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Colonial Order and the Origins of California Native Women's Mass Incarceration: California  
Missions and Beyond

A thesis submitted in partial satisfaction of the  
requirements for the degree Master of Arts  
in American Indian Studies

by

Jacquelyn May Teran

2015

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## ABSTRACT OF THE THESIS

Colonial Order and the Origins of California Native Women's Mass Incarceration: California Missions and Beyond

by

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Master of Arts American Indian Studies

University of California, Los Angeles, 2015

Professor Mishuana R. Goeman, Chair

This thesis begins to explore how understanding settler colonialism is significant to understanding and dismantling the prison industrial complex (PIC). Using the historical dehumanization, racialization, gendering and criminalization of California Indians as a lens reveals the way Native women specifically have become entrapped by a legal system that gives impunity to those who enact violence upon Native women but criminalize behaviors that are often associated with the trauma of victimization. I begin with the arrival of the Spanish in 1769 and closely examine the way the *monjeríos*, the room in every mission that locked young girls and women up until marriage, functions as a site of gendering and racialization through their imprisonment and specific conditions. Building off of that work and culling from newspaper sources, the 1850 Act for the Government and Protection of Indians formalized and codified the criminalization and carcerality of California Indians through the federal government, the state,

and local communities. This specific time period marks a shift from mission and Spanish control to one of conquest by law and criminalization, which begins a period of jurisdictional law designed to leave Native women vulnerable to settlers. Later, adding to the complex matrix of jurisdictional injustice imposed on California Indians through *The 1850 Act*, was The Major Crimes Act, Public Law 280, *Oliphant v. Suquamish*, as well as other laws and policies, all which reinforce the gendered entrapment of Native women. The paper concludes by looking at the work of two California Indian women, Stormy Ogden (Pomo) and Deborah Miranda (Ohlone-Costanoan Esselen) whose voices have illuminated how the historical legacies of settler colonialism continues to impact Native women today. Their voices are significant tools to begin to dismantle the PIC through sharing stories of survival.

The thesis of Jacquelyn Teran is approved.

Paul Kroskrity

Benjamin Madley

Mishuana R. Goeman, Chair

University of California, Los Angeles

2015

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To my mom and sister, thank you for listening every time I needed you to. And lastly, to Joey and Dot, the loves of my life, your patience, love, motivation, and editing assistance (even the scribbles inside all of my books), were the driving force that got me through the past two years.



## Introduction

“An ending point cannot exist without a beginning point, and ending violence against Native women requires an understanding of its historical beginning.”  
-Jacqueline Agtuca

In 1773 two young California Indian girls were digging plants at the Soledad ranchería near the San Diego mission. Three soldiers had followed them, when the girls realized they were being followed, they headed up a hill to escape. Two of the soldiers trapped and raped one of the girls while the third soldier caught and raped the other, inflicting a spinal injury from which she would die two days later.<sup>1</sup> The surviving girl testified, via an interpreter along with four other witnesses to a local priest who relayed the information to Sergeant Mariano Carillo. Carillo interviewed the girl and the four soldiers who had witnessed the crime, and had them sign a document detailing the events.<sup>2</sup> Lieutenant Pedro Fages received the complaint and then forwarded the document to Governor Felipe de Barri who then sent the document to the Mexico City viceroy. Fifteen months later, the overlooked document reached General José Antonio Areche. The viceroy ordered the men: Francisco Avila, Sebastián Albitre, and Matheo Ygnacio de Soto to be tried. Avila and Albitre were imprisoned in the San Diego presidio during the course of the trial, Ygnacio de Soto disappeared and never faced trial. The trial was an opportunity to make an example of the soldiers and demonstrate that this type of violence would not be tolerated, despite this being one of the only court cases dealing with sexual violence during the missionization of California. The trial began on October 19, 1775, and a copy of the entire proceedings was sent to the viceroy in Mexico City. However, “The distance between

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<sup>1</sup> Virginia M Bouvier, *Women and the Conquest of California, 1542-1840: Codes of Silence* (Arizona: University of Arizona Press, 2004), 47.

<sup>2</sup> Edwin A. Beilharz, *Felipe de Neve: First Governor of California* (San Francisco: California Historical Society 49, 1971), 27-30.

Loreto and the scene of the alleged crime had made it impossible to confront the accused with their accuser or with Carillo and the first witnesses to the complaint; there had been no defense attorney because none was available; and other steps had been omitted, through necessity, which the law prescribed ‘for the better proving’ of the crime.”<sup>3</sup> Since the accused denied the charge, the body of the child who died was never examined or seen, and the identification of the soldiers was not considered to be satisfactory, the burden was placed on the child, whose words were “poorly explained by the interpreter.”<sup>4</sup> The trial ended by discharging the accused soldiers, granting them time served and sent them to live away from the crime. The trial had lasted for five years.

Influential Native feminist activist, Stormy Ogden (Pomo) was sexually abused by her neighbor’s son at the age five, her stepfather at the age of seven, several boys she went to school with and later, her husband.<sup>5</sup> By the age of ten she was becoming an alcoholic, and later had attempted suicide multiple times. When Stormy was twenty-two she, not her rapists, was sentenced to five years in the California Rehabilitation Center in Norco. Girls who are abused are likely to face social consequences such as poverty and involvement in illegal activity.<sup>6</sup> In other words, their coping mechanisms are criminalized and they, not their abuser, end up serving time. Stormy writes, “Violence perpetrated against women and girls can put them into the criminal justice system where they are not seen as victims, but as offenders in the eyes of the state.”<sup>7</sup>

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<sup>3</sup> Beilharz, *Felipe de Neve*, 29.

<sup>4</sup> *Ibid.*, 30.

<sup>5</sup> Stormy Ogden, “Prisoner W-20170/Other” in *Sharing Our Stories of Survival, Native Women Surviving Violence*. Eds. Sarah Deer, Bonnie Clairmont, Carrie A. Martell and Maureen L. (White Eagle: Altamira Press, 2008), 149-163.

<sup>6</sup> Beth Richie, “Queering Antiprison Work” in *Global Lockdown: Race, Gender, and the Prison-Industrial Complex*. Ed. Julia Sudbury (New York and London: Routledge, 2005), 73-85.

<sup>7</sup> Ogden, “Prisoner W-20170/Other”, 156.

These two stories highlight the complex or absent legal procedures Native girls and women face following sexual violence. They also serve to demonstrate the subsequent criminalization of their coping mechanisms and survival skills.

The violence that took place in the missions reveal the logics of elimination and containment that unfolded in a myriad of ways that marked Native women for rape centuries later. Anthropologist Patrick Wolfe uses the term logics of elimination to describe settler colonialism as an ongoing structure rather than an event and scholar and activist Noelani Goodyear-Ka'ōpua (Native Hawaiian) expands on this to add that containment is used when elimination is avoided.<sup>8</sup> These historical logics continue to govern contemporary modes of discipline through the prison industrial complex (PIC).<sup>9</sup> In many ways the PIC mirrors the California missions. Stormy Ogden makes this connection as well by describing how the prison industrial complex is dependent on economic factors, or *human fuel*. She argues, “The prison industrial complex has a twofold purpose: social control and profit. [It] interweaves government agencies with business interests who seek to make a profit from

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<sup>8</sup> Patrick Wolfe, "Settler Colonialism and the Elimination of the Native," *Journal of Genocide Research* 8:4 (December 2006), 387-409; Noelani Goodyear-Ka'ōpua, *The Seeds We Planted: Portraits of a Native Hawaiian Charter School*, (Minneapolis: University of Minnesota Press, 2013).

<sup>9</sup> “Making Connections: the Anti-Violence Movement Actively Resisting the Prison Industrial Complex,” Communities Against Rape and Abuse, accessed May 27, 2014 <http://usprisonculture.com/blog/about/> CARA (Communities Against Rape and Abuse) defines the prison industrial complex as “a massive multi-billion dollar industry that promotes the exponential expansion of prisons, jails, immigrant detention centers, and juvenile detention centers. The PIC is represented by corporations that profit from incarceration, politicians who target people of color so that they appear to be “tough on crime,” and the media that represents a slanted view of how crime looks in our communities. In order to survive, the PIC uses propaganda to convince the public how much we need prisons; uses public support to strengthen harmful law-and-order agendas such as the “War on Drugs” and the “War on Terrorism”; uses these agendas to justify imprisoning disenfranchised people of color, poor people, and people with disabilities; leverages the resulting increasing rate of incarceration for prison-related corporate investments (construction, maintenance, goods and services); pockets the profit; and uses profit to create more propaganda.” [cara-seattle.org](http://cara-seattle.org)

imprisoning the poor and people of color. Like an industry, the prison economy needs raw material. In this case the raw materials are people – prisoners.”<sup>10</sup> As a Native woman fighting against the PIC, Stormy Ogden notes that she feels alone in this struggle.<sup>11</sup>

In 1999, The Bureau of Justice reported that Native Americans experience per capita rates of violence which are more than twice those of the U.S. resident population and on a per capita basis Native Americans had a rate of prison incarceration at a rate of 38 percent higher than the national rate, since then those numbers have continued to rise.<sup>12</sup> Despite being the most arrested, most incarcerated, and most victimized by police brutality, per capita, of any other demographic, Native Americans remain the most under-researched group in prison scholarship.<sup>13</sup> This form of erasure is troubling for a number of reasons. For one, it contributes to a long history of scholarship that devalues the experiences of Native Americans and places them on the periphery of prison-related issues. This erasure also limits the scope of prison related research by excluding settler colonialism as an analytical rubric for understanding the nature of the PIC. Many scholars have begun thinking through a historical trajectory to trace the roots of the mass incarceration of people of color. Many have made significant contributions by interrogating the Middle Passage, Jim Crow legislation, and the strategic construction of the Thirteenth

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<sup>10</sup> Ogden, “Prisoner W-20170/Other”, 153.

