to National Crime Information Databases”). However, the Tribal Access Program is unavailable for tribes that do not have law enforcement, which is about 40 percent of tribes in Alaska, according to Jerue.

Another useful database to work with is called NamUs (National Missing and Unidentified Persons System). Funded and administered by the Department of Justice, it is managed by the University of Northern Texas Health Science Center in Fort Worth Texas. It gathers information on missing, unidentified, and unclaimed person cases across the country. It was established to “match remains found with people who were missing” (Jerue The House Committee on Natural Resources 37) which means that family members have to provide DNA samples and the process has to involve law enforcement. The first issue Tamra Jerue pointed out in regards with NamUs is that Native Americans might shy away from the DNA collection, especially since they “do not have the assurances that [their] DNA won’t be used in ways not approved” (38). Furthermore, since 40 percent of Alaska Native communities do not have law

⁵² She is referring to the report written by André Rosay which is mentioned in **II. C. 1) Federal Data Gathering.**

enforcement, and because NamUs always confirms cases with law enforcement before they publish information given by families, these 40 percent have to depend on off-site law enforcement agents such as the Alaska State Troopers:

Tribes and the general public could have access to NamUs, the challenge, however, is that most tribes lack the resources and infrastructure to track the type of information that needs to be entered and assign someone to enter such information. (43)

She argued that NamUs could be really helpful to tribes if they had the resources to properly use it. Finally, she expressed her regrets that the two databases – that of the National Crime Information System and NamUs – work separately. As a consequence, they do not have the same numbers:

There are fewer missing Native persons in NamUs than there are in FBI Criminal Justice Information Services (CJIS) missing person files. [...] NamUs and CJIS are separate systems, which cannot currently talk to each other. When this point is raised with Federal officials, they look at us like we have a third eye – they don't acknowledge the value of having one streamlined database and process. (43)

Her recommendations were that better resources be allocated to tribes so that they can create or develop law enforcement and therefore benefit from the Tribal Access Program and interact with NamUs.

Between their oral statements, written testimonies, and the answers they provided to a total of twenty-four questions from the House Members, the four women advocates provided a large amount of information on the crisis and a solid basis of recommendations as to how Congress can respond to kidnappings and murders of Native women. In this essay, the focus was laid on the March 2019 hearings, but it must be noted that this is not the only event during which the MMIWG2S crisis was discussed on Capitol Hill. For instance, on September 11, 2019, the same subcommittee heard the testimony of a panel of federal officials on how the Trump administration addressed the crisis (*Reviewing the Trump Administration's Approach to the MMIW Crisis*). There have been some hearings held by the Senate Committee on Indian Affairs as well: on December 12, 2018, federal law enforcement officials and Native women discussed the silent crisis not long after the first version of Savanna's Act had unanimously passed the Senate.

Having observed what advocates felt the need to voice out in Congress, we will now pay attention to the law in order to determine whether their advice carried weight.

3) The Impact of Advocates on Recent Federal Legislation: Savanna's Act of 2020

Savanna's Act was originally introduced as a bill by Senator Heidi Heitkamp (D-ND)⁵³ in October 2017 as a measure to specifically address the MMIWG2S crisis. It was assigned to the Committee on Indian Affairs and it passed the senate in December 2018. However, it did not get a vote in the House of Representatives before the end of the 115th session of Congress as former Representative Robert Goodlatte (R-VA) opposed some sections of the bill. As a consequence, the bill died and was archived. In January 2019, since Senator Heitkamp had not been reelected, Senators Lisa Murkowski (D-AK) and Catherine Cortez Masto (D-NV) reintroduced a slightly amended version of the bill, which had significant bi-partisan support. In the spring of 2019, a similar bill entitled the Not Invisible Act was introduced in the Senate by Catherine Cortez Masto and in the House by Debra Haaland (Laguna Pueblo Tribe; D-NM) who had just been elected in the House of Representatives thus becoming one of the first two Native American women to serve in Congress.⁵⁴ Both Savanna's Act and the Not Invisible Act were finally voted in Congress on September 21, 2020 and signed into bills by the President on October 10, 2020. The act is named after Savanna LaFontaine-Greywind, a twenty-two-year-old Dakota woman who was murdered in Fargo, North Dakota, in August 2017 while she was eight months pregnant ("S. 1942 (115th): Savanna's Act"; "S. 227 (116th): Savanna's Act"; Carr; Monet).

Analyzing Savanna's Act is of interest for us as it is the first federal legislation that is specifically addressing the MMIWG2S crisis in the United States. Additionally, because it took almost two years to be voted into law, and since it did not pass the first time and was re-introduced, advocates seized this as an opportunity to point out some parts of the text that could be improved. The purposes of Savanna's Act are stated in the second section of the text. Its first aim is to address the jurisdictional maze by "clarify[ing] the responsibilities of Federal, State, Tribal, and local law enforcement agencies with respect to responding to cases of missing or murdered Indians" (Murkowski 16). It was also designed "to increase coordination and communication among Federal, State and Tribal law enforcement agencies" (Murkowski 16), to provide more resources to tribal governments to address the crisis, and to improve data collection on cases of MMIWG2S.

⁵³ D-ND stands for Democrat politician from North Dakota.

⁵⁴ Sharice Davids (Ho-Chunk Nation; D-KS) was elected in the Senate in January 2019 as well.

In the fourth section,⁵⁵ the act requests the Attorney General to consult tribal organizations on how they can provide better and more relevant access to federal databases to tribal law enforcement agencies. The fifth section demands all U.S. attorneys develop guidelines to better respond to cases of missing and murdered Native Americans and to promote interjurisdictional cooperation. These guidelines will also seek to develop better and more culturally appropriate practices for searches of missing Native Americans and improve response rates and victim services. All these guidelines will be developed in consultation with a large number of people: “the Department of Justice; the Federal Bureau of Investigation; the Department of the Interior; the Bureau of Indian Affairs; Tribal, State, and local law enforcement agencies; medical examiners, coroners; Tribal, State, and local organizations that provide victim services; and national, regional, or urban Indian organizations with relevant expertise” (Murkowski 21–22). Finally, the sixth section is focused on improving statistics on the overall crisis, since it presses the Attorney General to issue annual reports of statistics on missing and murdered Native Americans. It stipulates that these statistics shall include the “age, [...] gender, [...] and tribal affiliation” of missing and murdered individuals when possible as well as the “current number of open cases, [...] the total number of closed cases per state each calendar year” and “any other relevant information” (Murkowski 25) while preserving the privacy of victims and families as much as possible and explaining why “the statistics [...] may not be comprehensive” (Murkowski 26). The annual reports shall also offer “recommendations on how data collection on missing or murdered Indians may be improved” (Murkowski 26).

In a webinar hosted by Michaela Madrid from the Sovereign Bodies Institute in October 2020, Mary-Kathryn Nagle and Sarah Deer were invited to discuss the passing of Savanna’s Act and how they had an impact on the final text as advocates. To explain what the act does, Nagle clarified the fact that constitutionally, it is not possible for Congress to tell local law enforcement what they can or cannot do: however, they can encourage them to do certain things and this is what Savanna’s Act is about (*SBI Webinar*). Savanna’s Act makes law enforcement agencies accountable in two ways. First, it asks the Attorney General to annually disclose on the website of the Department of Justice the names of each law enforcement agency (federal, state or local) that has submitted the information required for the annual report (section 6). Secondly, it offers to give grants to law enforcement agencies that do “develop, strengthen, and implement” (Murkowski 27) the guidelines requested in section 5 and successfully compile and report the data asked for in section 6 by amending an existing act from 1968: the *Omnibus*

⁵⁵ The first section states the short title of the act (Savanna’s Act) and the third section provides definitions.

Crime Control and Safe Streets Act. It is the seventh and last section of the act that discloses the incentive program.

Overall, Deer and Nagle think advocates of the movement to end violence against Native American women have to see Savanna’s Act as a “wonderful victory” (*SBI Webinar*):

This is a huge, huge victory. It’s important to celebrate our victories. I know we always have so much more work to do but it can be overwhelming if we don’t stop to realize: “hey, we’ve made this happen.” (*SBI Webinar*)

They acknowledge that the bill took a long time to finally be voted into a law – especially with the Covid 19 global pandemic breaking out in March 2020 – but they reveal that it was not necessarily a bad thing, since it allowed them to call attention to lawmakers on some parts that needed editing. One of the main concerns that advocates had was that the original bill would have left out urban populations of Native Americans, as well as Alaska Natives. Indeed, in the original version, the act did not ask all U.S. attorneys to develop guidelines but only those who had Indian Country in their jurisdiction.

This would have excluded the U.S. attorney in Alaska from having to create those guidelines. SBI, NIWRC, all these organizations pointed that out and mentioned the urban populations. The US attorney in Manhattan, or Los Angeles, or Chicago, or Baltimore, may not have Indian country jurisdiction, but that doesn’t mean that they shouldn’t also create these guidelines. That was one of the great changes that we, together, as advocates were able to create. (Nagle, *SBI Webinar*)

The text was modified as such:

[*Original text*.:] the Attorney General shall direct United States attorneys with jurisdiction to prosecute crimes in Indian country [...] to develop guidelines [...]. (Murkowski 8)

[*Revised version*.:] the Attorney General shall direct United States attorneys to develop regionally appropriate guidelines [...]. (Murkowski 20)

Not only does the new version request all U.S. attorneys to develop these guidelines but it also claims that the guidelines should be “regionally appropriate” and Sarah Deer insists that such wording is essential as a “one-size-fits-all solution” is impossible for the MMIWG2S crisis. This modification responded to a concern that the activists had: during the March 2019 hearing, they voiced out the need to recognize the variety of existing tribes and the many differing factors that they each have to take into account when developing solutions to the violence crisis.

The revised version of the act therefore addresses the violence that Native Americans experience while living in urban areas and in Alaska, where most reservations do not classify

as “Indian Country.” Another way in which the revised version of the bill takes urban Natives into consideration is that it includes urban Indian organizations among the list of entities that will participate in the consultations cited in both section 4 and 5. Finally, it states that the new guidelines shall include “best practices in conducting searches for missing persons on and off Indian land” (Murkowski 20) when the original version only mentioned searches “on Indian land” (Murkowski 8). The fact that the act includes Native Americans that live in urban areas and in Alaska is something to celebrate as it “reinforces the idea that there are Indigenous people everywhere” (Madrid, *SBI Webinar*) and that the crisis does not only impact people who reside on reservations.

Another strength of Savanna’s Act is that it promotes some degree of tribal sovereignty. The original version could have been harmful to tribal sovereignty since it did not recognize that tribes might already have guidelines in place or might be interested in developing their own guidelines. The original text declared that all tribal nations should adopt the U.S. attorneys’ guidelines but a paragraph was then added to the fifth section allowing tribes to develop their own guidelines and that “the Attorney General shall publish the guidelines on the website of the Department of Justice [...] to make the guidelines available as a resource to any Federal agency, State, or tribal government” (Murkowski 24).

