

*Minnesota Journal of Law & Inequality*  
*Inequality Inquiry*  
Fall 2024

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**Delaying Justice: How Jurisdictional Gaps Fuel the Missing and Murdered  
Indigenous Women Crisis in the United States**

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Hand-in-hand, thirty-eight Dakota men began to harmonize, calling out each other's names to ensure no one was missing.<sup>1</sup> Four thousand spectators gathered to witness a tragic spectacle: the largest mass lynching in United States history.<sup>2</sup> The U.S. government sentenced thirty-eight Dakota Natives to death for their involvement in the U.S.-Dakota War, a conflict that erupted when the government failed to deliver the promised food and supplies in exchange for tribal lands.<sup>3</sup>

Today, the legacy of colonialism and forced assimilation endures, manifesting in the ongoing crisis of missing and murdered Indigenous women ("MMIW").<sup>4</sup> The United States has a history of mistreating and committing genocide against Native peoples, which directly contributes to the harrowing statistics we see today.<sup>5</sup> In Minnesota, Native women, who make up just one percent of the state's population, account for a staggering eight percent of all murdered women.<sup>6</sup> This disproportionate violence is not an anomaly but rather a continuation of centuries of systemic oppression and marginalization. Judicial loopholes, inconsistent law enforcement, and failed

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<sup>1</sup> *Trials & Hanging: The US-Dakota War of 1862*, MINN. HIST. SOC'Y, <https://www.usdakotawar.org/history/aftermath/trials-hanging>.

<sup>2</sup> *Id.*

<sup>3</sup> *U.S. Government Hangs 38 Dakota Men in Minnesota*, EQUAL JUST. INITIATIVE, <https://calendar.eji.org/racial-injustice/dec/26>.

<sup>4</sup> *See generally* Jaqueline Agtuca, *National Day of Awareness for Missing and Murdered Indigenous Women May 5<sup>th</sup> Actions Calling for Justice!*, RESTORATION MAGAZINE, <https://www.niwrc.org/restoration-magazine/february-2020/national-day-awareness-missing-and-murdered-indigenous-women-may>.

<sup>5</sup> *Id.*

<sup>6</sup> *The Missing and Murdered Indigenous Relatives Epidemic*, MINN. MISSING AND MURDERED INDIGENOUS RELATIVES OFFICE, <https://dps.mn.gov/divisions/ojp/mmir/Pages/default.aspx#:~:text=Although%20American%20Indian%20women%20and,month%20from%202012%20to%202020>.

attempts at rectification have left Native women vulnerable to violence, with perpetrators of rape, assault, sex trafficking, and murder rarely facing consequences.<sup>7</sup> According to the U.S. Department of the Interior's Indian Affairs, a 2016 study by the National Institute of Justice revealed that more than four out of five American Indian and Alaska Native women have experienced violence at some point in their lives, including 56.1% who have endured sexual violence.<sup>8</sup> In total, more than 1.5 million American Indian and Alaska Native women have suffered from violence throughout their lifetimes.<sup>9</sup> The reality, however, is likely even grimmer, as poor record-keeping, uncooperative law enforcement, and underreporting from Indigenous communities exacerbate this atrocity.<sup>10</sup>

The jurisdictional quagmire that perpetuates the MMIW crisis is deeply rooted in settler colonialism and the legal framework that emerged from it.<sup>11</sup> The genocides committed against Native Americans—through diseases, slavery, starvation, assassinations, and mass relocations—were not isolated acts of violence but part of a broader strategy to dispossess Native peoples of their lands and sovereignty.<sup>12</sup> The landmark legal case *Cherokee v. Georgia* cemented the U.S. government's control over Native tribes, relegating them to a status of “domestic dependent nations” with limited sovereignty.<sup>13</sup> Despite the Supreme Court's ruling in *Worcester v. Georgia* that states had no authority to enforce their laws within Cherokee boundaries, President Andrew Jackson proceeded with the forced removal of the Cherokee and 100,000 other Indigenous people,

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<sup>7</sup> Sierra Crane-Murdoch, *On Indian Land, Criminals Can Get Away with Almost Anything*, THE ATLANTIC (Feb. 22, 2013), <https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391/>.

<sup>8</sup> *Missing and Murdered Indigenous People Crisis*, U.S. DEP'T OF THE INTERIOR, <https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>.

<sup>9</sup> *Id.*

<sup>10</sup> *Cherokee v. Georgia*, 30 U.S. 1, 14 (1831).