<sup>11</sup> Stormy Ogden, 2010, “Indigenous Women and State Violence.” Lecture presented at University of California Los Angeles, May 12.

<sup>12</sup> Lawrence Greenfield and Steven Smith, *American Indians and Crime*, (Washington, DC: Bureau of Justice Statistics/US Department of Justice, 1999); Todd D. Minton, *Jails in Indian Country, 2012*, U.S. Department of Justice (2013): accessed November 20, 2014, <http://www.bjs.gov/content/pub/pdf/jic12.pdf>.

<sup>13</sup> Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005), 139; American Indians, experience per capita rates of violence which are more than twice those of the U.S. resident population and on a per capita basis American Indians had a rate of prison incarceration at a rate of 38 percent higher than the national rate. See Lawrence Greenfield and Steven Smith, *American Indians and Crime*(Washington, DC: Bureau of Justice Statistics/US Department of Justice, 1999).

Amendment as particular sites that offer a road map that leads directly to our current carceral conditions.<sup>14</sup> Settler colonialism is often mentioned in passing as a contributing factor, but Native American experiences and a close examination of settler colonialism has rarely been fully interrogated.

Sociologist Luana Ross's (Salish) work is an exception. Ross examines the life histories of imprisoned Native American women in Montana to demonstrate how race/ethnicity, gender, and class contribute to the defining of certain behaviors as criminal and to the subsequent incarceration rates. She provides a detailed history of the way colonization in Montana created conditions that are specific to these women.<sup>15</sup> Ross's work provides a useful framework for examining California. The sexist, racist, heteropatriarchal ideology of Spanish Franciscans and soldiers as well as the physical and socially constructed spaces of the missions, demonstrates that Montana is not isolated in how sexual violence functions today as a form of colonization and is rooted in an historical temporality that might seem different in its form of conquest, but is structurally and ideologically very similar. Tejana feminist historian Antonia Castañeda and anthropologist Barbara Voss have shed light on sexual violence as part of Spanish rule in California. Castañeda interrogates the sexual violence towards California Native women as part and parcel of the experience of Spanish conquest and as a legitimate aspect of war and conquest,

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<sup>14</sup> Dylan Rodriguez, *Forced passages: Imprisoned radical Intellectuals and the US Prison Regime* (Minneapolis: University of Minnesota Press, 2006); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012); Angela Davis, *Abolition Democracy: Beyond Empire, Prisons, and Torture* (New York: Seven Stories Press, 2011).

<sup>15</sup> Luana Ross, *Inventing the Savage: The Social Construction of Native American Criminality* (Austin: University of Texas Press, 1998).

yet excludes violence within the physical space of the missions.<sup>16</sup> Voss examines archaeological remains of late prehistoric and colonial California architecture to investigate the sexual consequences of missionization on Native Californians.<sup>17</sup> Putting these two theories in conversation with each other and elaborating them by analyzing primary sources from the mission era to bolster these claims strengthens our understanding of how domination arose through the relationships between sexual violence, racial ideology, and conquest. Historian Benjamin Madley painstakingly documents the economic agenda and accompanying ideas of racial superiority of California settlers to illuminate how the 1850 Act for the Government and Protection of Indians unfolded following Spanish and Mexican rule.<sup>18</sup> Applying a feminist lens to his work allows for a demonstration of gender's relational dimension to colonialism and how gender and sexuality as a category of analysis are key to understanding how the exploitation of California Indian women and children were essential to the rise of California. The invaluable contributions of scholar and activist Angela Davis that have allowed other scholars and activists to comprehend the far-reaching and destructive nature of the PIC and her accompanying work to break the PIC down through abolition must also be acknowledged. Davis has highlighted the role of colonization and has deconstructed the black-white paradigm that too often accompanies the debates surrounding the functionality of the PIC. She has demonstrated throughout her work that

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<sup>16</sup> Antonia Castañeda, "Sexual Violence in the Politics and Policies of Conquest," in *Building With Our Hands: New Directions in Chicana Studies*, eds. Adela de la Torre and Beatriz M. Pesquera, (Berkeley and Los Angeles University of California Press, 1993).

<sup>17</sup> Barbara L. Voss, "Colonial Sex: Archaeology, Structured Space, and Sexuality in Alta California's Spanish-Colonial Missions" in *Archaeologies of Sexuality*, eds. Robert A. Schmidt and Barbara L. Voss, (London: Routledge, 2000).

<sup>18</sup> Benjamin Madley, "'Unholy Traffic in Human Blood and Souls': Systems of California Indian Servitude under U.S. Rule" *Pacific Historical Review* 83, no. 4, (2014): 626-667.

colonization and genocide were crucial aspects to shaping racism within the United States.<sup>19</sup> The work presented here elaborates on and supports that claim by tracing the trajectory of colonization and genocide from 1769 until today.

The methodologies previously put forth by Professor of Criminal Justice and Gender and Women's studies Beth Richie and Civil Rights Lawyer, advocate, and legal scholar Michelle Alexander have greatly informed this work. Richie uses the term gender entrapment to describe the way abused Black women's coping mechanisms are criminalized. She writes that the gender entrapment theoretical paradigm exposes, "the link between culturally constructed gender-identity development, violence against women in intimate relationships, and women's participation in illegal activities."<sup>20</sup> She has also exposed how feminist responses to gender violence facilitated and exasperated Black women's carceral violation. Applying her theoretical framework to Native women makes visible the ways the PIC operates to uphold settler colonialism. Richie also uses the term gender entrapment to describe, "the conditions that compel women to crime and implicate an overly punitive criminal justice system that ignores conditions in which women are often revictimized as a result of persistent poverty and violence."<sup>21</sup> An important distinction to make about the way gender entrapment functions for Native women as opposed to Black women is the historical legacies that the sexual violence can be traced back to, but also important to note is that both histories are part and parcel of a larger settler colonial project and should be examined together to fully understand the way violence and

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<sup>19</sup> See for example, Angela Davis, *The Meaning of Freedom: And Other Difficult Dialogues* (San Francisco: City Lights Books, 2012).

<sup>20</sup> Beth E. Richie, *Compelled to Crime: The Gender Entrapment of Battered Black Women* (New York: Routledge, 1996), 4.

<sup>21</sup> Beth E. Richie, *Arrested justice: Black women, Violence, and America's Prison Nation* (New York: NYU Press, 2012), 154.

criminalization work against all women today. Michelle Alexander reveals that much like the way Jim Crow developed as a response to Reconstruction, the prison industrial complex works through eradicating the rights won during the Civil Rights era, effectively upholding Jim Crow.<sup>22</sup> Similarly, and for the same goal of building a white supremacist heteropatriarchal national body, the prison industrial complex reflects Native people's relationship to a number of carceral projects, specifically the California missions. My own work has drawn more detailed connections to the shared experiences of women in the California missions and in prisons today by showing that the PIC constellates and consolidates multiple regimes of racial patriarchy, emphasizing the role of patriarchy/sexual logics and violences in consolidating these racial regimes, using California and Native women as a site through which to elucidate this specific history. California is a particularly relevant and significant site because of the convergence of anti-Black, anti-Native, and anti-immigrant histories as well as its role as arguably the world leader in imprisonment.

Understanding the full history of violence and white supremacy upon which the United States was founded and the logics and politics that have emerged directly out of that history will better equip anti-prison/prison abolitionist activists and scholars with tools to understand and ultimately to dismantle the United States prison industrial complex.<sup>23</sup> Doing this work does not contradict the scholarship mentioned above, but rather enhances it by exposing the contradictory logics of gendering and racialization under white supremacy. Situating this work within a feminist, abolitionist framework, and putting Native women at the center of analysis allows a

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<sup>22</sup> Michelle Alexander. *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012).

<sup>23</sup> Anti-prison activism and scholarship works to abolish the prison industrial complex by creating a political vision with the goal of eliminating imprisonment, policing, and surveillance and creating lasting alternatives to punishment and imprisonment.



closer examination of how sexual violence serves the goals of settler colonialism in various ways.<sup>24</sup> Beyond Montana and beyond the slave trade, the missionization and subsequent legal codification of violence in California reveals a significant place of origin in which Native men and women were institutionally contained and physically eliminated. The California missions represent an introduction to what would later become a carceral state.

Beginning with missionization and following a historical trajectory that traces these logics through other laws, policies and institutions that impacted Native men and women in California will provide a broader understanding of today's far reaching carceral conditions. California's missions served as prisons for Native men, women, and children, but a more specific analysis of the dormitories, known as *monjeríos*, that women and children were locked up in are reflected in conditions that incarcerated Native women have documented today. Some of these conditions include: poor health conditions, impunity for sexual violence, confining living quarters, profit, forced geographical relocation, denial of Native spirituality/practices, imposition of Eurocentric, patriarchal religious practices, complex legal procedures, food limitations, shackles, enforcing intra-community violence, punishment of gender non-conforming individuals, breaking up of families, harsh discipline, mortification, unfree labor, hypervigilance, banal normalization of ritualized and imminent physical violence, and premature death.

The supposedly deviant, savage, and inferior Indian was carefully constructed against the culturally "superior" European Americans. Boarding schools were relentless in their attempts to assimilate Native children. Rape and torture were used to punish Native ways of being. Reservations were sites of starvation, economic tyranny, and jurisdictional laws that left Native women particularly vulnerable. Luana Ross describes some of the policies that increase that vulnerability.