Nagle and Deer know that it is only an incentive program and that U.S. attorneys do not have to necessarily publish the guidelines they will develop and prove that they are implemented. However, they argue that it is an important first step and that their job as advocates from now on will be to hold those who do not implement and publish the guidelines accountable:

[...] our job as advocates is going to be to publicly shame them for not implementing those guidelines. Once those guidelines get implemented, when they break them, then we shame them for breaking them. We make sure we hold everyone accountable to them. [...] And that’s how we’ve been able to achieve a lot of success so far: there has been a public outcry, and people are starting to listen about this crisis, and people don’t want to be bad on the issue of MMIW. Some folks think they don’t care right now, but I think they’re starting to feel more and more political pressure. (Nagle, *SBI Webinar*)

Overall, Savanna’s Act attracted a lot of attention to the MMIWG2S crisis and that is an important accomplishment as well, considering the issue of invisibility that we have mentioned before. Incidentally, Sarah Deer warns the public that numbers might go up now that the act was passed since it has caught on more attention: she explains that victims and families might want to come forward since the passing of the act can signal that violence against Native women

is starting to be taken more seriously at the federal level. The act also promotes a better documentation of missing and murdered Native Americans. As a consequence, the number of MMIWG2S might appear to be on the rise, therefore sending the message that Savanna's Act is a failure but, on the contrary, such an outcome would be proof of success:

We have to remind lawmakers that [numbers going up] is expected, that this is why Savanna's Act was passed, so that we can learn more and more about these cases. We have to be gathering data and we have to be thoughtful about how we explain the data. (*SBI Webinar*)

Despite listing the strengths of the act, Nagle and Deer agree on the fact that it is a “foot in the door” but “not the panacea to the problem” (*SBI Webinar*). They assert that a large part of the violence Native Americans experienced is due to the general culture resulting from colonialism and patriarchy that blames Native women and that such a culture will not be changed overnight. Mary-Kathryn Nagle insists that assumptions about Native American women are everywhere from the halls of Congress, to journalists, to county sheriff offices, to funeral homes: “If you're a Native woman and you're a victim of violence, you probably did something that got you to that point. [...] They don't even understand that that's their starting assumption anytime they approach any of these cases” (Nagle, *SBI Webinar*). Michaela Madrid, host of the webinar, agrees and notes that changing societal views takes much more time than changing laws, but she thinks that “policy like this is that first step to undoing a lot of societal harm” (*SBI Webinar*).

What Sarah Deer remarks is missing from Savanna's Act is funding: the act does not fund tribal governments or their affiliated non-profit agencies and, as she stated in the March 2019 hearing, funding would be very valuable. In most cases, advocates of the movement have colossal amount of work to do as they are involved in victims' services in communities, but also lobbying three different kinds of governments – tribal, state, and federal governments – which makes “the job of a Native advocate so much more time-consuming” (Deer, *SBI Webinar*). There is a lot of work to do but not enough people on the ground: “most of the time, advocates in any particular tribal community are stretched so thin that they are barely able to take care of themselves or their children because they are working twenty hours a day” (Deer, *SBI Webinar*). More funding would allow non-profit agencies to have more people on the ground and give a more decent wage to those who fight every day. In the conversations Nagle and Deer had about Savanna's Act, they were told that if there had been money attached to it, the bill would have probably never gone through Congress. Mary-Kathryn Nagle indicates that this is something advocates have to fight for in the future. Indeed, although Congress might be

selective as to who they grant money to, Native Americans should not be among the competition because of the trust responsibility it has to tribes. With the treaties that were signed throughout the centuries, the federal government committed to providing public safety and to fund tribal governments and institutions. Through laws and court decisions, the ability of tribes to raise revenue through taxes was limited over the years, thus putting them at a disadvantage compared to states, counties and municipalities. Nagle is stunned by this inequality:

You're letting those states drive taxation dollars to fund their courts, their law enforcement, their victims' service programs – and yes the DOJ does provide funding to both the states and tribes – but you, federal government, limited the ability of tribes to tax so you better fund tribal government institutions. This is a trust duty and responsibility. This is one thing going forward we have to fight for. (*SBI Webinar*)

In their last remarks during the webinar, both women still showed optimism and enthusiasm:

This is a time for us to celebrate that we did achieve this for Savanna's family, that they have honored her memory and her legacy and that we, as Native women advocates, and as allies, and as two-spirits in our communities, we have come forward and we have achieved this. (Nagle, *SBI Webinar*)

Thank you again to SBI and your amazing staff, and volunteers, and anyone who works there for constantly putting out educational materials and webinars and zooms. I don't think a day goes by on *Facebook* when I don't see SBI doing something to put it out there in the universe and to make it available to anyone who has access to the internet and *Facebook*. I'm excited to see where this goes. (Deer, *SBI Webinar*)

Yet they noted that there is still a lot of work to be done. Every time the Violence Against Women Act is reauthorized, it is an opportunity for advocates, families, and survivors to pinpoint policies that need to change. VAWA can be used to continue to improve legislation around the issue of MMIWG2S: “we are not limited to Savanna's Act – we can always amend Savanna's Act but we also have a big vehicle through the Violence Against Women Act” (Deer, *SBI Webinar*). Furthermore, federal reform is not the only type of reform that should be considered, especially since states do have the power to dictate what law enforcement can or cannot do. Sarah Deer notes that many bills are being developed at the state and local levels as well and that duplication of legislation on the MMIWG2S crisis is not superfluous at all, on the contrary: the more bills addressing violence against Native women, the better. In fact, in the June 2019 issue of the NIRWC's *Restoration Magazine*, an article states with enthusiasm that “twelve states have introduced and passed legislation such as establishing a MMIW Task Force

to respond, proclamations recognizing the National Day of Awareness, authorizing and funding a study, etc..” (National Indigenous Women’s Resource Center 28).

Savanna’s act is proof that the voice of Native American advocates can carry weight in the designing of laws that address the MMIWG2S crisis. In some instances, we have seen that the editing of only two words can make a tremendous difference: going from “on Indian lands” to “on *and off* Indian lands” shifted from including only reservation residents of the lower 48 to including both Alaska Natives and urban populations of Native Americans – that is to say all Indigenous people in the country. What this shows is that arguments that were made by the four advocates during the hearing seemed to have been heard by lawmakers. Among what they spoke about, they all made a case for tribal sovereignty, highlighting that a solving of the MMIWG2S crisis must put tribal sovereignty at the center of the stage.

B. Why The Solutions Have To Be Native-Led

During the March 2019 hearing in front of the House subcommittee on Indigenous People of the United States, the four advocates who were invited to testify insisted that sovereignty for Native Americans should be central in fixing the MMIWG2S crisis. Professor Deer made a compelling argument by comparing what happens when a tourist from Canada or another foreign country disappears on the American territory to what happens when a Native woman goes missing in the U.S.:

Native women are citizens of tribal nations. Tribal nations should be apprised when their citizens go missing and be kept informed as to the status of the case. Typically, when a foreign national goes missing or is murdered in the United States, it is common courtesy to keep their home country informed as to the investigation whenever possible. I believe tribal nations should be accorded that same courtesy. (The House Committee on Natural Resources 13)

Tribes are sovereign entities that should have higher degrees of self-determination, especially with regards to their ability to provide safety and justice to their citizens. The four Native women advocates suggested that Native American people – and especially Native American women – should be at the heart of finding solutions and that federal, state, and local governments should recognize that the input of survivors, families, and communities is crucial as they are directly facing and witnessing the crisis. They also insisted on the importance of services that are culturally appropriate and that is only possible if Native Americans run these services themselves. Professor Deer mentioned urban Indian centers which can be places of refuge where urban Natives can find help and connect with other Native Americans in urban

areas. She argues that such organizations should not only receive more funding, but they should also be included in all discussions regarding MMIWG2S.

Mary-Kathryn Nagle argued that tribes should be given more political power: she thinks there needs to be legislation allowing a strengthened response to the MMIWG2S crisis at the tribal level. Women have told her multiple times that the restoration of special domestic violence criminal jurisdiction over non-Natives made possible by VAWA 2013 have saved their lives. She wishes tribal law enforcement and tribal courts were taken more seriously so that they could provide optimal justice and safety to their women. As she illustrated it in her play *Sovereignty*, stereotypes against Native Americans – rooted in the long-lasting image of the savage whose sense of justice is untrustworthy because it is based on spirituality – still stand in the way of a complete repeal of the decision in *Oliphant v Suquamish Tribe*. However, we will see that a report on the implementation of the Special Domestic Violence Criminal Jurisdiction that was authorized by VAWA 2013 over the five years that followed comes to prove the legitimacy of tribal courts. If their criminal authority is restored, tribes have to strengthen their criminal codes and, in some cases, write them from scratch. Professor Deer proposes ways in which tribes can come up with their own theories of rape that would provide solutions to the current violence Native women face while drawing on concepts of justice from the values of their ancestors. She offers a vision of how tribal sovereignty can happen at the legislative level.

1) Grassroots Action: Indigenous Women's Engagement in Prevention and Victim's Services

One of the reasons why it is important for Native American women to be central in addressing the MMIWG2S crisis is that many of them have suffered directly or indirectly from it, whether they might have a MMIWG2S in their family or in their community, if they have themselves experienced some kind of violence, or perhaps because they live in the constant fear Annita Lucchesi mentioned of being the “one in three.”⁵⁶ Contributing to the fight to end violence against Native women can empower them and help them heal as well. Malinda Limberland, the mother of 21-year-old Hanna Harris who went missing and was murdered in 2013 in Lake Deer Montana, made the following statement:

As a mother, nothing will replace the loss of my daughter but by organizing to support the National Day of Awareness, and creating the changes needed I

⁵⁶ See II. C. 2) **The Case for Indigenous Data Sovereignty**

know it will help others. And Hanna and so many others will not be forgotten.
(National Indigenous Women's Resource Center 28)

Native American women are already at the front lines, behind grassroots movements that seek to provide concrete help to survivors and their families. They are close to the violence and what causes the crisis. We will focus on the types of concrete help that some of them provide.

Among the organizations that work to address the MMIWG2S crisis is the NIWRC, a non-profit that is led by Native women and was founded in 2010. It is funded by the federal government and more precisely by the Department of Health and Human Services' Administration for Children and Families. The creation of the NIWRC was made possible by Indigenous grassroots organizing. Its goal is to end violence against Native women and the majority of the staff is female and Native American. One of its founders is Tillie Black Bear (Lakota) who was one of the first women to voice out to Congress the issues of domestic and sexual violence that Native American women face and who reminded the federal government of its trust responsibility. The NIWRC promotes the voices and experiences of Native women in order to develop "effective, responsive, culturally based, and trauma and healing-informed programs, resources, and policies to best serve the needs of Native victims and survivors" (NIWRC, *Annual Report - Fiscal Year 2019* 4).