<sup>11</sup> See generally Agtuca, *supra* note 4.

<sup>12</sup> See generally Dr. Michael Kryzanek, *The United States' Treatment of Native Americans*, BRIDGEWATER STATE U. (Jan. 23, 2023), <https://www.bridgew.edu/stories/2023/united-states-treatment-native-americans#:~:text=The%20history%20of%20the%20United,to%20respect%20basic%20human%20rights>.

<sup>13</sup> *Worcester v. Georgia*, 31 U.S. 515, 529 (1832).

an event now known as the Trail of Tears.<sup>14</sup> This demonstrated that authorities could selectively ignore the rule of law when dealing with Native peoples, a pattern that persists to this day.

Furthermore, the 1883 case *Ex parte Crow Dog* set a dangerous precedent that undermined Native legal systems and paved the way for further federal encroachment.<sup>15</sup> When the Supreme Court overturned the Dakota Territory's decision to hang Crow Dog, a Sioux man, for the murder of another Sioux man, it opened the door for federal intervention in Native affairs.<sup>16</sup> The Major Crimes Act of 1885 followed, extending federal jurisdiction over serious crimes involving Native Americans, regardless of whether the crime occurred on tribal land.<sup>17</sup> This law effectively stripped tribes of their ability to handle their own legal matters, imposing an external legal system that was often indifferent to Native interests. The 1953 Public Law 280 ("PL 280") further selectively expanded state jurisdiction over Native Country, one of which was Minnesota, creating a confusing patchwork of legal authorities that often leaves crimes against Native women unaddressed.<sup>18</sup> This disjointed system often leaves crimes against Native women overlooked due to several factors: the lack of proximity of state authorities to Native lands, as seen in Alaska; poor communication with Native communities; the absence of trust needed to build strong relationships between Native peoples and state police; a general disinterest in addressing Native issues; and insufficient funding to effectively investigate and manage these cases.<sup>19</sup> These systemic issues further exacerbate the failure to protect Native women and provide justice.

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<sup>14</sup> Elaine Erola, Legal Obstacles in the Epidemic of Missing and Murdered Indigenous Women in the U.S., 54 TEX. TECH L. REV. 165, 168 (2022).

<sup>15</sup> *Ex parte Crow Dog*, 109 U.S. 556, 109 (1883).

<sup>16</sup> *Id.*

<sup>17</sup> Major Crimes Act, Ch. 394, § 9, 23 Stat. 385 (1885) (codified at 18 U.S.C. § 1153).

<sup>18</sup> *American Indians and Alaska Natives - Public Law 280 Tribes Fact Sheet*, ADMIN. FOR NATIVE AM., <https://www.acf.hhs.gov/ana/fact-sheet/american-indians-and-alaska-natives-public-law-280-tribes#:~:text=In%201953%2C%20Congress%20enacted%20Public,be%20handled%20by%20state%20courts>. See also Erola, *supra* note 10 at 170.

<sup>19</sup> Megan Mallonee, *Selective Justice: A Crisis of Missing and Murdered Alaska Native Women*, 38 ALASKA L. REV. 1, 94 (2022).

Additionally, the 1978 *Oliphant v. Suquamish Indian Tribe* decision dealt another blow to tribal sovereignty by stripping tribes of the authority to arrest and prosecute non-Natives on tribal lands.<sup>20</sup> This decision created a jurisdictional void, where non-Natives who commit crimes on tribal land are often beyond the reach of both tribal and federal law enforcement.<sup>21</sup> This legal loophole has been a significant factor in the MMIW crisis, allowing perpetrators to evade justice simply because of their non-Native status.

Moreover, in contemporary times, the MMIW crisis is further fueled by economic activities like oil drilling, fracking, and logging, which bring an influx of non-Native men into Native territories.<sup>22</sup> These men often exploit Native women, knowing that the complex jurisdictional maze makes prosecution unlikely.<sup>23</sup> This exploitation is not new; for generations, traffickers have taken Dakota and Ojibwe women from reservations to the port city of Duluth, where they were prostituted on ships in international waters.<sup>24</sup> Some women were even sold to ships' crews and forced to remain onboard for months at a time.<sup>25</sup> The horrific legacy of these practices is rooted in historical depictions of Native women as subservient and sexually available, perpetuated by the romanticized images of figures like Sacagawea and Pocahontas.<sup>26</sup> These stereotypes have fetishized Native women as the ideal victims, reinforcing a cycle of violence and exploitation.