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<sup>24</sup> Smith, *Conquest*.

The 1850 Act for the Government and Protection of Indians simply allowed white people to take Native children as indentured slaves. Further, it “virtually compelled Indians to work because any Indian found loitering or strolling about was subject to arrest on the complaint of any white citizen, whereupon the court was required within twenty-four hours to hire out arrestees to the highest bidder for up to four months.”<sup>25</sup> The General Crimes Act in 1817 allowed the U.S. Congress to award itself federal jurisdiction over Native peoples. Tribes were only allowed exclusive jurisdiction over crimes where both parties were Native.<sup>26</sup> The Major Crimes Act of 1885 gave federal courts jurisdiction over serious crimes that occurred in Native territory, even when both parties were Native. In 1854 the California Supreme Court ruled that Native Americans and African Americans could not testify in court cases involving whites. Adding to this complex matrix of jurisdictional injustice was Public Law 280 and *Oliphant v. Suquamish*. In 1973, without tribal consent, Public Law 280 handed out California (as well as other states) jurisdiction “over offenses committed by or against Natives on reservations”.<sup>27</sup> In 1978, the Supreme Court ruled, through *Oliphant v. Suquamish*, that Indian tribal courts do not have criminal jurisdiction over non-tribal members. A closer examination of these laws and policies are detailed in chapter two. In their report, “Maze of Injustice” Amnesty International reveals that “The US Department of Justice’s study on violence against women concluded that 34.1 per cent of American Indian and Alaska Native women – or more than one in three – will be raped during their lifetime; the comparable figure for the USA as a whole is less than one in five.” Navigating between tribal, state, and federal law, essentially permits perpetrators to evade justice, “Sometimes the confusion and the length of time it takes to decide whether tribal, state or federal authorities have jurisdiction over a particular crime results in inadequate investigations or in a failure

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<sup>25</sup> Ross, *Inventing the Savage*, 16.

<sup>26</sup> Ross, *Inventing the Savage*, 17.

<sup>27</sup> *Ibid.*, 24.

to respond at all.” And lastly Amnesty International adds, “The US government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence by underfunding tribal justice systems, prohibiting tribal courts from trying non-Indian suspects and limiting the sentences which tribal courts can impose for any one offence.” The lawlessness that occurred on the missions continues today on tribal territory and functions similarly but under different conditions off of tribal territory in urban areas.<sup>28</sup>

The contradictory nature of the logics of elimination and containment become glaringly transparent in that the U.S. Government does little to protect the safety of Native women through the criminal justice system, yet uses this system to “effectively” imprison them. Historical trauma and sexual violence are inextricably intertwined as the criminal legal system criminalizes Native women’s ways of coping. Joseph Gone, citizen of the Gros Ventre tribal nation of Montana and Professor of Psychology has shown that Native Americans suffer from disproportionately high degrees of psychological distress and points out that both researchers and professionals have consistently associated this stress with indigenous historical experiences of European colonization.<sup>29</sup> This historical trauma as Gone has labeled it, calls attention to intergenerational accumulation of risk for poor mental health status among Native peoples that purportedly originates from the depredations of past colonial subjugation, including ethnocidal policies and practices. The effects of historical trauma are similar to complex post-traumatic stress disorder (where characteristics include drug and alcohol abuse, violence, destruction of property, and so on). His research neutralizes the

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<sup>28</sup> Amnesty International. *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*. Amnesty International USA. 2007.

<sup>29</sup> Joseph P. Gone, “A Community-Based Treatment for Native American Historical Trauma: Prospects for Evidence-Based Practice.” *Spirituality in Clinical Practice*, Vol 1(S) (2013) : 78-94.

systemic factors, such as coercive assimilation (missions and boarding schools), intrapersonal factors such as maladaptive coping, shared community vulnerabilities, such as suppression of Indigenous ways of being or sexual violence, and individual deficits such as impulse control (like drug and alcohol abuse) by attributing this distress to historical oppression rather than personal failure. What Gone calls for is culturally sensitive approaches to clinical intervention where therapeutic services are community controlled, bottom up endeavors. But what our society more generally does, is criminalize these behaviors that emerge as a result of historical trauma in order to keep Native women contained.

Returning to characteristics of historical trauma such as drug and alcohol abuse, Luana Ross's research shows us that thirty three percent of all women in state prison are incarcerated for drug offenses. She also reveals a study that shows many women prior to incarceration were exposed to violence very early in their lives. Five of every eight women were sexually abused as children and nearly half were raped as older children by adult males known to them. In an effort to save themselves, they often ran away and were criminalized for sex work or drug and alcohol abuse. Rational coping strategies for historical trauma and sexual violence are deemed criminal. Ross makes clear that any explanation of Native criminality that sees individual behavior as significant overlooks the social and historical origins of the behavior.<sup>30</sup> Ross's in-depth study amongst Native and white female prisoners also reveals that when crimes were the same, Native women served longer sentences than white women.

Scholar Dian Million (Tanana Athabascan), writes about Felt Theory as a tool to assist in the healing process from historical trauma, specifically, the racialized, gendered, and sexual nature of colonization and to challenge settler colonial truths, which effectively deny Native

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<sup>30</sup> Ross, *Inventing the Savage*, 12.

histories, rendering Native peoples invisible.<sup>31</sup> Invisibility, according to Luana Ross, allows structural arrangements of inequality to persist. Million notes, “Those whose subjective history this is must speak of it, since its emotional resonance still lives through them; because *we are who we are* because of this history that continuously haunts our storied bodies and lands”.<sup>32</sup> Using the felt experiences of trauma as the framework to understand culturally mediated knowledges creates a new language where Native women can address the “real multilayered facets of their histories and concerns by insisting on the inclusion of our lived experience, rich with emotional knowledge of what pain and grief and hope meant or mean now in our pasts and futures.”<sup>33</sup> Survivors of historical trauma and sexual violence are encouraged to begin speaking out and sharing their stories so no longer will they participate in “a past that stays neatly segregated from the present.”<sup>34</sup> This thesis will also offer a close reading of writer and poet, Deborah Miranda’s (Ohlone-Costanoan Esselen) *Bad Indians*, a memoir that takes seriously the way historical trauma and intergenerational trauma are deeply connected as a result of the missionization of California. Miranda’s memoir also exposes the power of sharing stories of survival.<sup>35</sup>

Historical discourse informs theory, which informs the laws and policies that criminalize Native men and women’s ways of being and the “deviant” practices that result from their victimization. Unpacking the ways in which California Native women’s experiences in California missions and the subsequent 1850 Act for the Government and Protection Indians

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<sup>31</sup> Dian Million, "Felt Theory: An Indigenous Feminist Approach to Affect and History." *Wicazo Sa Review* 24.2 (2009): 53-76.

<sup>32</sup> Million, “Felt Theory”, 72.

<sup>33</sup> *Ibid.*, 54-61.

<sup>34</sup> *Ibid.*, 71.

<sup>35</sup> Deborah Miranda, *Bad Indians: A Tribal Memoir*, (Berkeley: Heyday) 2013.

helps us to understand the ideologies that first gendered and racialized Native bodies. More specifically, what are the conditions that have lead to the victimization and criminalization of Native American women? How might a settler colonial framework help assist in the prison abolition movement? To answer these questions, an analysis of the *monjeríos*, will provide a site of gendering and racialization through their imprisonment and specific conditions. Building off of that work and culling from newspaper sources, the 1850 Act for the Government and Protection of Indians formalized and codified the criminalization and carcerality of California Indians through the federal government, the state, and local communities. This specific time period marks a shift from Mission and Spanish control to one of conquest by law and criminalization. Using the California missions and subsequent laws, policies, and forms of erasure as a lens will demonstrate the need to take these histories seriously and pursue further inquires on how the PIC is related to and extended from settler colonialism.



## Chapter One: Elimination and Containment: The Beginning

“a mean ‘digger’ only becomes a ‘good Indian’ when he is dangling from the end of a rope, or has an ounce of lead in him.”

-*Yreka Semi-Weekly Union*, March 26, 1864

The arrival of Spanish priests and soldiers in California in 1769, brought with it, the ideology that California Indians needed to be Christianized in the name of God because they were inferior, uncivilized savages. Padre Fermín Francisco de Lasuén regarded their task of evangelization as “the greatest problem of the missionary” and inquired, “how to transform a savage race such as these [sic] into a society that is human, Christian, civil and industrious.” Answering his own inquiry, Lasuén noted that this task could only be accomplished by, “‘denaturalizing’ them. It is easy to see what an arduous task this is, for it requires them to act against nature, but it is being done successfully by means of patience, and by unrelenting effort to make them realize they are men.”<sup>1</sup> Violence towards California Indians was not only seen as permissible, but often necessary, and unrelentingly. The story of the two young California Indian girls that opens the Introduction demonstrates how contradictory the politics were that governed California. The priests worked hard to control the sexual behavior of the soldiers, yet the soldiers were sent to California, trained to subdue and discipline the original inhabitants. Violence against California Indians was “permissible when it advanced the particular interests of the Spanish Conquest, but punishable when it did not.”<sup>2</sup> Antonia Castañeda argues that despite their efforts to “protect” California Indian women from sexual violence imposed by Spanish soldiers, the Catholic Church was extremely hypocritical. Notwithstanding their claim of being the “great

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<sup>1</sup> James A. Sandos, *Converting California: Indians and Franciscans in the Missions* (New Haven: Yale University Press, 2004), 92.