Some of the actions of the NIWRC have already been discussed in a previous part of this dissertation, especially the work they do to raise awareness on violence against Native American women and more specifically the MMIWG2S crisis. They organize and host events during which they raise awareness by inviting people to speak about the violence that Native American women face.⁵⁷ They also organize outreach events which allow them to extend their network and distribute materials and resources to tribal leaders, community members and organizations. The NIWRC also promotes dialogue and conversations on violence against Native women by hosting webinars during which they invite Native survivors, advocates, and allies to provide expertise or share their experiences. In the year 2019, a variety of topics were explored such as, for instance, the impact domestic violence can have on children (April 23, 2019), how to empower children in shelters (August 21, 2019), tribal consultation on VAWA (July 27, 2019), the rights of victims of crimes in Indian country (July 29, 2019), how to create a nonprofit organization that addresses violence against Native women (May 23, 2019) and advocating for a change in order to address the MMIWG2S crisis (May 2, 2019). In 2019, the NIWRC hosted 11 online webinars which were attended by 1,448 people and reached 213,630

⁵⁷ The reader might be reminded of the screenings of the movie *Wind River* that were held in universities and in Washington DC.

views on the website by the end of the year (NIWRC, *Annual Report - Fiscal Year 2019*). Another large part of the NIWRC's work consists of providing on-site technical assistance and training for tribal organizations on various topics, which can be grant funding, alliance building or the development of shelters for example. Tribal organizations can apply for this online through the NIWRC website.

Three times a year, the NIWRC publishes a magazine called *Restoration of Native Sovereignty and Safety for Native Women*, often referred to as *Restoration* magazine. It is a political magazine the main goal of which is to provide legislative updates to tribal leaders and advocates on bills that are pending. Although it is published by the NIWRC, it has existed since 2003, when Native organizations and advocates who were uniting behind the movement for the 2005 re-authorization of VAWA, saw it necessary to have "continuous briefings on the reasons for and the status of the amendments" (NIWRC, *Annual Report - Fiscal Year 2019 22*). The magazine provides political analysis of the violence Native women experience nowadays that understands it in its connection with the violent colonial patterns that sought to diminish the sovereignty of Indigenous people. The name of the magazine itself reflects the central strategy of regaining sovereignty as a way to fix a lot of issues faced by Native Americans today, including the MMIWG2S crisis. *Restoration* also proposes "solutions, changes, or reforms" (NIWRC, *Annual Report - Fiscal Year 2019 22*), features the voices of advocates, survivors and families, provides updates on Alaska, promotes the need for better services in Indian country and for urban Native populations, and also often provides an international update on violence against Indigenous women. The magazine is available online and is also distributed during advocacy and community events.

Volume 16, issue 2, which was published in June 2019 announced the addition of a resource library to their website, in which a MMIWG2S toolkit has been made available to all. The goal of this toolkit is to prepare Native communities and families to act quickly when a Native woman goes missing or is suspected to have been murdered. In the subcommittee hearing of March 2019, Mary-Kathryn Nagle who is a legal counsel for the NIWRC, mentioned this toolkit, explaining that advocates of the NIWRC felt the need to create this toolkit to make up for the insufficient response of law enforcement. She mentioned cases of MMIWG2S when law enforcement did not act quickly enough or did not help at all and families and friends had to look for a missing loved-one. In many of these cases, the police started their investigation too late at a point when the woman had already been murdered. Counsel Nagle said that, in most cases, "the quicker the response, the faster the victim may be located and help may be

provided” (The House Committee on Natural Resources 23). The toolkit was created to help communities navigate all the issues they might face when a Native woman goes missing.

The MMIW Toolkit for Families and Communities is made of four documents that can be downloaded from the website. There is a tri-fold brochure which can be printed out and distributed to people and summarizes the actions that should be taken as quickly as possible in the 72 hours following the disappearance of a Native woman. The first action that is suggested is to contact law enforcement right away and resist being tempted to gather more information before doing so. Besides contacting law enforcement, it is strongly advised to request police officers to issue an alert as soon as possible. Gathering information is the second step that is suggested in the brochure, followed by the preservation of important evidence. Finally, family, friends, and domestic violence programs should be enlisted to help immediately as there might be a lot of things to do, such as making calls, designing, and posting a flyer, spreading the message on social media, contacting news media, organizing a search, etc.

The second document made available in the toolkit is a template for a missing person flyer that can be filled out and printed or shared on social media. What the NIWRC suggests should be inserted in the flyer is a recent photo and the following information: “full name, date of birth, age, sex or gender, race, eyes, hair, weight, height, [what the person was] wearing, identifying characteristics,” and “date when last seen” (NIWRC, “MMIW Toolkit for Families and Communities”). The word “MISSING” is written in red in capital letters at the top of the flyer and the bottom of the flyer has a space in which a family member should put their phone number so that anyone who might have information can contact them.

The third document is a 20 x 24” poster on which are written some important crime victims’ rights and a chart that sorts out and explains tribal, federal, and state jurisdiction. This poster explains what concurrent jurisdiction is, what PL280 states are and how the Major Crimes Act matters, and what law enforcement agency has authority over an alleged criminal depending on whether they are Native or not. To complement this poster, the NIWRC created a chat bot in the toolkit section of their website which they called the “Jurisdiction Assessment Tool.” Here are the questions that are asked by the chat bot:

Is there evidence that they were kidnapped or trafficked across state lines?

Did your relative go missing or were they murdered on a reservation belonging to a federally recognized tribe?

Did they go missing or were they murdered in a rural area?

Are they missing, or were they murdered?

Is there evidence that suggests a crime has occurred, and/or that the perpetrator is not a tribal citizen?

Did it happen in a Public 280 state?

Did it happen on US Forest Service land, a national park, or any other kind of federal land?

Did it happen on a road, highway, or freeway?

Depending on what the user answers – they have a choice between “yes,” “no” or “skip” – the chat bot informs them on who has jurisdiction on the crime and therefore who they should contact. This is a highly valuable tool that simplifies the complex criminal jurisdiction that Native Americans have to deal with.

The fourth document is a pocket guide of about 50 pages that includes all the information provided in the brochure, flyer, and poster. It is more complete as it describes for instance the types of alert that law enforcement can issue (BOLO Bulletin, ASHANTI Alert, AMBER Alert, etc.) or what should and should not be done when attempting to preserve evidence. The pocket guide also has an introductory section in which the MMIWG2S crisis is linked with the brutality of colonization and the failed trust responsibility of the government. This section explains why the toolkit was created:

Native women are particularly vulnerable to violence because perpetrators often go unpunished due largely to the failure of federal and state laws and policies. For example, nearly a quarter of Indian country criminal investigations opened by the FBI are not referred for prosecution. Of those that are declined by federal prosecutors, approximately two-thirds relate to physical or sexual assault or exploitation. With 574 federally recognized tribes in the U.S., it can be nearly impossible for families of MMIW to navigate complex jurisdictional issues and determine how and from whom to seek help. That uncertainty, compounded by fear and grief, often means it might be too late once they’ve figured out exactly where to turn.

The NIWRC wish they did not have to create such a toolkit in the first place as they would prefer it if jurisdiction was simplified – and even restored to tribes for all crimes perpetrated by Native and non-Native criminals – and if law enforcement did a better job at handling cases of MMIWG2S. However, by designing it and making it available to all on their website, NIWRC advocates give power back to communities and families by letting them know how they can act when a woman goes missing, what their rights are, and whose job it is to help them and how to hold these people accountable. This does not fix the roots of the issue, but it empowers communities that often feel helpless and abandoned. It also connects them with a wide range of allies as the pocket guide ends on a list of contact information for federal and state authorities

as well as victims' services programs, national hotlines, the contact information of organizations of the SBI, the Alaska Native Women's Resource Center, the Urban Indian Health Institute, and a Native-led hotline that was specifically created to help Native American women who suffer from domestic or sexual violence.

In March 2017, the NIWRC partnered with the National Domestic Violence Hotline to create a Native-centered hotline to assist victims of domestic abuse called the StrongHearts Native helpline. In this partnership, the National Domestic Violence Hotline provided technology and infrastructure, and the NIWRC provided expertise and community connections. A focus on the StrongHearts website, combined with their 2020 end of year report, allows us to get an insight on who they are and what they do. The director, the CFO, the Operations Manager, the Senior Native Affairs Advisor and the Communications Manager are all women, and the rest of the staff includes a total of 28 people among which are 21 advocates who are all Native Americans. More than half of the people who contact the hotline are survivors of abuse calling for themselves but there are also people calling because they want to help a close relation who is either victim or abuser (10 percent of contacts). The most frequent types of abuse that advocate hear from are emotional abuse (87 percent) and physical abuse (78 percent). In terms of sexual violence, rape is the most common experience callers bring up and the most frequent perpetrator of it is an intimate partner (StrongHearts Native Helpline, *Sharing Our Stories - 2020 Year-End Report*).

For a victim of domestic abuse or a concerned relative, calling the StrongHearts number is a free and anonymous way of reaching out to an advocate with knowledge, listening and counseling skills, and connections to support services. The first thing that the advocates do is that they listen to and advise the people who called them. They also educate callers on healthy relationships "for all gender identities and sexual orientations" (StrongHearts Native Helpline, "Get Help"). Furthermore, they help callers with safety planning by coming up with a step-by-step plan on how they can leave the abusive relationship, what they can do after they leave, and what they should do if they return to this abusive partner. Creating a safety plan differs from one caller to the other as there are many factors to take into account: "[s]afety planning involves how to cope with emotions, tell friends and family about the abuse, protect children if involved, take legal action and more" (StrongHearts Native Helpline, "Get Help"). Finally, callers are usually referred to Native-centered services that are located in their area. At the end of the year 2020, the StrongHearts Native helpline was actively working with 257 Native-centered service providers. An example of a service provider a caller might be referred to is a health center that

takes care of survivors of sexual assault by providing crisis counseling and offering sexual forensic exams. A caller could also be referred to a shelter for battered Native women.

In about four years, the hotline has received more than 10,000 calls. In May 2020, an online chat was created for people for whom it is not safe to talk on the phone. Using the chat can also allow some women who live in remote area and do not have phone service to get help from a StrongHearts advocate. Since February 2021, texting with advocates from the hotline is a new option, which the StrongHearts Operations Manager thinks might appeal to a younger audience who, with the evolution of social norms and technology, feel more comfortable texting than making a phone call (Hovie, “Expanding Advocacy at NIWRC’s StrongHearts Native Helpline”). Thanks to these new ways of contacting advocates, the hotline is available 24/7 to anyone seeking help. Before the addition of the online chat and the text option, some calls were missed but the hours of operation were extended in March 2019, and a total of eighteen new staff members were hired in the year 2020.