In addition, the forced assimilation of Native children into boarding schools between 1941 and 1967 reinforced cycles of abuse that victimized Native women and contributed to the

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<sup>20</sup> *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 211-12 (1978).

<sup>21</sup> *Id.*

<sup>22</sup> Erola, *supra* note 10 at 175; see generally Julia Stern, *Pipeline of Violence: The Oil Industry and Missing and Murdered Indigenous Women*, U. CIN. IMMIGR. AND HUM. RTS. L. REV. (2021).

<sup>23</sup> See generally Stern, *supra* note 22.

<sup>24</sup> Cecily Hilleary, *Sex Traffickers Targeting Native American Women*, VOA NEWS (Nov. 18, 2015), <https://www.voanews.com/a/sex-traffickers-targeting-native-american-women/3063457.html>.

<sup>25</sup> *Id.*

<sup>26</sup> Christine Stark, *Native Women Easy Prey for Traffickers*, MINN. STAR TRIBUNE (Aug. 3, 2013); see also Alexandra Pierce, *Shattered Hearts: The Commercial Sexual Exploitation of American Indian Women and Girls in Minnesota*, MINN. INDIAN RES.CTR. (2009).

perpetuation of the MMIW crisis.<sup>27</sup> This process sought to erase Native cultures and impose Western ideologies of patriarchy and sexual abuse, which Native communities eventually internalized.<sup>28</sup> The removal of children from their families and their placement in abusive environments created a lasting legacy of trauma that continues to impact Native communities today.<sup>29</sup> Many Native women grew up in a world where those in positions of power routinely violated their boundaries, whether it was a foster parent, teacher, or boarding school principal.<sup>30</sup> This normalization of abuse has profoundly impacted the mentality of Native women, conditioning them to view themselves as easy targets and to expect little justice or protection.

In recent decades, legislative efforts have addressed the MMIW crisis, but these have often fallen short. The 1994 Violence Against Women Act (“VAWA”) was a significant step forward, providing federal funding to state, tribal, and local governments, nonprofit organizations, and universities to combat violent crime.<sup>31</sup> However, VAWA requires reauthorization by Congress every five years, a process that occurred in 2013 but stalled after an attempted reauthorization in 2018. The 2013 reauthorization introduced Section 904, which grants federally recognized tribes and tribal courts the optional “special domestic violence jurisdiction” over non-Indigenous perpetrators of intimate partner violence or protective order violations.<sup>32</sup> To exercise this jurisdiction, tribes must submit a detailed application to the Department of Justice (“DOJ”),

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<sup>27</sup> See generally Hilleary, *supra* note 19.

<sup>28</sup> See generally Halle Nelson, *Remembering the Children of Native American Residential Schools*, NAT’L SEXUAL VIOLENCE RES CTR. (Nov. 22, 2022), <https://www.nsvrc.org/blogs/remembering-children-native-american-residential-schools>.

<sup>29</sup> *Id.*

<sup>30</sup> Dana Hedgpeth, ‘12 Years of Hell’: Indian Boarding School Survivors Share Their Stories, WASH. POST (Aug. 7, 2023), <https://www.washingtonpost.com/history/2023/08/07/indian-boarding-school-survivors-abuse-trauma/>.

<sup>31</sup> Violence Against Women Act, 42 U.S.C. §§ 13925–14045.

<sup>32</sup> Violence Against Women Reauthorization Act of 2013, Pub. L No. 113-4, §§ 901–908, 127 Stat. 54 (2013).

demonstrating their ability to protect defendants' rights adequately.<sup>33</sup> However, several significant issues remain.

First, Section 904 applies only to narrowly defined cases of “domestic violence,” excluding crimes such as sexual assault, child abuse, substance abuse, property destruction, threats, stalking, and assaults involving individuals not in intimate relationships.<sup>34</sup> For instance, the Pascua Yaqui Tribe in Southern Arizona was unable to prosecute a case involving a same-sex couple because their relationship status was not publicly known.<sup>35</sup> Second, the DOJ's stringent requirements for tribes to qualify for special jurisdiction often undermine traditional tribal justice practices, such as restorative justice and peacemaking circles.<sup>36</sup> The government's failure to extend this jurisdiction to all federally recognized tribes has also limited the law's impact. Out of over 500 recognized tribes, the government approved only 18 to exercise this jurisdiction under the 2013 reauthorization, highlighting how the burdensome application process disproportionately limits tribal participation.<sup>37</sup>

Likewise, the 2010 Tribal Law and Order Act sought to clarify the responsibilities of federal, state, and tribal governments in addressing crime in Native Country.<sup>38</sup> However, while it made some advancements, it also significantly restricted tribal authority. The Act increased sentencing power, expanding the maximum sentence from one year to three years and raising the cap on fines from \$5,000 to \$15,000.<sup>39</sup> Despite these changes, the Act maintains a heavy federal

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<sup>33</sup> *Id.*

<sup>34</sup> Mallonee, *supra* note 16 at 105.