<sup>2</sup> Antonia Castañeda, "Sexual Violence in the Politics and Policies of Conquest," in *Building With Our Hands: New Directions in Chicana Studies*, eds. Adela de la Torre and Beatriz M. Pesquera, (Berkeley and Los Angeles University of California Press, 1993), 28.



champion” of California Indian’s rights, “Jesuits, Franciscans and other religious orders relied heavily on corporal punishment”.<sup>3</sup> She adds, “While rape and other acts of sexual brutality did not represent official policy on this or any other Spanish frontier, these acts were nevertheless firmly fixed in the history and politics of expansion, war, and conquest.”<sup>4</sup> For Native women, once expansion, war, and conquest has been “completed” sexual violence persists in order to maintain settler colonialism.

In 1772, Father Luis Jayme provided the head of the Franciscan College detailed testimony documenting the seizure and rape of Kumeeyaay Indian women. He was particularly concerned about the number of accounts he was receiving about the rape of young girls, which were causing Indian families to flee. Jayme noted that at every mission, soldiers had “scandalized all the Gentiles”, were “committing a thousand wrongs, particularly in regard to sex”, and that there were “very many soldiers who deserved to be hung for the continuous abuses they commit, seizing and violating women.”<sup>5</sup> Jayme seemed less concerned with the treatment of the women than the ability to “enhance Franciscan efforts” and avoid retaliation from Native peoples.<sup>6</sup> Of the four-year period documented by Jayme, the story of the two young girls seems to be the only case that produced a trial. While the Franciscans admonished the soldiers for sexual abuse, the *monjeríos* represent the contradictory nature of the Franciscans and show how sex and corporeal punishment were used to violate and police California Indian women. In 1824 a Russian explorer, Otto von Kozebue, was visiting the Santa Clara mission. Documenting his experience, he describes the *monjerío*, “...as a

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<sup>3</sup> Castañeda, "Sexual Violence in the Politics and Policies of Conquest," 28.

<sup>4</sup> *Ibid.*, 25.

<sup>5</sup> Bouvier, *Women and the Conquest of California*, 46-47.

<sup>6</sup> *Ibid.*, 47.

large building resembling a prison, without windows and only one carefully secured door.”<sup>7</sup> He adds, “These dungeons are opened two to three times a day, but only to allow the prisoners to pass to and from the church. I have occasionally seen the poor girls rushing out eagerly to breathe the fresh air, and driven immediately into the church like a flock of sheep by an old ragged Spaniard armed with a stick. After mass, they are in the same manner hurried back to their prison.” The purpose of these rooms was to separate men and women to control their sexuality and keep them from sinning. It was “typically a long, narrow adobe room with high walls, small windows, and a single entrance which could be securely locked from the outside.”<sup>8</sup> Girls between the ages of seven and eleven who were taken from their families, unmarried women, and widows were locked up and monitored until marriage or death.

Ironically, the room that served to protect these women left them even more vulnerable to sexual abuse. A Chumash man, Fernando Librado (Kitsepawit), who was raised at the Mission La Purísima, shared a story as told to him by “Old Lucas, the Indian sacristan at Mission San Buenaventure.” According to Librado:

This is what he told me about what a certain priest did. I do not know the name of the priest the story is about. They all took the best-looking Indian girls, Lucas said, they put them in the nunnery; the priest had an appointed hour to go there. When he got to the nunnery, all were in bed in the big dormitory. The priest would pass by the bed of the superior and tap her on the shoulder, and she would commence singing. All of the girls would join in, which in the dormitory had the effect of drowning out any sounds. While the singing was going on, the priest would have time to select the girl he wanted, carry out his desires and come back to where the superior was. Then the singing would stop. In this way the priest had sex with all of them, from the superior all the way down the line. It maybe that it

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<sup>7</sup> Rupert Costo,, and Jeannette Henry Costo, *The Missions of California: A Legacy of Genocide* (San Francisco: Indian Historian Press, 1987), 81.

<sup>8</sup> Barbara L. Voss, "Colonial Sex: Archaeology, Structured Space, and Sexuality in Alta California's Spanish-Colonial Missions" in *Archaeologies of Sexuality*, eds. Robert A. Schmidt and Barbara L. Voss, (London: Routledge, 2000) 43.

was some sort of game which had been concocted between the superior and the priest. The priest's will was law. Indians would lie down if the priest said so.<sup>9</sup>

Remarkably, In 1841, French Explorer Eugene Duflot de Mofras described the *monjerios* as a necessary space “to protect [young Native American women] from the brutality of the Indians.”<sup>10</sup>

The conflict between reality and ideology results in constitutive violence; making possible subjects who are legitimate and who are not. The ideology of “brutal Indians” justified the confinement of California Indian women, which realistically left them vulnerable to the brutality of their “protectors”.

The *corma*, one among many torture devices that structured the missions, was once used to keep livestock from running away.<sup>11</sup> However, the priests took it up to punish Indian women who had committed adultery and to police their sexuality, allowing women to continue to work, but not to spread their legs. This apparatus, “closed around the prisoner's feet, was formed of two pieces of wood hinged together, twenty-four inches long and about ten inches wide [...] the *corma* could be used to punish Indians and allow them to perform simple tasks, such as cleaning wheat or grinding corn.”<sup>12</sup> This torture device is representational of discipline and surveillance.

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<sup>9</sup> Librado, Fernando, and John Peabody Harrington. *Breath of the Sun: Life in Early California, as Told by a Chumash Indian, Fernando Librado, to John P. Harrington*. Ed. Travis Hudson. 1979. (Banning: Malki Museum Press, 1979) 52-53; Some historians speculate that the priest was likely Fr. Blas Ordaz, who was rumored to be very fond of California Indian women and was the (literal) father of several children.

<sup>10</sup> Chelsea K. Vaughn, "Locating Absence: The Forgotten Presence of Monjeríos in AltaCalifornia Missions." *Southern California Quarterly* 93, no. 2 (2011): 148.

<sup>11</sup> Floggings, shackles, hobbles (two piece of wood that covered the feet, joined together by a ring that went to the knee which then connected to ring straps that hung from the waist and were then fastened with weights), beatings with cudgels, and whippings with cat-o'-nine tails (whips with nine knotted lines, sometimes fashioned with steel balls or barbs of wire) are some of the other devices that may have been used to punish California Indians within the missions.

<sup>12</sup> Steven W Hackel, *Children of Coyote, Missionaries of Saint Francis: Indian-Spanish Relations in Colonial California, 1769-1850* (Chapel Hill: University of North Carolina Press, 2005), 325.

When priests discipline women's sexual activities with a painful device meant for cattle, her sexuality is shamed and she is reduced to an animal. At the same time, when a priest walked into a room and required girls to sing for him while he chose who he will have his way with that night, Indian girls were taught that adultery was acceptable under certain circumstances. The male's sense of self is then "directly derived from controlling rigid boundaries and specific practices of knowledge production to create racial space, that is, space inhabited by the racial Other."<sup>13</sup> Europeans had long depended on patriarchal authority and racialization to establish power over Native women's bodies marking them as inherently "violable" and "rapable".<sup>14</sup> Sexual violence towards Native women serves the goal of settler colonialism by leaving Native women particularly vulnerable through specific modes of gendering and racialization. This particular violence extends to harm Native men, Native land and Native independence.

In the missions, priests struggled with population decline among the California Indians. Excessively high mortality rates and low fertility rates were "largely the result of a host of chronic infectious diseases introduced to the region by the Spaniards."<sup>15</sup> Calculations of the number of women locked up on average in the *monjeríos*, and the space described left about 7 by 2 feet for each person.<sup>16</sup> It is speculated that overcrowding of these spaces aided the spread of infection, and, "furthermore, venereal disease, notably gonorrhea and syphilis, both highly infectious, not only contributed to the high mortality but most certainly contributed to the low

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<sup>13</sup> Sherene Razack, *Race, Space, and the Law: Unmapping a White Settler Society* (Toronto: Between the Lines Press, 2002), 12.

<sup>14</sup> Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005), 10.

<sup>15</sup> Hackel, *Children of Coyote*, 113.

<sup>16</sup> Sherburne Friend Cook, *The Conflict Between the California Indian and White Civilization* (Berkeley and Los Angeles: University of California Press, 1976), 89. This book is a collection of six articles that were first published in *Ibero-Americana* between 1940 and 1943.

fertility that prevented the mission population from stabilizing between epidemics.”<sup>17</sup> In 1852, A Los Angeles rancher from Scotland, Hugo Reid, wrote a letter about the punishment inflicted on California Indian women in the missions who gave birth to stillborn babies. Reid refers specifically to Padre Jose Maria Salvedea, “Having found out the game practiced in regard to destroying the children born to the whites, he put down all miscarriages as the same cause. Therefor, when a woman had the misfortune to bring forth a still-born child, she was punished. The penalty inflicted was shaving the head, flogging for fifteen subsequent days, irons on feet for three months and having to appear every Sunday in Church on the steps heading up to the altar, with a hideous painted wooden child in her arms!”<sup>18</sup> The “game” Reid was referring to was women committing infanticide after becoming pregnant as a result of rape by soldiers. In reality, it was more likely the very conditions imposed by the Franciscans contributed to infant mortality and high infertility rates. Beyond the trauma of rape and infant mortality, the Franciscans imposed shame, surveillance and policing to correct the behavior the Franciscans themselves conditioned onto Native women’s bodies.