Calls are still sometimes unanswered at night or when the available staff is limited but calls that cannot be answered automatically offer the callers to be redirected to the national hotline. However, in the 2020 end-of-year-report, StrongHearts Native helpline were able to make the observation that out of the 3,074 calls they received during the year, none of the 31 percent of callers whose call was unanswered chose this option. They thus made the following remark: “[t]hey would rather wait for a StrongHearts Native advocate during business hours. Native callers prefer to work with a Native-centered organization” (StrongHearts Native Helpline, *Sharing Our Stories - 2020 Year-End Report* 9). This is a strong argument for sovereignty as being a central part of solving the violence crisis: Native women feel more comfortable seeking assistance from other Native women. The name of the hotline reflects the idea that although they are a group that is victimized by violence at higher rates than the rest of the population, they have “strong hearts,” a lot of resilience, an ability to help each other, and they understand the specificities of that violence. The website does not explain the meaning behind the name “StrongHearts” but we can assume that it was chosen to give emphasis to the strength of Native women. Having services available that are culturally appropriate is crucial:

Culturally appropriate for Native Americans means we are happy to help anyone, but we are built by Natives for Natives. Our advocates are trained specifically to meet the needs of Native American and Alaska Native victim-survivors. (StrongHearts Native Helpline, “Frequently Asked Questions”)

As mentioned before, all the advocates that receive calls and chat online are Native American; the website does mention as well that they also all have a strong connection to and

understanding of Native culture and of tribal law and sovereignty. Discussing the creation of StrongHearts Native helpline, Operations Manager Anna Nicolosi said that, considering that numbers have well proven the higher rates of sexual violence Native women face everywhere in the country, it is outrageous that there had not been any culturally appropriate service available for them until they launched the hotline in 2017. Having advocates that understand the specific issues that Native American women might face when they seek help or want to press charges against an abuser – jurisdictional complexity, geographic isolation, historical mistrust of law enforcement or even mere lack of law enforcement, etc. – is crucial (Hovie, “StrongHearts Native Helpline Launches Advocacy Services for Victims of Sexual Violence”).

Organizations such as StrongHearts might not appear to have a direct connection with the MMIWG2S crisis as it helps women who suffer from domestic, dating, and sexual violence. However, as Mary-Kathryn Nagle highlighted in March 2019 when she made her testimony in front of the Subcommittee on Indigenous People of the United States, prevention is central to reducing cases of missing and murdered Native women: there is evidence that cases of domestic violence often escalate into even grimmer crimes such as sexual trafficking and homicide. Stories such as the one Annita Lucchesi shared about her past with dating violence that led her to be trafficked illustrates this very well. By teaching Native women how to recognize unhealthy relationships, helping them escape from partners that abuse them, building with them plans to find safety and referring them to Native-centered services in their area, StrongHearts Native helpline is therefore actively working towards putting an end to the MMIWG2S crisis.

In October 2019, the StrongHearts Native Helpline received \$2.7 million dollars in grants from the Office for Victims of Crime of the Department of Justice. They were granted this money to enhance their services, which they were allowed to do since it is with this sum that they developed and launched the online digital chat, developed advocacy training and services to assist survivors of sexual violence, and extended their operating hours to be available 24/7. In February 2020, callers could reach an advocate from 7 a.m. to 10 p.m. central time, whereas they can now get someone on the phone at any time during the day and the night (Adamski; StrongHearts Native Helpline, “Get Help”). Because there is a connection between domestic violence and sexual violence, advocates of StrongHearts felt the need to extend their resources and services to victims of sexual violence, which they were able to do in August 2020 with the grants they received. They completed specialized trainings on sexual violence and the impacts it usually has on a survivor (fear, self-blame, Post Traumatic Stress Disorder, etc.) as well as how sexual violence should be reported to the authorities and how the survivor can heal

from the trauma (Hovie, “StrongHearts Native Helpline Launches Advocacy Services for Victims of Sexual Violence”).

StrongHearts Native Helpline receiving funding from the Office for Victims of Crime is a great example of how Native American women can be central in assisting other Native women escape from violence, all the while being supported by the federal government, which thus adopts the position of an ally. Supporting Native women’s grassroots work is necessary, but so is giving more authority to tribal governments.

2) Can We Anticipate A Further Restoration of Criminal Sovereignty for Tribal Governments?

As already mentioned previously, the 2013 reauthorization of VAWA restored some criminal jurisdiction to tribes over non-Indian criminals: it makes it possible for tribes to implement what is commonly called Special Domestic Violence Criminal Jurisdiction (or SDVCJ) on a voluntarily basis, which means that tribes can choose to adopt it or not. In March 2018, the National Congress of American Indians (of NCAI) published a report which examined the journey of the eighteen tribes who chose to implement SDVCJ. Over a period of five years, the NCAI and two other partners⁵⁸ kept track of “the general trends reported by tribes” (National Congress of American Indians 9) by maintaining consistent communication with tribal prosecutors, defenders and judges. The overall conclusion they were able to draw from their findings is that VAWA 2013 provided a “limited reaffirmation of inherent tribal criminal jurisdiction over non-Indians” (National Congress of American Indians 1) but that it is nonetheless a very important first step that must be celebrated and which tribes have taken very seriously. We shall now discuss both the positive outcomes and the limits of SDVCJ.

First, it must be noted that implementing SDVCJ is not an easy process for tribes, since many of them have had to rewrite large portions of their tribal codes to comply with the requirements of the statute. However, doing so generated a surge in conversations surrounding the issue of domestic violence, which might have been a taboo topic in many communities. A positive outcome is that it increased awareness about domestic violence, letting victims know of services that are available to them and ultimately resulting in an environment in which they feel more comfortable seeking help as they understand that the issue is taken more seriously. Deborah Parker of the Tulalip tribes commented that the number of victims seeking help has

⁵⁸ The Tribal Law and Policy Institute (TLPI) and the National Council of Juvenile and Family Court Judges (NCJFCJ).

probably doubled since VAWA 2013 (National Congress of American Indians). They do not necessarily choose to report abuse or press charges, but they reach out to people who can help them heal or find solutions to leave an abusive partner (by calling the StrongHearts Native helpline for instance). Parker recognized that SDVCJ is just a first step but she argues that it is a crucial one since it sends the message that justice and safety for Native women matters and that people are trying to find ways to mend a broken system: it “has given a ray of hope to victims and communities that safety can be restored” (National Congress of American Indians 1).

Tribes that have chosen to implement SDVCJ have also noticed that it has led them to develop better relationships with other jurisdictions. In many cases, tribal police officers were able to arrest and prosecute non-Natives who had escaped the law by crossing jurisdictional boundaries. Many offenders had committed offenses or crimes outside of Indian country and some had already had contacts with tribal police who could not arrest them because they lacked jurisdiction: “85 defendants account for 378 prior contacts with tribal police before their tribe implemented SDVCJ” (National Congress of American Indians 8). Allowing tribal law enforcement to protect their citizens by making arrests regardless of the Native status of a person who poses a threat to the community serves everyone and strengthens inter-jurisdictional collaboration. Furthermore, it greatly empowers tribal governments who feel they are finally able to protect their citizens. Terri Henry, former tribal council Chairwoman of the Eastern Band of Cherokee Indians made the following statement:

It is incredible for us to be able to say, we can do this, we can protect you. You are our citizen, and it matters to me as a tribal leader—it is my responsibility in fact — to say that this tribe will do everything we can to protect you. (National Congress of American Indians 9)

In order to prove that, by being restored an authority that should not have been taken away from them in the first place since it was their inherent right as sovereign nations to be able to protect their citizens, the eighteen tribes mentioned in the report have proven to be very conscientious and serious in how they implemented SDVCJ. A lot of effort is made to ensure that for any case of SDVCJ, the tribe does in fact have jurisdiction and to do that they have to prove three things: the Native status of the victims, an existing relationship between the defendant and the victim, and finally sufficient connections between the defendant and the tribe. In many cases, gathering sufficient evidence to prove these three elements has been very difficult, time-consuming, and sometimes impossible: in these instances, cases were not prosecuted. Making sure that they do not overstep the rights they were given in VAWA 2013

has proven the tribes' determination to comply with the law and to assert their legitimacy and integrity.

In five years, only six SDVCJ cases ended up in trials, and five of them resulted in acquittal. Although the NCAI recognizes drawing conclusion from six trials only is not ideal, "it does disprove the notion that a non-Indian could never get a fair trial in front of a tribal jury or tribal judge in tribal courts" (National Congress of American Indians 18). What is even more significant is the fact that in five years, no defendant filed a writ of habeas corpus to appeal their conviction to a federal court, out of 143 arrests and 75 convictions, although they have been encouraged to do so if they felt the need to. In fact, according to Professor Angela Riley who has focused on VAWA implementation, defendants have overall argued that they felt more comfortable being trialed in front of a tribal court: "[n]umerous parties asserted that they preferred tribal court to federal court, stating that the tribal process was less formal, less intimidating, offered more focus on treatment and showed more respect to defendants" (National Congress of American Indians 19).

Another tendency that the NCAI reported is that tribal courts prefer rehabilitation to punishment: the longest incarceration time a defendant was sentenced to was three years. Tribal courts are committed to making sure that the offender also heals: more than half of defendants (51 percent) were asked to take either batterer intervention courses, to seek anger management or mental health counseling, or to turn to alcohol and drug rehabilitation services. The reasoning behind this restorative type of justice is that the offender is very likely to maintain connections with the tribe while they have charges pending or after they have done some time in incarceration; they might have children who are citizens of the tribe for instance, or they might be quite involved in the community because of their job or other occupations. Jennifer Bergman, tribal prosecutor for the Alabama-Coushatta tribe of Texas explained that, "[d]ue to this fact, [they] want to try to help make sure that [they] do everything [they] can to deter them from reoffending" (National Congress of American Indians 20).

From the five-year report, it appears that tribal courts have proved both their motivation and their capacity to provide fair trials to non-Native people: if one thing, it almost seems like offenders particularly appreciate a tribal approach to justice, since it is focused on helping them too. Although the restoration of criminal authority that was granted to tribes in the 2013 reauthorization of VAWA is very positive, it has limits. Many tribes that chose to implement it noted that it is a very difficult process, especially because of how much it costs them. For a tribe, implementing SDVCJ means that they have to hire additional law enforcement officers, additional personnel to review or draft codes, and additional prosecutors, defense counsels and

judges who are licensed to practice law in any jurisdiction.⁵⁹ There are also probation, incarceration, jury, and training costs that are added, and the victim support and offender rehabilitation services also must be paid by tribal justice systems. Grants were authorized by VAWA 2013 but only four out of the eighteen participating tribes received these funds, and they did not use them to prosecute.⁶⁰

Another way in which implementing SDVCJ is rather difficult is the jurisdictional complexity that was already mentioned: investigators and prosecutors have to devote a lot of time and energy proving that the case does meet the statutory requirements – Native status of the victim, existing relationship between the defendant and the victim, sufficient ties between the defendant and the tribe. It is also very frustrating for tribal law enforcement and prosecutors to be limited to domestic and dating violence, especially since these crimes are usually linked to other crimes over which a tribe has no authority if the offender is non-Native. There are often children involved in cases of domestic violence, whether they be witnesses or victims. For instance, the Pascua Yaqui tribe has identified 38 children who were involved in SDVCJ cases. In these cases, tribal law enforcement has no authority, and it is city, state or federal courts that have to prosecute the offender for these charges. It is rare for a prosecutor to only charge one count in a domestic violence related case. Calls that are made to law-enforcement for suspicion of domestic violence are also among the most dangerous for police officers who risk being assaulted by an abuser who might be under the influence of drugs or alcohol or in fits of rage. Again, when it happens, tribal courts are powerless as they have no authority over such crimes. Finally, SDVCJ does not apply to many forms of violence that Native women experience, such as stalking, sexual violence from a stranger or an acquaintance, or sex trafficking. In some instances quoted in the report, tribal law enforcement could not prosecute non-Native men who assaulted Native women with whom they did not have a relationship, and before another jurisdiction intervened, the men had already reoffended.