<sup>35</sup> Rhea Shinde, 'No More Stolen Sisters': Jurisdictional Barriers to Justice for Missing and Murdered Indigenous Women, 3 GEO. J. GENDER & L. 21, 104 (2020).

<sup>36</sup> Suvi Hynynen Lambson, *Peacemaking Circles: Evaluating a Native American Restorative Justice Practice in a State Criminal Court Setting in Brooklyn*, CTR. FOR CT. INNOVATION (JAN. 2015), <https://www.innovatingjustice.org/publications/peacemaking-circles-evaluating-native-american-restorative-justice-practice-state>.

<sup>37</sup> Emma Cueto, *In Indian Country, A 'Maze of Injustice' Persists for Women*, LAW360 (Sept. 15, 2019), <https://www.law360.com/articles/1197831>.

<sup>38</sup> Tribal Law and Order Act, Pub. L. No. 111-211, § 202(a)(1), 124 Stat. 2261, 2262 (2010).

<sup>39</sup> *Id.*

oversight role, limiting tribal sovereignty. Tribes must provide legal counsel to defendants at their own expense, imposing a financial burden on already underfunded tribal justice systems.<sup>40</sup> Ultimately, the United States government continues to exercise significant control over tribal courts, restricting their ability to obtain justice for Indigenous women.

The 2020 Savanna’s Act and the Not Invisible Act (“NIA”) aimed to improve data retention and coordination between state and federal governments in addressing MMIW.<sup>41</sup> However, critics argue that these efforts may still leave out Native women in urban areas or those outside tribal lands.<sup>42</sup> Notably, the NIA stands out for incorporating Native voices, including tribal leaders, survivors, and family members, into its advisory commission on violent crimes.<sup>43</sup> NIA is one of the few instances where the government has taken a step toward acknowledging the historical impacts of colonialism and creating space for communities to heal from this ongoing epidemic. Moreover, the success of the NIA demonstrates that the government is fully capable of creating such inclusive programs—it simply needs the will to prioritize and expand them. In contrast, Operation Lady Justice, a task force established by President Trump, failed to include Native perspectives, further alienating the communities it was supposed to help.<sup>44</sup> This exclusion of Native perspectives is symbolic of a broader problem: the failure of the U.S. government to fully recognize and respect the sovereignty of Native peoples.

While these legislative efforts represent steps towards acknowledging the historical and ongoing effects of colonialism, they fall short of empowering Native communities and providing adequate funding for programs aimed at addressing the MMIW crisis. True progress requires

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<sup>40</sup> *Id.*

<sup>41</sup> Savanna’s Act, Pub. L. No. 116-165, S. 227, 116th Cong. (2019); *see also* Not Invisible Act of 2019, Pub. L. No. 116-166, S. 982, 116th Cong. (2020).

<sup>42</sup> Mallonee, *supra* note 16 at 117.

<sup>43</sup> *Id.*

<sup>44</sup> *Operation Lady Justice Task Force Accomplishments Fact Sheet*, U.S. DEP’T OF JUST. (May 2020), <https://www.ojp.gov/ncjrs/virtual-library/abstracts/operation-lady-justice-task-force-accomplishments-fact-sheet>.

enacting laws that amplify Native voices, ensuring their active participation in decision-making processes, and allocating adequate time and resources to make these programs effective. Without such commitments, these efforts will continue to be inadequate. Moreover, the U.S. must confront its colonial past and recognize that the MMIW crisis is not merely a Native issue—it is a national one rooted in the systemic racism and violence that still permeate American society. Addressing the crisis effectively will require empowering Native voices and respecting tribal sovereignty, which are essential to dismantling the legal and cultural structures that have allowed this epidemic to persist. Only by doing so can the U.S. begin to foster genuine healing and justice for Native communities.