The missionization of California lasted from approximately 1769 to 1845. However, the end of missionization did not offer reprieve for California Indians. In fact, just the opposite occurred. On January 24, 1848, white men working at Coloma discovered gold.<sup>19</sup> In 1850, California entered the union and the new California state legislature, dominated by whites from the United States, drastically changed the lives of California Indians. Most notably, the state

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<sup>17</sup> Hackel, *Children of Coyote*, 114-115.

<sup>18</sup> Robert F. Heizer, *The Indians of Los Angeles County: Hugo Reid’s Letter of 1852*, (*Los Angeles, Southwest Museum Papers 21*, 1968), 83.

<sup>19</sup> Clifford E. Trafzer and Joel R. Hyer, *Exterminate Them!: Written Accounts of the Murder, Rape, and Enslavement of Native Americans during the California Gold Rush*, (East Lansing: Michigan State University Press, 1999), 1.

legislature passed California Stature Chapter 133 on April 22, 1850.<sup>20</sup> This chapter, known as “An Act for the Government and Protection of Indians” forced California Indians into subordinate legal, political, social, and economic positions.<sup>21</sup> This act authorized the indenture of California Indians, “or the common practice of kidnapping Indian children and women, and openly selling them as servants.”<sup>22</sup> The twofold purpose of this act was to get rid of California Indians and/or exploit their labor. It also created an atmosphere of lawlessness, where white men were the law unto themselves and where sexual violence against California Indian women continued. Settlers could continue to kill and violate California Indians with impunity, unless they were killed or injured by retaliation, in which case white settlers justified their own actions against these “violent savages”. Newspapers often told stories that encouraged vigilante justice.

Newspapers often represented the voice of white settlers of the time and publishers frequently demanded that local, state, and federal governments work to dispossess, displace, and destroy California Indians.<sup>23</sup> Many newspapers would encourage violence and even genocide of California Indians. There were also newspaper articles that called for leniency and attempted to offer a voice for California Indians, those of which shed light on the cyclical nature of violence imposed on California Indians. The newspaper sources examined for this article never speak about the 1850 Act directly, however they demonstrate that the illegal nature of kidnapping

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<sup>20</sup> For a complete historical timeline that documents the period after missionization that leads up to 1850 and how this legislation came to be, see Benjamin Madley, “‘Unholy Traffic in Human Blood and Souls’: Systems of California Indian Servitude under U.S. Rule” *Pacific Historical Review* 83, no. 4, (2014): 626-667.

<sup>21</sup> Trafzer, *Exterminate Them!*, 19.

<sup>22</sup> Robert Heizer, ed., *The Destruction of California Indians: A Collection of Documents from the Period 1847 to 1865 in which are Described Some of the Things that Happened to Some of the Indians of California* (Santa Barbara and Salt Lake City: Peregrine Smith, Inc. 1974), viii.

<sup>23</sup> Brendan C. Lindsay, *Murder State: California’s Native American Genocide, 1846-1873*, (Nebraska: Board of Regents of the University of Nebraska, 2012), 30.

women and children was par for the course. The 1850 Act already granted the legal acquisition of California Indians, “When an Indian is convicted of an offence before a Justice of the Peace, punishable by fine, any white man may, by consent of the justice, give bond for said Indian, conditioned for the payment of said fine and costs, and in such case the Indian shall be compelled to work for the person so bailing, until he has discharged or cancelled the fine assessed against him.”<sup>24</sup> In other words, if a California Indian was simply loitering in public, for example, they were arrested and made available to purchase for labor. Section three of the Act allows for the legal obtainment of children and any white male in possession of an Indian child, “and wishing to keep it, such person shall go before a Justice of the Peace in his Township, with the parents or friends of the child, and if the Justice of the Peace becomes satisfied that no compulsory means have been used to obtain the child from its parents or friends, shall enter on record, in a book kept for that purpose, the sex and probable age of the child, and shall give to such person a certificate, authorizing him or her to have the care, custody, control, and earnings of such minor, until he or she obtain the age of majority.”<sup>25</sup> For white settlers, this act was not enough to fulfill their desires. In 1856, a journalist for a San Francisco newspaper article reported that agents and employees of several reservations “are daily and nightly engaged in kidnapping the younger portion of the females, for the vilest of purposes. The wives and daughters of the defenseless Diggers are prostituted before the very eyes of their husbands and fathers...”<sup>26</sup> This report, and many other calls for reform, were a success, just not in the way the authors had intended. In April of 1860, California legislatures amended the 1850 Act, giving

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<sup>24</sup> California, *Statutes of California*, Passed at the First Session of the Legislature (San Jose, California, 1850), 102.

<sup>25</sup> California, *Statutes of California*, 102.

<sup>26</sup> Heizer, *The Destruction of California Indians*, 278.

County and District Judges full power and authority to apprentice Indian children without the consent of parents or guardians, essentially legalizing the kidnapping of Indian children.<sup>27</sup>

On August 19, 1865, as conditions became increasingly more deplorable for California Indians, a journalist for the *Sacramento Union* wrote, “The Legislature has done much blowing concerning the Indians in this county, but every Act hits them harder. They are held here as slaves were held in the South; those owning them use them as they please, beat them with clubs and shoot them down like dogs, [...] James Shores, an Indian slaveholder here, shot one the other day, because he would not stand and be whipped, inflicting a severe wound, but not killing him [...] I have my doubts of finding a jury that will convict a man for killing an Indian up here.”<sup>28</sup> The passing of the 1850 Act and the subsequent amendments, marks a specific temporality in which sexual violence became codified into law by creating jurisdictional legislation that granted impunity for kidnapping, raping, and killing California Indians. In this case, the jurisdiction was all of California. California Indian women were twice subject to assault and settler profitability; through domestic servitude and selling their bodies for rape.

Newspaper sources revealed how this impunity was granted and justified. A specific cycle of violence began by imposing conditions on California Indians that led to their inability to obtain food. As a result, Indian men would attempt to steal cattle in order to eat and feed their families. In response, settlers would rally a mob of men, kill entire camps of Indian men, and keep the children and women. A lengthy article by the *Marysville Appeal* dated December 6<sup>th</sup> 1861 fully encompasses the magnitude of what California Indian men and women faced during

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<sup>27</sup> California, *The Statutes of California, Passed at the Eleventh Session of the Legislature, 1860* (Sacramento, 1860), 196–197.

<sup>28</sup> Robert F. Heizer, ed., *They Were Only Diggers: A Collection of Articles from California Newspapers 1851-1866, on Indian and White Relations*, (Ramona: Ballena Press, 1974), 2-3.



this period. Noting that this article was written in the winter and in the northern geographical location of Marysville, the cold was probably beginning to set in. Starvation and lack of supplies and clothing would have been exasperated at this time. The author of this article was hoping to deescalate a war of extermination encouraged by *The Humboldt Times*, which remarked, “The pioneer settlers are not in the habit of deserting their homes for the menaces of native Diggers, and will not be likely now. The white man will remain and occupy the country, the Indian will disappear. If not removed to the Reservations, and retained there by the officers of Government, a bloody retaliatory warfare will continue until the Indians of this coast are exterminated. “ *The Marysville Appeal* responded by requesting a further inquiry to the state of degradations that white men face as a result of the California Indians. The author of *The Marysville Appeal* argued, “But it is from these mountain tribes that white settlers draw their supplies of kidnapped children, educated as servants, and women for purposes of labor or lust [...] It is notorious that there are parties in the Northern counties of this state whose sole occupation is to steal young children and Squaws from the poor Diggers.” Later the author notes that settlers are “willing to pay fifty or sixty dollars for a young Digger to cook and wait upon them, a hundred dollars for a likely young girl.” Also justifying the actions of California Indians, the same author wrote, “The stealing of a steer, worth, perhaps, five dollars, by a party of half-starved Indians, who, gradually crowded from their once-happy hunting grounds, have ventured to make a reprisal to sustain life, is generally deemed sufficient cause for a bloody raid upon the flying fugitives, who, exasperated in turn by discriminate slaughter of their kin, seize upon the very first occasion that offers retaliation”<sup>29</sup> Here the systemic rape and logics of elimination under settler colonialism unveil

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<sup>29</sup> Heizer, *They Were Only Diggers*, 84-85.

the workings of how the criminalization of Native peoples can be seen as deeply connected to sexual violence and violence with impunity.

On September 10, 1859, *The San Francisco Bulletin* released a story reported by a man by the name of John Breckenridge. Breckenridge reported that four men, including himself, were watching over ten imprisoned California Indians. A miner by the name of Cain arrived to claim one of the imprisoned women. When the four guards prevented him, he returned two hours later with a mob of forty-five men and a Deputy. The mob and Deputy locked up the guards, released the prisoners, shot the woman's "Buck" (husband) and took the "squaw."<sup>30</sup> Breckenridge reported that "the only motive the mob had was to secure the squaws and keep them..."<sup>31</sup> It is during this period that law can be seen as inherently violent in and of itself by legitimizing the way it functions to both punish and uphold violence depending on who commits the act, revealing the contradictory logics of white supremacy under settler colonialism.

*The Marysville Appeal* reported on February 8, 1861, that "Several hundred miserable Indians have been slain in Tehama, Mendocino and Humboldt counties [...] for the hunger offense of cattle stealing."<sup>32</sup> Later in the same article the journalist adds, "there are many white men who take their neighbor's stock, and have nothing worse hurled at them, therefor; but a string of resolutions." Once the California Indian men were eliminated for these "hunger offenses" women and children would then become easier to abduct. This method of elimination and containment was made abundantly clear in *The Alta California* newspaper on April 5, 1852. A California Indian man was shot by a miner for stealing a knife. When the miner who killed the Indian man was identified by other Indians, they threatened the miner's life. The miner

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<sup>30</sup> Heizer, *They Were Only Diggers*, 117.