The NCAI notes that SDVCJ is the first restoration of tribal authority since the Supreme Court decision to remove it in 1978 and that it should be seen as a good first step. In fact, Professor Sarah Deer states that for decades, people argued that reversing the decision in *Oliphant* would be impossible but she agrees that it feels very limited (Deer). Sharon Jones

⁵⁹ The reader might think of the *Sovereignty* play which starts with the hiring of Sarah Ridge Polson in the Cherokee nation Attorney General's office where help is needed as they are getting ready to implement SDVCJ.

⁶⁰ The NCAI did not specify why tribes did not use these grants to prosecute SDVCJ cases. However, considering that tribes are consistently underfunded, we can assume that the funds were used for other pressing issues.

Hayden, a prosecutor of the Tulalip tribes and Special Assistant U.S. Attorney shares this opinion:

In reservation attorneys' offices and tribal court houses throughout the United States when VAWA was passed, there was celebration like you wouldn't believe...what we didn't realize then...was how it's really just a little tiny down payment on a much bigger issue that needs to be addressed. (National Congress of the American Indian 23)

In June 2016, the NCAI passed a resolution entitled "Combatting Non-Indian Domestic Violence and Sexual Assault: A Call for a Full *Oliphant* Fix" in which they expressed the need to restore full territorial criminal jurisdiction for tribes to be able to fully protect their citizens from violence. The opinion on restoration of tribal sovereignty is divided: Democrats tend to be in favor of it, while Republicans tend to oppose it. Deer argues that having a Democratic President in office when VAWA was reauthorized in 2013 probably helped making it possible, especially since improving criminal justice in Indian country was part of his goals. Republicans have not been very comfortable with the 2013 version of VAWA, and their opposition partly explains why the legislation stalled, but there were other provisions about immigrants and the LGBTQ community that bothered them. The main argument that Republicans have against restoration of tribal criminal jurisdiction over non-Natives is that it is unconstitutional. In 2013, Senator Chuck Grassley argued that it would not be fair for a non-Native to be tried in front of a jury made of Native people, therefore assuming that Native people are not as capable as the rest of the population or making a moral judgement based on facts and evidence. He forgot to mention that, as any other jury, tribal juries cannot exclude anyone based on race and must include individuals that represent all members of the community that lives on their territory. Republicans sometimes also make the argument that tribes are not sovereign entities at the same level as the states and that for this reason they should have inferior authority. Professor Deer argues that although they often bring up the issue of constitutionality, they rarely explain how restoration of tribal criminal authority goes against the constitution. According to the Tribal Law and Policy Institute, it is constitutional for Congress to grant criminal jurisdiction to tribes since the 2004 Supreme Court case *United States v Lara* recognized the power of Congress to hold "plenary and exclusive authority over Indian affairs" and the Court also stated that "Congress does possess the constitutional power to lift the restrictions on the tribes' criminal jurisdiction" (Tribal Law and Policy Institute).

On March 13, 2019, the day before the hearing in front of the subcommittee for Indigenous People of the United States, there was a markup of the Violence Against Women

Act reauthorization of 2019 during which Republicans proposed an amendment that would take away the SDVCJ instituted in the 2013 reauthorization. Republican Representative Jim Sensenbrenner from Wisconsin argued that allowing tribes to prosecute non-Natives would send the country “down the road into a dangerous path” (Agoyo) because defendants in a tribal court would not be protected by the same constitutional rights as in any other court. Juana Majel-Dixon, Secretary of the NCAI and the co-chair of a national task force to prevent violence against Native women said that she “was disheartened, and frankly appalled, to see an amendment offered that would have stripped tribal governments of their inherent authority to hold non-Indians accountable for domestic violence crimes on tribal lands” (Agoyo). During the hearing the following day, Mary-Kathryn Nagle expressed similar disappointment:

[I]t is very disappointing to see [...] that anyone would even suggest rolling back this progress that has happened in the last 5 or 6 years. And the only statement that was made in support of the amendment was that simply tribal jurisdiction and prosecuting of non-Indians in tribal courts is unconstitutional. That was the same rhetoric that was given in 2013 against VAWA. That is based on a prejudicial view that tribal courts must be incompetent and cannot fairly adjudicate the rights of non-Indian defendants.

She mentioned the NCAI report that had been published a year before and had provided proof that tribal courts are fair and do not violate the rights of non-Native defendants. Although a full restoration of tribal criminal jurisdiction over non-Natives for crimes that occur in Indian country appears to be a judicious solution to solve the high levels of violence Native American women experience, it seems rather unlikely to happen in future years, considering that the 2013 limited restoration was recently questioned, even after having proven to be successful. However, with Debra Haaland becoming Secretary of the Interior, and considering her involvement in fighting the violence against Native Americans, we could expect a lot of rapid change in favor of Indigenous peoples of the United States.

3) *The Advantages of Reform at the Tribal Level*

If full criminal jurisdiction were to be restored to tribes, how could they build strong legal systems that would fight violence against their women? Some would have to rewrite their laws, but most would have to write them from scratch. In *The Beginning and End of Rape*, Professor Deer discusses the advantages of drafting new tribal rape laws and provides ideas of what they could look like.

Compared to working on federal reforms, working on tribal legislation is interesting as “tribal governments are able to act more quickly” (Deer, *SBI Webinar*). As independent foreign

nations, tribes are in the position of crafting new laws “instead of reforming dysfunctional existing” ones (Deer 108) and this is advantageous. At the federal level, amending laws to better protect and give more rights to women can take a lot of time and energy as it entails fixing legislation that was built in a patriarchal society. Because tribal nations have the opportunity to write laws from scratch, they can adapt them to the specificities of the violence Native women face today. However, thinking outside the box in order to avoid replicating the Anglo-American legal system might be challenging. The unique nature of violence experienced by Native women, which is deeply rooted in colonialism, must be taken into account when drafting new tribal laws. Deer quotes Palestinian criminologist Nadera Shalhoub-Kervorkian who noted that:

Copying models of intervention without in-depth examination of their applicability to a given social setting might not only inflict additional pain and problems, but might also imprison helpers in unrealistic and non-applicable theories and methods. (Deer 113)

Writing solutions for violence against Native women into law must both understand the contemporaneous situation and consider what has happened in the last 500 years: “the efforts should be grounded in a contemporary understanding of the crime, informed and contextualized by historical analysis” (Deer 112).

Legal philosopher Keith Burgess-Jackson listed three categories of rape⁶¹ theory. First, there is the conservative theory, that focuses on women and girls who are raped – generally by a man - as the property of another man. There is also the liberal theory of rape which considers the crime as an unlawful attack on someone’s physical body. Finally, there is a radical theory which pays attention to the social and political aspects of the crime (Deer). Professor Sarah Deer proposes that an Indigenous theory of rape would not fall into one of these three categories, as it should be focused on how it both violates a woman’s humanity while being closely linked to the colonization of the land. In a way, this new theory would be a combination of the liberal and the radical theories of rape, considering both the attack on the victim’s physical body and the social and political dimension of the violence: “this Indigenous model allows the entire experience of the victim to be acknowledged” (Deer 115).

⁶¹ Sarah Deer mostly uses the word *rape* in her book, but she links it to the MMIWG2S crisis, and other types of gender violence (domestic abuse, sex trafficking, etc.). If statistics from the SBI show that only 4 percent of cases they logged in their database are related to sexual assault, they also reveal that 88 percent of cases have remained unresolved (Appendix B). For that reason, it is difficult to know how many missing and murdered indigenous women have been raped. Because of the overall sexualization of Native American women in mainstream consciousness and because we do know that 56.1 percent of Native women are sexually assaulted (Rosay), we can safely draw a link between the MMIWG2S crisis and rape.

To integrate tribal values in creating these theories, Deer suggests that the focus should be laid on listening to women's stories. Historically, Native American culture, beliefs, and values have been carried out from generation to generation through stories. Therefore, basing a theory of rape and writing laws to protect Native women from gender violence by listening to women's experiences is in-keeping with Native American oral traditions. Deer argues that stories from the present are invaluable resources to base the work on, but she also says that stories from the past should not be left aside. Many tribes have kept stories about rape and sexual violence alive, despite colonial efforts to break down the story-telling traditions, and these stories are useful sources of knowledge. For instance, Sarah Winnemucca, the Paiute leader who spent most of her life speaking out for the rights of her people, wrote specific stories about women who suffered from sexual violence in her community. Sarah Deer also insists that the voice of Native men is of interest as well, since they "have also played a role in responding to rape, and those stories also deserve to be uncovered and retold" (Deer 118). She mentions the name of Struck-by-the-Ree, a Yankton Dakota leader who, in the late nineteenth century, went to speak with Congressmen about U.S. soldiers who used Native women for sexual favors in exchange for food and clothes.

Deer explains that a theory of rape will look different from one tribe to the other: thus, we should talk about "Indigenous rape theories" (Deer 115). The reason for this is that, whether it be today or in the pre-Columbian era, tribes have not had the same views on violence against women and they might favor different ways of punishing gender and sexual crimes. However, some common tendencies stand out, such as the concept that people who sexually assault women should be held accountable through social punishment, which can rank from the withdrawal of someone's social roles to ostracism. Another tendency is to allow women to participate in determining the punishment someone who committed a sexual crime should receive.

If we focus on the traditions of Ojibwe tribe, we learn through the *Tale of the Raped Maiden*⁶² which was published by an anthropologist in the early twentieth century that survivors of rape were honored and held in awe. In the story, the maiden who survived a rape is considered by her people to be so powerful that she becomes a medicine woman and a warrior. Deer remarks that it stands in great contrast with the common western beliefs that a woman who was raped is "soiled" (Deer 120). Although this concept has evolved with feminist movements, it is based on the conservative view of rape as a crime committed by a male on another male's

⁶² This story was published in Harlan I. Smith's "Some Objibwa Myths and Traditions" in the *Journal of American Folklore* in 1906.

property – a woman or a girl. Furthermore, the western views are paternalistic and patriarchal in that they tend to rest on the idea that women need to be protected because they are weak. On the contrary, the Ojibwe think women should be protected because of how strong they are and how much their communities need them.

