

**Sovereignty of the Soul: Confronting Sexual Violence
in Native America**

March 26, 2018

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**AGENDA:
Journeys of Justice**

1. The Truth: We are suffering
2. The Good: We have not always lived this way
3. The Ugly: How federal policies and laws have facilitated the violence
4. The Great: How Native women's activism has changed federal law

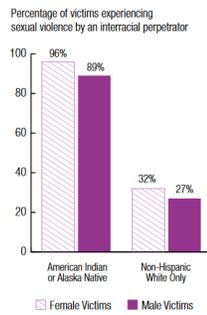
Violence Against Native Women: Statistics

- **84.3%** of Native women have experienced violence (Dept. Justice, 2016)
- Native women suffer the **highest rate** of sexual assault in the United States. (Dept. of Justice, BJS 2004)
- **56%** of Native women have experienced some form of sexual violence (Dept. Justice, 2016)
- **55%** of Native women have been raped or have experienced physical violence and/or stalking by an intimate partner in a lifetime (Dept. of Justice, 2016)

Violence Against Native People: Statistics

- The rate of Post-Traumatic Stress Disorder (PTSD) in Native adults is **4.4 times** the national average
- Native youth experience child abuse at rates of **15.9 per one thousand compared to 10.7** per white youth
- Native children experience PTSD at the **same rates as veterans returning from Iraq and Afghanistan** and triple the rate of the general population.

National Data: Interracial Crime



Source: Rosay, 2016 (Dept. of Justice)

Historical Response: Full Sovereignty

- Historically, tribal nations had full jurisdiction over all crimes – domestic violence, sexual assault, homicide, etc.
- Evidence indicates that investigation and prosecution were thorough and victim-centered.

Traditional Law and Violent Crime

- Traditionally, violence against women was not tolerated in indigenous societies
- Tribal governments had strict laws against hurting family members, especially women and children
- Matrilocal / Matrilineal
- Punishments included banishment and death

Protecting Women and Indigenous Beliefs

An Indian never attempts, nay, he cannot use towards a woman amongst them any indelicacy or indecency, either in action or language. **I never saw or heard of an instance of an Indian beating his wife or other female, or reprovng them in anger or in harsh language.**

-William Bartram (American naturalist), 1791 (writing about the Creek and Cherokee Indians)



Creek Rape Law - 1824

And be it farther enacted if any person or persons should undertake to force 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.**

Question

What factor(s) explain the disproportionate amount of violence in the lives of Native people in the United States?

Sovereignty: Tribal Nations

The inherent power of a government to address and respond to its own internal and external affairs.

Sovereignty and Violence

- Tribal governments had effective legal systems which serve to protect and respond to violent crimes.
- BUT those systems have been weakened or dissolved by colonial power and control.

Sovereignty: Individual

The inherent power of a person to control and respond to her own internal and external relationships.





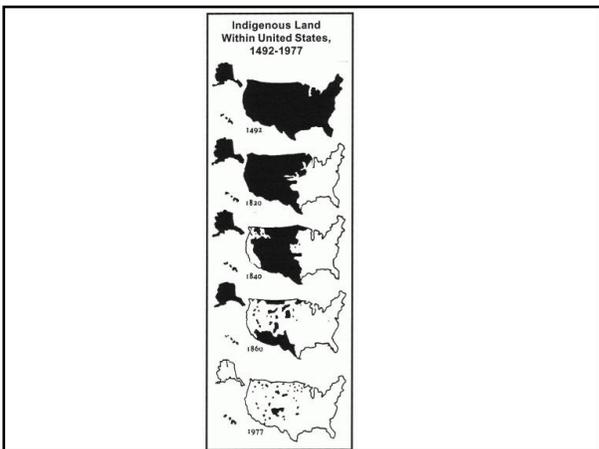


Sarah Winnemucca

One of the Indians had a sister out digging some roots, and these white men went to the women who were digging, and caught this poor girl, and **used her shamefully**. The other women ran away and left this girl to the mercy of those white men, and it was **on her account that her brother went and shot them**.

-Sarah Winnemucca, 1883





Land Loss







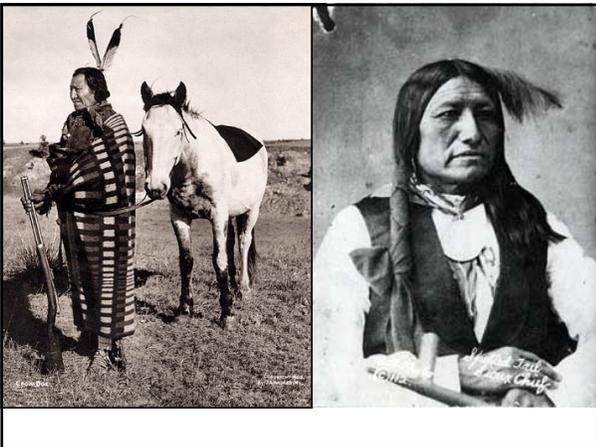
Sexual Slavery

“The girl, when sold to a white man, is generally skeary for awhile 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.”

-Advice from a “Rocky Mountain Hunter” who purchased a Native girl in 1868.

Usurping Sovereignty

- Major Crimes Act
- Public Law 280
- Indian Civil Rights Act
- *Oliphant v. Suquamish*



Public Law 280 (1953)

- Conferred on certain states broad criminal and limited civil jurisdiction
 - California
 - Nebraska
 - Minnesota
 - Wisconsin
 - Oregon
 - Alaska
- A source of major conflict vis a vis states and tribes

Indian Civil Rights Act (1968)

- 25 U.S.C. 1302(7)
- Limitation of sentencing to 1 year, a \$5000 fine or both

Oliphant v. Suquamish (1978)

- 435 U.S. 191 (1978)
- Eliminated tribal criminal jurisdiction over non-Indians

Tribal Criminal Prosecution: Major 20th Century Limitations

- LIMITED to prosecution of members of federally-recognized tribes
- LIMITED to 1 year incarceration, \$5000 fine, or both
- LIMITED in terms of jail space / resources for probation

Positive Changes in the Law 21st Century

- Tribal Law and Order Act of 2010
- Violence Against Women Reauthorization of 2013

Tribal Law and Order Act July 2010



Violence Against Women Act Reauthorization

- More clarification on civil authority for tribal courts to issue protection orders
- Limited Oliphant-fix



The Latest Fight



December 7, 2015

Amicus Brief on behalf of victim organizations



I take myself back, fear.

You are not my shadow any longer.

I won't hold you in my hands.

You can't live in my eyes, my ears,
my voice

my belly, or in my heart my heart

my heart my heart."

-Joy Harjo
(Mvskoke)



MVTO (Thank you)