<sup>31</sup> *Ibid.*, 117.

<sup>32</sup> *Ibid.*, 76.

assembled a mob and surrounded the encampment where the California Indians were staying. The mob, “shot all the men, several squaws , and destroyed the rancho.” The mob traveled two miles to another encampment and repeated the bloody scene. “The squaws and children” were taken and were reported to have been “mourning over their hard fate and begging for bread.”<sup>33</sup> Their “hard fate” was likely that of domestic servitude and/or sexual violence and was justified by the chief offense of stealing a knife.

Domestic servitude was hardly the lesser of two evils as the story of one Kumeyaay girl demonstrates. In 1862, “Emma”, named by the Chase family who indentured her as a domestic servant, arrived after five years of being refused into the home by the wife of Andrew Chase.<sup>34</sup> When Mr. Chase first introduced the idea to his wife five years earlier, his wife turned the idea down after hearing from other women that their husbands often had sex (rape) with apprenticed Indian girls. Mr. Chase decided to fight the temptation and wrote, “I should like an Indian Girl and had about concluded to send for one, but Mrs. C found by inquiry of ladies who had experience in this kind of property, that they [Indian girls] weren’t to be trusted, especially if their masters are fond of vanity. Wife thinks we had better not run the risk, and I think if anything should turn up it would be awful.”<sup>35</sup> Mrs. C felt more comfortable when her husband turned forty-five, as if his old age would diminish the risk of sexual engagement. The letter written by Mr. Chase reveals the way Indian girls were thought of as property and were to blame for their own rape by the white males. The logics of containment under white supremacy was upheld through sexual violence towards Native women and girls. Sexual violence was accepted

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<sup>33</sup> Heizer, *They Were Only Diggers*, 24-25.

<sup>34</sup> Lindsay, *Murder State*, 155.

<sup>35</sup> *Ibid.*, 155.

as a norm and justified through the ideology of whiteness as property and indentured servitude was legalized under The 1850 Act.<sup>36</sup>

It was not until 1863, after President Abraham Lincoln issued the Emancipation Proclamation on January 1st, that state and federal officials began to take legal measures to enforce the dismantling of the 1850 Act. By this time, settlers had taken control of much of the land and there were significantly fewer California Indians to exploit. The state had established itself with a booming agricultural economy and had skated under the radar of being known as a slave-holding state. Settlers flocked for gold, but most became land-owners that relied on California Indians to do all of the labor. Sexism and racism allowed for the destruction of the land, the starvation of the people, retaliation through mass murder, and then the stealing of California Indian women and children for labor and sexual exploitation and was all justified through the codification of violence under the 1850 Act for the Government and Protection of California Indians. The Euro-American ideology of a successful economy in California was built on the starvation, genocide, and rape of California Indians, first established in California by Spanish Franciscans and soldiers. Despite the eradication of the 1850 Act, convict labor continued and new laws would be set forth to maintain impunity for sexual violence towards Native women. State and federal legislation has manipulated the law to disguise sexist and racist ideology, but the lived effects of these laws by Native women tell a different story. Violence that stemmed from the missions and the 1850 Act continues through erasures of Native identity off of reservations and jurisdictional laws that exist on reservations. Following a trajectory that begins

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<sup>36</sup> Cheryl Harris posits that racial identity and property are deeply interrelated concepts, where whiteness, constructed as a form of racial identity evolved into a form of property, protected by law. Whiteness as property parallels the system of domination in which Black and Native American peoples were created as racially contingent forms of property. See Cheryl Harris, “Whiteness as Property”, *Harvard Law Review* 106, no. 8, (1993): 1707-1791.

in 1885, through the Major Crimes Act, and continues today exposes how these continuities operate and maintain elimination and containment.

## Chapter Two: Hub-Making

“Yet in the end, it was the power of the word and marking of Native place passed on through stories that refuted settler power.”  
-Mishuana Goeman (Haudenosaunee)

Sexual violence did not begin with the arrival of Europeans, it existed in Native communities long before priests or soldiers began their conquest. Intracommunity violence and sexual violence was often dealt with in ways that discouraged such behavior. Attitudes towards women also discouraged violence, and without overly romanticizing pre-colonial violence, many scholars have suggested that sexual violence was likely extremely rare.<sup>1</sup> Women and children were not considered to be property of men, women in rape-free societies were respected and influential members of society; often holding positions as powerful spiritual and political leaders. Historians have documented that Native men also did not sexually violate prisoners of war. Legal scholar Sarah Deer (Muscogee) writes, “Even Europeans who wrote disparagingly about Native people noted that Native people abhorred sexual violence.”<sup>2</sup> Native justice systems severely punished those who were accused of rape and oral stories that were passed on functioned as laws that contributed to the rare occurrences of sexual violence and to the ways in which communities held individuals accountable for their actions.

Poet and novelist, Paula Gunn Allen (Laguna-Sioux), retells a cautionary story of Deer Woman as a moral imperative that highlights the ways many Native American men have internalized colonial, heteropatriarchal values. The Deer Woman story that follows is a shortened

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<sup>1</sup> Sarah Deer, “Towards an Indigenous Jurisprudence of Rape,” *Kansas Journal of Law and Public Policy*, 14 (2004), 121-143.

<sup>2</sup> *Ibid.*, 130.

rendition by Allen, composed from a combination of stories she had read and heard through witnesses or friends of witnesses of encounters with Deer Woman.

On a hot evening, Jackie and Ray were riding around in their pickup, chasing after girls, or what the two men referred to as “snags”.<sup>3</sup> They drove up and down the countryside, stopping at friends’ places for drinks. Long after dark, Jackie and Ray stopped at a bar and joined some other men gathered around several tables. After a few drinks, one of the men asked if they were going to the stomp dance that night. Jackie and Ray replied yes, though they hadn’t known of the stomp dance that was taking place that night. The three men headed out in the pickup.

They drove a long distance. They navigated long, windy back roads and drove past many unmarked crossings until they finally saw the light of the bonfire. When they arrived they saw several huts that helped light the dark night along with headlights from a few parked cars. They all made their way towards the dance ground. The dance was going strong, and the sound of turtle shells and aluminum can rattles and singing, mixed with occasional laughter and bits of talk, reached their ears. The men grinned at each other excitedly, eager to continue their search for girls that began earlier that night.

Jackie and Ray spoke to a few girls over a long period of time, but the conversation hadn’t lead where they were hoping. The friend who drove them had already left with a long-legged beauty named Laurine. Jackie and Ray were content with being with their own people and were not disheartened by their failed attempts. They continued to sing and dance and enjoy themselves.

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<sup>3</sup> Paula Gunn Allen, *Grandmothers of the Light: A Medicine Women’s Sourcebook*, (Boston: Beacon Press, 1991), 185.

As dawn began to rise, Ray spotted two strikingly beautiful women stepping onto the dance ground. Their long hair flowed like black rivers down their backs. The women were dressed in traditional clothes and they had an air about them that made Ray shiver with what seemed like a feeling of recognition, as well as dread. Neither man knew who the women were. At the same time, Jackie and Ray saw that the two women had acknowledged them and continued to dance modestly and almost gravely past them. Jackie nudged Ray and they decided to head towards the women. When the song ended, one of the women said to the men, "My friend and I need a ride towards where you two came from." She gestured towards a group of people indicating they had told the women where the men had come from. Ray asked what her friends' name was. "Linda, mine is Junella." Ray introduced himself and Jackie and asked when they wanted to take off. Junella replied they were ready whenever Jackie and Ray were, and held his eyes with hers. The four of them made their way towards the pickup and got in. As Ray was backing up, he thought he saw that both women had deer hooves for feet. But the car was crowded and Ray just decided he should probably cut back on the weed. He somehow forgot he hadn't smoked weed in months and hadn't had anymore to drink since the tavern. The women were careful to tuck their feet under a blanket once they set off.

For a while, the car ride was filled with introductions, laughter, and singing. After about an hour, Linda pointed to a road and asked Ray to turn down it. Ray complied and continued to follow her directions. After one particular turn that shifted Linda into him, Ray put his arm around her and she leaned right into him. After a short distance, they were driving on a dirt road next to water. "Let's go to the water," Linda said. "Junella and I like to wash in fresh running water every morning."



Junella continued, “We were raised by our mother’s grandmother, and the old lady was real strict about some things. She always made sure we prayed to Long Man every day.” The four of them got out of the truck and made their way through scrub oak and bushes on their way to the stream. The two women stepped right in, still dressed in their dance clothes and splashed cold water on their faces, speaking in their old tongue softly to each other. Jackie and Ray removed their shoes and followed.

Junella pointed to a path and suggested following it to see if it was path that would lead to their childhood home. They stood still and allowed the men to take the lead. After pushing through the low branches for quite some time, Linda told the men to continue the direction they were headed and that it couldn’t be far. They followed up a gradual slope, which soon became a steep rise. “I don’t think we’re going to grandma’s house” Jackie said to Ray. Ray replied by saying he had never noticed the bluff they were on before. Janelle teased them for seeming to be too tired to continue, “It’s not much further,” she laughed cheerfully.

“Well, I use to say I’d walk a mile for a Camel,” Jackie said wryly, “but I didn’t say anything about snags” referring to the two women. He and Ray laughed heartily. They found another creek and all walked into it after Junella convinced the men that the creek led to their right to the old house. As the men stepped into the water, their feet touched down on soft grass.