Going back to traditional views on violence against women will be an important part of developing Indigenous theories of rape since, in many communities, conversations do not exist yet and have to be started. Because colonizers instituted patriarchal norms in tribes through strong and efficient measures of assimilation, silence has become the norm in communities. Deer writes that “[i]n many tribal nations, it is likely that generations of rape survivors have remained silent about their experiences and that many perpetrators have gone unpunished. Denial and secrecy have incredible power over victims” (122). Opening up conversation on gender and sexual violence is very likely to be triggering for many and dig up a lot of trauma and heavy emotions. For that reason, Professor Deer argues that Indigenous women’s advocates must be at the center of these conversations to provide assistance to those who decide to speak up, and to speak for those who do not feel comfortable sharing their experiences:

[I]t is critically important that local, Indigenous grassroots women’s advocates be a central part of the dialogue. Women’s advocacy programs, especially those grounded in grassroots organization, can provide support and encouragement for survivors of rape, and a voice for those who cannot speak. (Deer 122)

For a sovereign nation, being able to protect its citizens is critical. In order to provide a safer environment for Native women, they must be empowered – along with the governments of the tribes they are affiliated to – to do so. “Native women cannot depend on external systems of justice to provide justice and accountability for the high rates of rape they experience” (Deer 122). Writing new laws on gender and sexual violence can be a key solution to the MMIWG2S crisis, but without higher levels of self-determination for tribes, without the ability to protect Native women from all predators regardless of their race or ethnicity, writing new laws can only have a limited effect.

C. Conclusion

It is almost impossible for Native advocates who work to solve the MMIWG2S crisis not to interact with the federal government. Their voices have gained ground on Capitol Hill in the last fifteen years, and Native women advocates have been lobbying federal lawmakers with the hope of seeing amendments to existing laws and even new legislations that address violence

against Native women. Whether it be through letters, speeches, or testimonies given in front of subcommittees in Congress, they have been able to provide consequential input. As we have seen with Savanna's Act, for instance, the original text that had been drafted with the best intentions could have been very harmful to Alaska Native and Indigenous people living in urban areas. Native women advocates suggested the change of a few words that will have tremendous consequences on Native people that lawmakers did not think of.

Scholars, advocates, Indigenous organizations, tribal leaders, the National Congress of American Indians, and the National Institute of Justice⁶³ argue that the United States Congress could do more to help address the crisis: they could restore full criminal authority of tribes over non-Natives and for all crimes, which would allow tribes, which are sovereign nations, to protect their citizens against violence in a much more effective way. However, if working with the federal government is necessary for advocates fighting to solve the MMIWG2S crisis, it is not an easy process. First, it takes years and years, time which feels like an eternity for families who have lost a loved one and advocates who work with them. Furthermore, it is rather difficult for many Native Americans to work with a government that has brought a lot of suffering to generations before them and has not yet provided an official and meaningful apology.

Yet, the work of Native women advocates who have dedicated their lives to fighting against the crisis goes far beyond Washington D.C.. They work every day on the ground, in grassroots organizations and movements, to both prevent violence against Native women to escalate in kidnapping and murder, and to assist survivors and families who have experienced traumatic levels of violence. The examples of the NIWRC's toolkit and of the StrongHearts Native helpline were provided here to illustrate this type of action, but there are others. The Sovereign Bodies Institute has also recently published their own toolkit which offers resources the goal of which is to help the movement for justice for MMIWG2S to grow by "giving readers a comprehensive road map to getting started in the movement" (Sovereign Bodies institute). For Native American women to be at the center of the movement is very important as it can be both healing and empowering. Because they are on the front lines and because they have dedicated their lives to understanding this crisis, its roots with colonialism, and the impacts of gender violence on communities and individuals, they are experts on how to solve it. Giving them more tools, resources, and authority to address the crisis would make sense.

Since the unexpected partial restoration of criminal authority in 2013, tribal courts have proven, thanks to a thorough documentation work done by the NCAI over a period of five years,

⁶³ Rosay's report concluded that their findings "provide continuing strong support for Indian nations' sovereign right to prosecute non-Indian offenders" (4).

that they can provide fair trials to non-Natives, just as any other court in the country. It would appear to be rather coherent to continue towards a full reversal of *Oliphant*, so as to simplify jurisdictional complexity and improve interjurisdictional collaboration. However, restoring criminal authority is not enough on its own: an increase in funding would be necessary as well. Regaining the power to protect their citizens against any criminal and to prosecute everyone in their courts for any crime would encourage tribes to develop their own codes and to think about how they can reconnect to traditional values in how to deal with violence against women. This could be very healing for communities who, although they resisted with strength as best they could, have been stripped of their traditions and especially of their views on gender and social organization.

In recent years, the question of whether to restore criminal authority to tribes has been a source of debate between Republicans and Democrats. Republicans have opposed it, arguing that it is unconstitutional. Yet, the Supreme Court declared in 2004 that Congress had the power to make decisions on all Indian affairs. Since the Special Domestic Violence Criminal Jurisdiction that was granted in 2013 was still recently being called into question, a full restoration of tribal criminal authority seems rather unlikely in the near future. Yet, the recent election of a Democratic President and his nomination for the first time in history of a Secretary of the Interior who not only Native American but also a woman, we could expect more and quicker action on issues concerning Native Americans: especially on addressing violence against women, ensuring that the government honors its trust responsibility, and potentially restoring more criminal authority to tribal governments. Then, they would have the liberty of writing their own rape laws which could be based on stories of both the past and the present, taking into account how violence against Native women relies on a deep intersection between the violence of colonialism and the violence of patriarchy.

CONCLUSION

The missing and murdered Indigenous women, girls, and two-spirit people crisis has been an issue in the United States since before it even became an independent country. As long as colonialism is seen as an event and not a structure, addressing the crisis is nearly impossible. It has become obvious that the system was decidedly not built to Indigenous people's advantage: on the contrary, it fails to protect them, especially from violence committed by non-Native individuals. Because the Supreme Court declared that tribes cannot protect their citizens from non-Native criminals who attack them, it appears that colonial violence is not simply history, but still very much existing today. Furthermore, the federal government remains complicit by failing to provide meaningful apologies, failing to honor its trust responsibility to Indian tribes, and failing to hold a large portion of criminals accountable for major crimes committed in Indian country. The main reason why Native women are particularly targeted by violence relies in the fact that Anglo-European settlers who colonized the continent brought with them a patriarchal order that was largely unknown to Native American peoples, and they used gender violence as a tool of colonization. While they used to be in positions of power in their societies before colonization, centuries of having been commodified and used for their knowledge, their lands, their skills, their connections, and their bodies have deeply harmed them and taken a lot of power away from them.

As a consequence, a culture in which the bodies of native women have been marked as available and rapable has developed, and broadly shared misconceptions on Native Americans have reinforced it. Stereotypes of Native Americans are harmful as they can convey the narrative that Native men are violent while White men are saviors. These stereotypes are very dangerous because they have existed for such a long time now that they have become entrenched in American culture and are very difficult to deconstruct. Furthermore, underrepresentation of 21st century Native Americans in the media is problematic since it carries the idea that they no longer exist. It is complicated to get people to think about a crisis that hurts a group they think no longer exists. As a consequence, the crisis of MMIWG2S has remained invisible and is only starting to be talked about more widely. The three works that are analyzed in this dissertation fight against harmful stereotypes and provide better depiction of Native Americans and of the types of violence they experience. They also portray Native women as warriors. Overall, the voice of Native women is what matters most and stories and experiences they can share, regardless of the form, are key and have to be promoted and made known. Stories are instrumental in shedding light on this invisible crisis, but numbers are

needed as well to fully grasp the scope of the violence. Data gathered by federal agencies in the last two decades have not proven ideal, whereas Indigenous data gathering such as the work undertaken by the Sovereign Bodies Institute has many advantages: besides being more comprehensive and more useful in fighting the crisis, it also empowers Native Americans of the whole continent and can provide healing for Native families and communities.

It is armed with invaluable stories and comprehensive data that Native women activists of the movement to end the MMIWG2S crisis have gone all the way to Capitol Hill to offer their expertise to lawmakers on how the federal government should participate in finding and implementing solutions. Among their suggestions, they advocated for an amelioration of data gathering, for the development of protocols to enhance law enforcement response, for the attribution of more funds and resources to tribal governments, and for a restoration of tribal sovereignty with, ideally, a repeal of the decision in *Oliphant v. Suquamish*. Since 2013, tribes have proven that their courts are as fair and legitimate as any other court in the country and that when they are given more criminal authority, there are a lot of positive side effects: interjurisdictional cooperation increases, conversations around gender violence are generated, tribal governments are empowered, and offenders tend to be treated and rehabilitated rather than imprisoned. Some politicians still argue that restoring full tribal criminal jurisdiction is unconstitutional when in fact the Supreme Court declared the opposite in *United States v. Lara*. The question of sovereignty is still on the table and will be for years to come, but some of the suggestions Native women advocates made in Congress had an impact on the first federal law specifically written to address the MMIWG2S crisis: Savanna's Act. Their words have weight in the halls of Congress. After the passing of VAWA 2013, the TLOA, Savanna's Act and the Not Invisible Act in the last eight years, Native women advocates are celebrating their accomplishments while keeping in mind that it is only a first step and that there is much more to do. These policies restore some criminal authority to tribes, improve law enforcement response and generate important conversations but do not fully honor the trust responsibility of the U.S. government since it does not offer more funding. Native women activists are not only speaking out in Congress, but they are also on the ground, educating women on healthy relationships, preventing domestic violence and sexual assault from escalating into kidnapping and murder, helping tribal communities make connections and found non-profit organizations, helping survivors and victim's families organize searches, reach out to the appropriate jurisdiction, and bring loved-ones home, opening shelters, educating Native women on their rights, etc. They have seen the violence for years; they perhaps experienced it themselves; they have heard about it from their mothers, their aunts, and their grandmothers; they fully

understand that the violence is a direct consequence of colonialism; and they honor the diverse traditions and values of their tribes which allows them to propose culturally appropriate solutions. This makes them experts on the crisis with their voices and ideas being essential and central to solving it. However, they cannot do it alone: it appears important that the federal government clears the many obstacles that stand in their way and positions itself as an ally. They have been fighting against the crisis for decades and will keep on doing so in years to come. From prevention and healing to lobbying of federal, state, local and tribal governments, they are assiduously fighting for a safer future for themselves and other women.

In November 2019, President Trump authorized the creation of a task force on missing and murdered Indigenous people nicknamed “Operation Lady Justice” (Ebbs), the goal of which was to reconsider the ways law enforcement agencies deal with these cases. Overall, Native American advocates of the movement have been rather disappointed by this task force which they argue should include more voices of victims’ families, survivors, and tribal leaders. Executive director of the Sovereign Bodies Institute Annita Lucchesi commented that “the task force’s goals are too vague to make a meaningful difference and that it feels like a matter of convenience in an election year” (Ebbs). Michaela Madrid, SBI’s Operations Manager, made a similar complaint in October 2020 when she testified in front of another task force, Section 904 Taskforce, which was created by the 2005 reauthorization of the Violence Against Women Act. She argued that the voices of families and survivors are priceless and that the task force does not give them the importance they deserve:

When reviewing the limited information available regarding the 904 Taskforce, it is unclear to what degree MMIW families and survivors are empowered. It is great to see the level of Tribal consultation that goes into the development of this work – but how much family and survivor consultation is conducted? At SBI, we do not engage on projects without families and survivors in leadership positions and we always offer long-term support services to those involved. (Madrid)

On April 1, 2021, Interior Secretary Debra Haaland announced the creation of a Missing and Murdered Unit (MMU) within the Bureau of Indian Affairs. The MMU will “put the full weight of the federal government into investigating” (Interior Press) murders and abductions of Native women and improving inter-jurisdictional collaboration. Debra Haaland made the following statement on that day: “[t]he new MMU unit will provide the resources and leadership to prioritize these cases and coordinate resources to hold people accountable, keep our communities safe, and provide closure for families” (Interior Press). The new unit will build on the work of President Trump’s taskforce, but advocates are more supportive of this new

initiative. Debra Haaland stated that it will be focused on assisting tribal communities with “all hands-on-deck” efforts, which suggests that families, survivors, and tribal leaders will have a more central role and voice in the work (Chavez). Advocates have emphasized how important it is that resources allocated by the MMU be directed towards prevention and healing as well as investigation, and they really insisted on the importance of consulting with Native Americans for the unit to really make a difference. It is still very early, and advocates prefer to wait and see how the project is designed and what work it will do in reality. However, the majority of them is hopeful since the nomination as Secretary of the Interior of a Native woman who has devoted a large part of her career to combatting violence against Native women appears to be a major turning point. Agnes Woodward, the Canadian Native woman who makes ribbon skirts, noted that Haaland “was able to announce in two weeks what they have been demanding for decades” (Nowell).

With the Covid 19 global pandemic that has hit the United States with great force all throughout the year 2020, this new momentum was really needed. Since the pandemic has isolated people and confined them to their homes, it has increased the rates of violence Native American women experience while also making the work of the advocates considerably harder. The violence is still there, but now it is even less likely to be seen as it occurs “behind doors that open less often” (Matthews). A Canadian survey revealed that Indigenous women have suffered greater rates of domestic violence since the beginning of the pandemic (Wright). We can only assume that it is the case in the United States as well. For women who live in violent homes, there is nowhere to go at a time when people are urged to stay at home. Financial strain can also make it more difficult for an abused woman to escape from her abuser and Covid 19 has put many Americans out of work. Finding help has become very difficult since social interactions highly decreased, limiting the resources available to the online world, which some Native women cannot access.⁶⁴

Advocates have had little choice but to turn to digital resources to carry on with their work: turning to social media, organizing webinars and public zoom conversations,⁶⁵ and creating online tools, such as the StrongHearts Native helpline online chat which was launched in May 2020 to allow victims of domestic abuse who cannot talk over the phone to seek help in a different way.

⁶⁴ Some regions in Indian country do not have internet coverage (Robin Maxkil, *AT&T Webinar*).

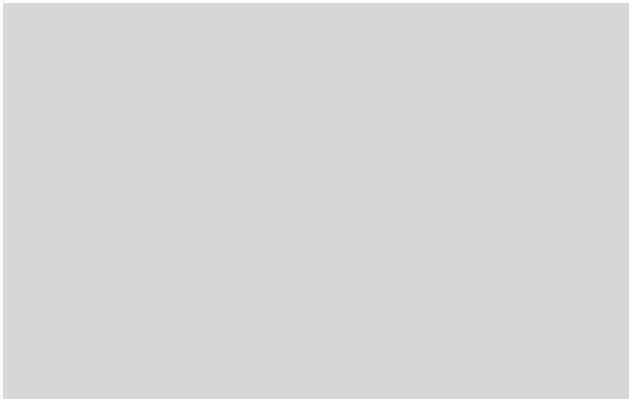
⁶⁵ This increased use of technology to carry on with the work to end the MMIWG2S crisis has in fact been interesting for my work as a researcher, since it allowed me to attend a live webinar on November 18, 2020, in which Sarah Deer, Mary-Kathryn Nagle, and Annita Lucchesi were invited to speak.

Navigating this difficult time requires connection, community, creativity, and collaboration. Thankfully, we are a movement made of creative Advocates who know how to adapt and shift to respond to challenging situations. While we look forward to the day that we will all be together in person, we are grateful for the ways that we have been able to connect and the things that we have learned over this last year. (Matthews)

The pandemic invited Native women activists to reinvent their ways of addressing the violence that their sisters, their daughters, their mothers, their friends, and themselves face, and by doing so, they have once again proven their strength, dedication, and tenacity.

ABOUT THE ADVOCATES

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- Founding Executive Director of Sovereign Bodies Institute and founding caretaker of the MMIWG2S Database
- Survivor of domestic violence, rape, and sex trafficking
- BA in Geography from UC Berkeley
- MA in American Studies from Washington State University
- Currently pursuing a PhD in Geography with a minor in Gender and Women's Studies at the University of Arizona

Source: (Sovereign Bodies institute)

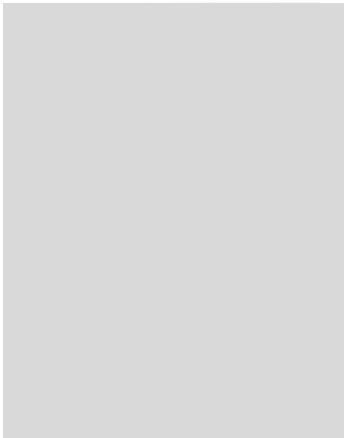
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- Partner at Pipestem Law P.C. focused on protecting the rights of Native Americans and protecting women and children from domestic violence
- Legal counsel to the NIWRC
- Author of numerous briefs filed in federal appellate courts
- Playwright (*Silver of a Full Moon, Sovereignty, Manahatta*)
- Executive Director of the Yale Indigenous Performing Arts Program from 2015 to 2019
- BA in Justice and Peace Studies from Georgetown University
- Law degree from Tulane University Law School

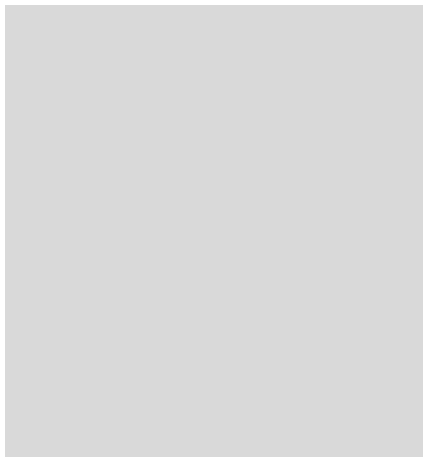
Source: (Sovereign Bodies institute)

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- Women, Gender, and Sexuality Studies and Public Affairs and Administration professor at the University of Kansas
 - Chief Justice for the Prairie Island Indian Community Court of Appeals
 - Author of *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (2015)
 - Named a MacArthur Foundation Fellow in 2014
 - Advocate who has worked with survivors for over 25 years
 - BA in Women's Studies and Philosophy with Honors from the University of Kansas
 - Law degree from the University of Kansas School of Law
- Source: (The University of Kansas)**

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- Executive Director of the Alaska Native Women's Resource Center
 - BA in Social Work
 - MA in Community Psychology
 - She has worked in Indian Child Protection and Counseling/Advocacy for domestic violence, sexual assault, mental health and addictions
 - Mother, Grandmother, and Auntie
- Sources: (Alaska Native Women's Resource Center; The House Committee on Natural Resources)**

•

[Redacted]

[Redacted]

- Member of the North Dakota State House of Representatives (second term)
- Has previously worked as an independent consultant and small business owner
- BA in Criminal Justice
- MA in Management, Business Administration and Public Health
- Mother of four

Source: ([Redacted]; **The House Committee on Natural Resources**)

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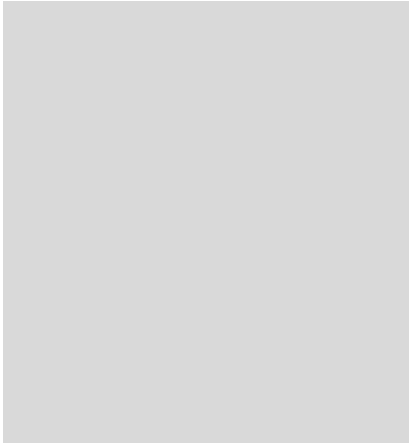
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- Operations Manager of the Sovereign Bodies Institute
- BA in Political Science and Sociology from Black Hills State University
- MA in Public Policy from Portland States University
- “Served on the Oregon State Police's Missing and Murdered Native American People Taskforce”
- “Served as the Program Coordinator for the Institute for Tribal Government and as an Energy and Water Policy Associate for the Affiliated Tribes of Northwest Indians”

Source: (**Sovereign Bodies Institute,** [Redacted])

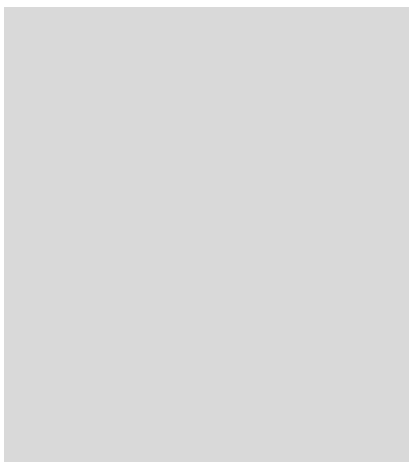
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- Director of the Seattle Urban Indian Health Institute
- Chief Research Officer and Executive Vice President at the Seattle Indian Health Board
- BA in Interdisciplinary Studies and MA in Policy Studies from the University of Washington

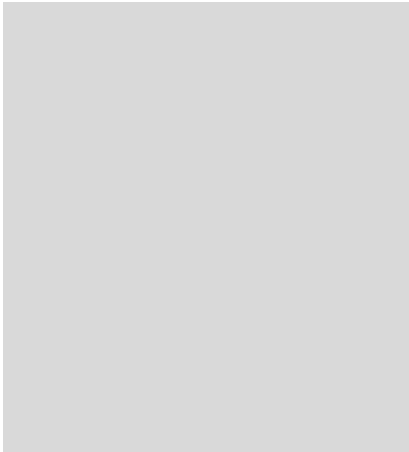
Source: (Urban Indian Health Institute)