“What’s happening?” Ray exclaimed. The women turned a corner, when the men came around they saw Linda leaning against a tall rock slab. She grabbed the edge of it and swung it open, like a regular door. The men were astonished as the women stepped through. Ray and Jackie stared at each other, shrugged their shoulders and went in.

Inside was an astonishing scene. Around two hundred people stood or walked around the green land before them. Many houses were in the distance. There were tables filled with food.

Junella and Linda took the men by their arms and led them to one of the houses. Inside was an older man with a large dog on each side of him. The old man looked at the women, "I see you've snagged two strong men, go get ready." The women slipped through a door, which they closed behind them. The three men stood in silence for a half hour. "It was a good thing you two followed my nieces here." The old man broke the silence. "You must be two intelligent men, I have told everybody that they did well by bringing you here." There was thunder in the background. "Perhaps if you like my nieces you'll stay here long enough. We'll feed you soon, but first there are some games for you two to join in on." The old man pointed in the direction he wanted to Jackie and Ray to go.

The two women joined them shortly after. They had changed into clothes that continued to cover their hands and feet and their appearance was different. Ray looked at Jackie, "They have no hair." The two men seemed mournful and resigned. The women led the men to an area nearby. The old man and his dogs were behind them. Other men, carrying balls, gloves, and bats followed until they ended up at a baseball diamond. The old man crouched behind home plate and yelled "play ball!" as the two women sat on benches nearby. Jackie and Ray, bewilderingly, found their positions. The men played a long game of baseball, the team Jackie and Ray were on had won.

As they finally sat to eat, Jackie and Ray noticed the women were gone, Jackie offered to go look for them, unsuccessfully. After, the men joined in on a tight circle around a drum, excited for the singing and dancing. Ray was between two women who wrapped an arm around his waist, causing him to forget about Jackie.

Ray awoke near the river's edge. He looked around groggily and noticed Junella nearby. "Hey," she said smiling. Ray asked how he got there. His memory was foggy but vaguely remembered the drum, the baseball game and eating.

"Where are Jackie and Linda?" Ray asked. "Jackie is staying there," Linda replied and handed Ray Jackie's wristwatch, "He said to give you this." Ray reached out, but suddenly Junella was gone, the wristwatch lay on the ground.

Ray never saw Jackie again. Years later, Ray had recalled that his grandma's brothers had spoken about Deer Woman when he was younger and other odd things that would happen near the countryside. Ray never paid much attention but had recalled them saying that Deer Woman might invite you to dance and if you weren't careful, she'd put a spell on you and take you inside the mountain to meet her uncle. He said her uncle was Thunder, one of the old gods or supernaturals.

Ray had heard that Jackie was sometimes seen with a woman. Jackie had become an alcoholic and would tell stories about his wife and his time inside of a mountain. When Ray heard that Jackie died, he recalled part of the story he had heard about Deer Woman. His grandma's brothers had also mentioned that the men who had entered the mountain were to never speak about their experience, if they did, they would die shortly after.

Jackie and Ray's untraditional attitudes towards Native women, or "snags", eventually led them to a fate of death and uncertainty and was a consequence of objectifying women. Allen tells of Jackie and Ray as a storytelling tradition that is meant to be used to guide the behaviors and morals of young men and women. In this version of the Deer Woman story, Jackie demonstrates a more overtly misogynistic and passive attitude towards women and suffers, which leads him to his death. Ray is not much better, but later ponders the story as told by his

grandma's brothers and is offered hope in the end. Paula Gunn Allen writes, "Taboo violation as causative of illness may seem strange to modern minds, but it is no stranger than avoidance of radioactivity, toxic chemicals or disease-bearing environments of all sorts. If one violates any of these strictures, disease is likely to ensue. In a similar fashion, traditionalists know that it is unwise and unsafe to show disrespect for spirits, do violence to other life forms, engage in selfish behavior to abuse oneself or others."<sup>4</sup> Prior to settler colonial rule and law, oral stories are what guided the morals and behaviors of men and women and instructed youth on social behavior.

The story of Deer Woman is known most commonly in the southeast, though poet Carolyn Dunn (Muskogee/Seminole/Cherokee) has noted how Deer Woman has made her way to California, "As we move westward, away from our traditional ancestral homelands, removed by force and by will, we are taught that the stories move with us. The spirits do as well, moving with us and following our migrations west. This is where Deer Woman and I met in the coolness of the Eel River; behind the Redwood Curtain in Southern Humboldt County, California."<sup>5</sup> Oral stories differentiate from group to group and are deeply rooted in their own intrapersonal histories and social contexts, for some it is Deer Woman, but other protagonists have prevailed to offer societal guidelines as well. Larry Hill (Seneca) notes, "Our stories are what we knew, what we came from and where we are going. They were told to remind us of our responsibility, to instruct, and to entertain. There were stories of our Creation, our travels, our laws. They were legends of hard-fought battles, funny anecdotes –some from the smokehouse, some from trickster – and there were stories to remind us of danger, spiritual and otherwise. Stories were our

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<sup>4</sup> Allen, *Grandmothers of the Light*, 169.

<sup>5</sup> Carolyn Dunn, "Deer Woman and the Living Myth of Dreamtime," *The Journal of Mythic Arts*, accessed May 5, 2015, <http://www.endicott-studio.com/articleslist/deer-woman-and-the-living-myth-of-dreamtime-by-carolyn-dunn.html>.

lives and still are.”<sup>6</sup> The ongoing imposition of settler colonialism has eroded this way of customary law by forcing Native communities to abide by laws written with their eradication in mind. As Larry Hill shares, these stories still offer guidance to Native communities but do nothing to offer protection from non-Native communities; four out of five reported sexual assaults and rape by Native American survivors have described the offender as non-Native.<sup>7</sup> This chapter demonstrates the stark contrast between the ways law and order functioned to limit sexual violence pre-colonization and how it functions today to allow it. This analysis opens up questions on how legitimate forms of sexual violence prevention can begin to replace laws that uphold settler colonialism’s reliance on sexual violence and highlights a trajectory that connects the California missions to the issues Native women face today.

With the arrival of Europeans came belief systems that were very much in contrast to what many Native communities had known. Spaniards held that women were legal subject of their fathers, brothers, or closest male relative and were often shocked to discover how well women were treated in Native communities.<sup>8</sup> While writing about Spanish conquest in California, Antonia Castañeda argues, “Under conditions of war or conquest, rape is a form of national terrorism, subjugation, and humiliation, wherein the sexual violation of women represents both the physical domination of women and the symbolic castration of the men of the conquered group” and that sexual violence is, “a legitimate expression of superiority that carries

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<sup>6</sup> Larry Hill, “Indigenous Peoples of California – Storytelling,” *Kumeyaay Stories*, accessed May 5, 2015, <http://www.kumeyaay.info>.

<sup>7</sup> Steven W. Perry, “American Indians and Crime,” *United States Department of Justice* 9 (2004).

<sup>8</sup> *Ibid.*, 130.

with it no civil penalty.”<sup>9</sup> No further evidence of this is needed after looking at Spanish and United States conquest through the California missions and 1850 Act for the Government and Protection of Indians. The United States government may have eradicated slavery and the 1850 Act in 1863, however, new laws were imposed that left Native women vulnerable to the ongoing logics of conquest through sexual violence.

In 1885, the U.S. government assumed jurisdiction over serious crimes committed by an Indian in Indian country through the Major Crimes Act, severely undermining tribal authority and sending a message that traditional responses were not equipped to handle such cases. Serious crimes that fell under the Major Crimes Act included crimes of murder, kidnapping, maiming, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, and sexual abuse. These acts of violence are ones that are commonly committed against women.<sup>10</sup> The Major Crimes Act marked a significant turning point where the federal government took on the state doctrine that allowed impunity for rape under the 1850 Act. Under the Major Crimes Act, there was an unsettled issue of whether tribes share concurrent jurisdiction with the federal government over certain crimes, which lead to uncertainty of where to prosecute crimes committed in Indian Country.<sup>11</sup> Ambiguities regarding the definitions of the crimes that fall under the Major Crimes Act are not only confusing for tribal and federal authorities, but to the survivors seeking assistance. For example, in regards to rape, it was never

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<sup>9</sup> Antonia Castañeda, "Sexual Violence in the Politics and Policies of Conquest," in *Building With Our Hands: New Directions in Chicana Studies*, eds. Adela de la Torre and Beatriz M. Pesquera, (Berkeley and Los Angeles University of California Press, 1993).

<sup>10</sup> Jacqueline Agtuca, "Beloved Women: Life Givers, Caretakers, Teachers of Future Generations" in *Sharing Our Stories of Survival, Native Women Surviving Violence*. Eds. Sarah Deer, Bonnie Clairmont, Carrie A. Martell and Maureen L. (White Eagle: Altamira Press, 2008), 3-27.

<sup>11</sup> Jasmine Owens, "Historic in a Bad Way: How the Tribal Law and Order Act Continues the American Tradition of Providing Inadequate Protection to American Indian and Alaska Native Rape Victims." *Journal of Criminal Law and Criminology* 102 (2012): 497-524.

defined to reveal whether this included statutory rape and carnal knowledge.<sup>12</sup> Several judicial opinions have defined “rape” as, “including only common law rape, not statutory rape or carnal knowledge.”<sup>13</sup> These ambiguities and lack of effort to take these crimes seriously under the Major Crimes Act set the stage for laws that would continue to make it difficult to prosecute anyone who committed such acts for the next one hundred and fifty years.