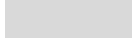
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- Leader of the American Indian Movement in the late 1960s
- Co-founder of Women of All Red Nations and the Black Hills Alliance
- Founder of the We Will Remember Survival School
- Advocate who has spoken out for Indigenous people in the U.S, Central America, Europe, the Middle East and in the United Nations in Geneva
- Present at all occupations, from Alcatraz to Standing Rock
- Currently fights against the removal of Native children into the foster care system
- **Source: (*Featured Perspectives — Warrior Women*)**

-



- “Community organizer with a focus on food sovereignty and cultural revitalization”
 - Graduate of the We Will Remember Survival Group
 -  currently works for Simply Smiles, Inc., a non-profit organization that locates one project on the Cheyenne River reservation in South Dakota. She manages the garden project that includes wild food identification, harvest, and food processing.”
 - MA in Nutrition from South Dakota State University
- Source: (*Featured Perspectives — Warrior Women*)**

- **Debra Haaland (Laguna Pueblo)**

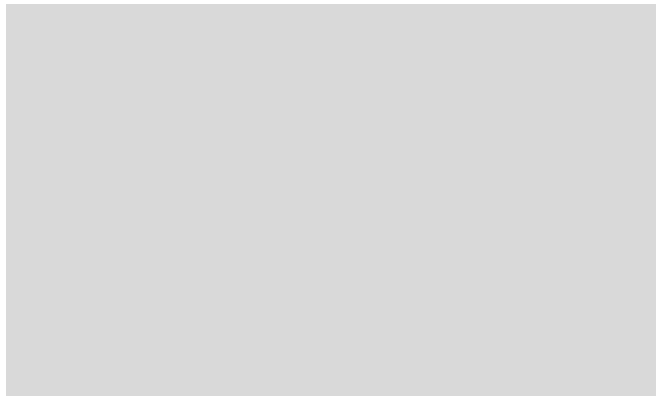


Figure 21

- 2018: became one of the first two Native American women elected to Congress
 - 2010: introduced and sponsored bill H.R.2438 or the Not Invisible Act
 - 2021: nominated by President Joe Biden to lead the interior Department and confirmed by the Senate by a 51-40 vote
- Source: (Lakhani)**

APPENDIX A

Emails exchanged with the Sovereign Bodies Institute:

25/05/2021

Re: Request for information on your data-collection work for my master's thesis on MMIWG2 and native activism

MMIW Database

mar. 18/05/2021 19:58

À : FAIVRE charlotte

Cc: >

1 pièce(s) jointe(s) (17 Ko)

Charlotte questions.docx;

Hi Charlotte,

Apologies for the delay. Here are the stats you requested. If you have any questions please let me know. I am cc'ing my personal work email to this email also. Feel free to email that one. I will also ask Annita to answer the top set of questions.

You will see in the attached document that I separated the data into US and Canada stats. I pulled those numbers for May 5th and they are the most updated.

On Mon, May 3, 2021 at 2:47 AM FAIVRE charlotte wrote:

Dear

Thank you for replying and offering to help me with my thesis. I am very happy to learn that you are willing to share some statistics with me and ask your Executive Director if she can answer the questions on the Sovereign Bodies Institute. I have not turned my work in yet. I still have a few weeks left. Do you think it would be possible for you to get back to me before around May 15th ?

As I learned more about SBI in my research, I updated some of the questions. Here they are:

About the work that you do:

1. How many names are submitted every month in the database? Have you noticed a growth in name submission after the passing of Savanna's Act, and more generally, as more and more people are becoming aware of the MMIWG2S crisis? In other words: how fast is the database growing?
2. Does the nomination and confirmation of Debra Haaland as Secretary of the Interior have an impact on the work that you do? If so, how?
3. At the Feminists Deliver Conference in 2019 in Vancouver, you said that you will not accept funding from the federal government. Would any other help from federal or state governments be helpful for an organization such as yours?
4. Can trust be built with time between an organization such as SBI and the federal government? If so, how?
5. To what degree was SBI involved in the drafting of Savanna's Act and the Not Invisible Act?

<https://owa.univ-lyon3.fr/owa/#path=/mail>

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6. Has the Sovereign Bodies Institute ever testified in Congress?
7. Are there Native American men in the SBI staff? Are there non-Native people in the SBI staff? Would you consider having men and/or non-Native people in your staff?
8. What impact has the Covid-19 pandemic had on your work?

About the data:

9. How many names have been logged in the database so far for the United States and in total (including other countries)?
10. How far in time did the first case logged in the database occur?
11. What is the average age of MMIWG2S and how many are 18 years old and under?
12. What is the proportion of murders and the proportion of missing cases? How many cases how unresolved?
13. How many indigenous women, girls and two-spirit people were missing from or murdered on...
 - a. urban areas
 - b. reservations
14. How many cases are linked with...
 - a. domestic violence
 - b. police brutality
 - c. the foster care system
 - d. human trafficking
 - e. homelessness
15. In how many cases did a family or community member find the body of a missing loved-one?

Again, thank you for your time and consideration

I hope to hear from you soon,

Sincerely,

Charlotte FAIVRE

Charlotte Faivre

Master 2 LLCE Recherche Études Anglophones
Université Jean Moulin Lyon III



25/05/2021

De : MMIW Database

Envoyé : mercredi 28 avril 2021 18:23:29

À : FAIVRE charlotte

Objet : Re: Request for information on your data-collection work for my master's thesis on MMIWG2 and native activism

Hi Charlotte,

Are you still needing these questions? I can ask my Executive Director to answer most of the questions. I am happy to answer the Data questions with specific numbers needed. I apologize for the delay in the response. Please let me know if there is any way I can support you still with your thesis.

Best,

On Thu, Feb 18, 2021 at 5:19 AM FAIVRE charlotte > wrote:

Dear SBI,

My name is Charlotte Faivre. I am a student at the University Jean Moulin Lyon III in France where I am about to complete a master's degree in Foreign Language, Literatures and Cultures specialized in English.

The subject of my master's thesis is the MMIWG2 crisis in the United States, on which I've been doing research for about two years now. I first found out about MMIWG2 in a Gender Studies class which was given by scholar and teacher Stephanie Lumsden (Hupa), and which I took as an exchange student at UCLA in 2018.

I am writing this thesis under the supervision of associate professor Marie Moreau who teaches American studies, translation and English at the University Lyon III and who wrote her PhD on *The evolutions of the family in the United States, Canada and Quebec between 1969 and 2005*.

So far, I have focused my research on the historical, political and cultural factors that have caused the MMIWG2 crisis since the beginning of settler colonialism in North America. Now that this has allowed me to situate the issue of missing and murdered indigenous women, girls and two-spirit people in its historical context, I wish to focus the rest of my thesis on native activism, shedding light on native advocates who are dedicated to fighting against this crisis. I am for instance following the work of Mary-Kathryn Nagle and Sarah Deer. I also wish to write about the work that the Sovereign Bodies Institute does, especially that of data-gathering, and this is why I am contacting you today.

I understand how sacred and precious the information you gather in the database is and I would not want to disrespect it in any way. As I have written before, what is of interest in my research is the work you are doing. For that reason, I have prepared a few questions about your work and a few questions about the database. I'd understand if you do not wish to answer some or any of them, especially since I am not indigenous, nor am I working with an indigenous organization. I truly appreciate your time and consideration as I understand the importance of the work that you do. If answering these questions is too time-consuming or if for any reason you do not wish to answer them, would you be inclined to sharing a few statistics with me? You must know that a master's thesis in France is not published: it will only be available in the university library for all students of the University Lyon III to read.

Here is the information that would be really helpful for my research:

About the work that you do:

1. How many names are submitted every month in the database?

<https://owa.univ-lyon3.fr/owa/#path=/mail>

3/5

2. Have you noticed a growth in name submission after the passing of Savanna's Act, and more generally, as more and more people are becoming aware of the MMIWG2 crisis? In other words: how fast is the database growing?
3. Has the Federal Bureau of Investigation – or the federal government more generally – asked you to share your findings and have they proposed to help you with any funding?
4. What is the importance of Native-owned data gathering on the crisis of MMIWG2?
5. What type of help from the federal government would be helpful for an organization such as yours?
6. How can a solid and trustful connection can be built between an organization such as SBI and the federal government?
7. To what degree was SBI involved in the drafting of Savanna's Act and the Not Invisible Act?
8. Are people who founded and who work at SBI all women or two-spirit people? Are there men among you as well? Is everybody working at SBI indigenous?

About the data:

9. How many names have been logged in the database so far for the United States?
10. How far in time did the first case logged in the database occur?
11. What is the average age of MMIWG2 and how many are 18 years old and under?
12. What is the proportion of homicides and the proportion of missing cases? How many cases how unresolved?
13. How many indigenous women, girls and two-spirit people were missing from or murdered on...
 - a. urban areas
 - b. reservations
14. How many cases are linked with...
 - a. domestic violence
 - b. police brutality
 - c. the foster care system
 - d. human trafficking
 - e. homelessness

Again, thank you for your time and consideration. I read on your website that requests are usually answered within 2-4 weeks, but just in case, and because of how much Covid19 impacts everything, I must let you know that my master's thesis is due in mid-April.

I hope to hear from you soon,
Sincerely,

Charlotte Faivre

Master 2 LLCE Recherche Études Anglophones
Université Jean Moulin Lyon III

APPENDIX B

Data provided by the Sovereign Bodies Institute from their most recent update (May 5, 2021):

In the United States

- Total Number in the database is 2448 MMIW
- Average Age is 26 years old
- 88% of the cases are unsolved
- 12% of the women in our database are mothers
- 30% of the women and girls in our database are 18 & younger
- 2/3 of the MMIW in the database are from the year 2000 to present day
- RELEVANT ISSUES
 - Death in custody/law enforcement-49= 2% of cases are Law Enforcement involved
 - DV-230- 9% of cases are domestic violence related
 - Sex work-25 1% of cases are sex work/trafficking related
 - Sexual assault-89-4% of cases are sexual assault related
- **Location**
 - Reservation-32%
 - Rural-14% of cases
 - Urban-54% of cases
- **Top States**
 - Washington-293 MMIW
 - Montana- 241 MMIW
 - Arizona- 225 MMIW
 - New Mexico- 216 MMIW
 - California-190 MMIW
 - Alaska-179 MMIW
- **These 6 states make up 55% of the United States MMIW data in the database.**

Answers to specific questions I sent them:

Question: In how many cases did a family or community member find the body of a missing loved-one?

Answer: This question is a data point that we don't track.

Question: How many names have been logged in the database so far for the United States and in total (including other countries)?

Answer: 4,773 Total in database. Including Pacific islands, Latin America

Question: How far in time did the first case logged in the database occur?

Answer: 1864

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