Further eroding tribal authority was Public Law 280. In 1953, the United States federal government transferred criminal jurisdiction over any person who commits a crime in Indian Country to the state’s government for Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin, and later in Arizona, Florida, Idaho, Iowa, Montana, Nevada, North Dakota, South Dakota, Utah and Washington. Congress had designated authority to these state governments to close the gap for crimes that were committed on Indian Country. However, Congress did not solicit the consent of the state or the tribes and failed to provide adequate funding for states to fulfill this new level of authority. This ultimately widened the gap and made prosecution for crimes even more difficult.<sup>14</sup> Additionally, a history of hostile relationships between states and tribes has limited the cooperation of law enforcement in many of these Public Law 280 states.<sup>15</sup> These enforcement gaps leave Native women particularly vulnerable. Many Native women are reluctant to report sexual assault to officials who know little about their culture and have

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<sup>12</sup> Owens, "Historic in a Bad Way," 506.

<sup>13</sup> *Ibid.*, 506.

<sup>14</sup> Marie Quasius, “Native American Rape Victims: Desperately Seeking an *Oliphant-Fix*,” *Minnesota Law Review*, 93 (2008), 1902-1941.

<sup>15</sup> Sarah Deer, “Federal Indian law and violent crime: Native women and children at the mercy of the state,” *Social Justice*, 31(4), (2004) 17-30.

historically devalued them. Perpetrators benefit from this lack of trust, “as it provides assurance to them that they will not be punished.”<sup>16</sup>

In 1968 the Indian Civil Rights Act (ICRA) was enacted which offered continued constraint on tribal jurisdiction by the federal government. Similar to the 1850 Act for the Government and Protection of Indians, ICRA does not do what its title implies. ICRA is yet another paternalistic endeavor by the federal government to intervene and assimilate tribal governments by forcing them to adopt the United States Bill of Rights into their government protocol. ICRA prohibits tribal courts from imposing a sentence of more than one-year imprisonment and/or a \$5,000 fine for any one offense, meaning, “tribal courts only have “misdemeanor” jurisdiction, and therefore cannot prosecute felony level crimes such as murder and rape.”<sup>17</sup> Further, while the sentencing limitation does not mention the type of crimes that can and cannot be prosecuted and only controls the imposed sanctions on crimes, a sanction of one-year imprisonment and/or \$5,000 does not fit the crime of sexual violence, may not deter sexual violence, but will likely deter survivors from reporting the crimes. These sanctions can only be imposed on Native Americans who commit crimes in Indian Country. Further, state and federal penalties for the same crimes are much more harsh, often exceeding eight and twelve years.<sup>18</sup> Lastly, and similar to Public Law 280, tribal law enforcement often lacks any sort of funding for investigating and prosecuting crimes.<sup>19</sup>

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<sup>16</sup> Sarah Deer, Carole Goldberg, Heather Valdez Singleton, Maureen White Eagle, “Final Report: Focus Group of Public Law 280 and the Sexual Assault of Native Women,” *A Product of the Tribal Law and Policy Institute*, 2007.

<sup>17</sup> Deer, “Towards an Indigenous Jurisprudence of Rape,” 128.

<sup>18</sup> Quasius, “Native American Rape Victims,” 1905.

<sup>19</sup> *Ibid.*, 1905.



In 1978, David Oliphant brought a case against the Suquamish Indian reservation through a writ of habeas corpus.<sup>20</sup> Oliphant was convicted of assaulting a tribal officer and resisting arrest. He argued that as a non-Indian permanent resident of the reservation, he should not be tried by tribal authority. In *Oliphant v. Suquamish* the Supreme Court referred to ICRA to determine that Oliphant was correct in his assessment and stripped tribal courts of having the ability to try non-Natives of any crime that occurs under tribal jurisdiction. While the accumulation of these laws continue to chip away at tribal sovereignty, they also erode the safety of Native women, “After a rape, an American Indian or Alaska Native woman first has to contact tribal authorities, who then must figure out which agency is responsible for the investigation. This is a process that can take months because of the lack of a dedicated force of either federal or state police to investigate crimes in Indian Country.”<sup>21</sup> Not only is this a further deterrence to report a crime, it leaves survivors vulnerable to continue to fear their attacker and leaves the suspects free to continue committing the same or other crimes. On the other hand, Deer Woman stories imply an oppositional narrative, one in which men fear the strength of women and holds these types of behaviors accountable before any such violence even takes place.

A close examination of *Oliphant v. Suquamish* also reveals the urgency at which the federal government felt they should act towards issues relating to sexual violence and Native women. During *Oliphant*, the Supreme Court recognized that there was confusion regarding jurisdiction over enumerated crimes committed by Indians under the Major Crimes Act and if the federal government was granted exclusive jurisdiction or not. Upon this discovery, the Supreme

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<sup>20</sup> *Oliphant v. Suquamish Indian Tribe*. 435 United States 191. 203 n. 14 (1978).

<sup>21</sup> Owens, "Historic in a Bad Way," 510.

Court responded, “We have no reason to decide today whether jurisdiction under the Major Crimes Act is exclusive.”<sup>22</sup> The case against even one offender should have been enough reason.

In 2010, President Barack Obama set out to, “reduce the prevalence of violent crime in Indian Country and to combat sexual and domestic violence against American Indian and Alaska Native women” by signing the Tribal Law and Order Act of 2010 (TLOA).<sup>23</sup> The TLOA in actuality maintains colonial authority, adds to the jurisdictional complications that the federal government has been implementing since its creation, further erodes tribal sovereignty, and inadequately addresses the needs of Native survivors of sexual violence. This Act upholds Public Law 280 and *Oliphant* by allowing state governments to retain jurisdictional authority for Public Law 280 states and by continuing the limitations on tribal governments to prosecute any crimes committed by non-Natives. It does however give Public Law 280 states the option to, “opt in to concurrent state, federal, and (possibly) tribal jurisdiction.”<sup>24</sup> Under TLOA, there is no mandatory spending, no new spending authorizations, and only reauthorizes existing programs at existing or last appropriated levels.<sup>25</sup> Existing funding for state and tribal government to oversee crimes has been extremely limited. The TLOA overturns the sentencing limitations under ICRA, however it only extends the maximum conviction to three years. Native women under The TLOA will receive more thorough investigation and medical care, however, “Preventative measures most likely will not deter those who rape American Indian and Alaska Native women because the prevention education is aimed at American Indian and Alaska Native men, who commit a small

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<sup>22</sup> *Oliphant v. Suquamish Indian Tribe*.

<sup>23</sup> Tribal Law and Order Act of 2010, § 202(b)(4).

<sup>24</sup> Owens, "Historic in a Bad Way," 519.

<sup>25</sup> American Bar Association, “Tribal Law and Order Act: Fact vs. Myth,” 2010, accessed May 7, 2015, <http://apps.americanbar.org/dch/thedl.cfm?filename=/IR514000/relatedresources/TLO-Facts-vs-Myths.pdf>

portion of these rapes perpetrated each year.”<sup>26</sup> This Act does nothing to fix the jurisdictional mess that contributes to the very problem it aims to address and only adds to the confusion by allowing Public Law 280 states to renegotiate their jurisdictional authority with the federal or tribal government. The TLOA ultimately operates under the same colonial ideology and authority that codified the impunity of sexual violence in the first place.

Recalling Amnesty International’s report entitled “Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA” and their assessment that, “The US government has interfered with the ability of tribal justice systems to respond to crimes of sexual violence by underfunding tribal justice systems, prohibiting tribal courts from trying non-Indian suspects and limiting the sentences which tribal courts can impose for any one offence” it becomes clear that the only way to solve jurisdictional injustice on reservations is not through reform. Rather, the focus should be on granting sovereignty for tribes to determine how to handle all crimes committed on Indian Country as well as granting Native women the recognition to determine what that looks like.<sup>27</sup> Professor of English and Gender and Women’s Studies Mark Rifkin challenges official U.S. accounts of Native identity by relying on queer Native writers representations of sensation in order to do so. He writes, “Those whose supposedly nonnormative sexual and gender identities are denigrated as personal pathology, then, are in a particularly good position to articulate the potential damage done by the acceptance of settler

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<sup>26</sup> Owens, "Historic in a Bad Way," 518.

<sup>27</sup> I do not mean to suggest here that women are the only survivors of sexual violence within Native communities. Men and the LGBTQ communities are also targets. This paper focuses on women based on the literature that is available. While the literature available on Native women and sexual violence is extremely limited, it is more so for those that are marked for their gender non-conforming status as well as sexual violence’s impact on men. More research needs to be done in regards to these issues.

notions of social life, including what properly constitutes politics.”<sup>28</sup> This principle holds true for survivors of sexual violence when determining a legitimate form of law and order that will address sexual violence. Many tribal governments and court systems have adopted settler colonial paradigms, which ultimately rearticulates terms of subjugation. Centering the survivors of sexual violence within the discourse that shapes the framework works to destabilize these paradigms. Mark Rifkin illustrates the significance of doing so, “From this perspective, sovereignty is less the construction and operation of a bureaucratic apparatus than it is a changing force field of lived relations through which collectivity is (re)constructed in every day ways.”<sup>29</sup> While this approach may be a descriptive for fracturing the jurisdictional “maze of injustice” on reservations that upholds settler colonialism through sexual violence, doing so would only protect a small portion of Native women.

In 2010, the United States Census Bureau reported that only 22 percent of American Indians or Alaskan Natives lived on reservations and/or off-reservation trust lands.<sup>30</sup> Research regarding the ways laws have left Native women vulnerable on reservations has received a relatively significant amount of attention. Off-reservation and/or urban Indian communities have been neglected in this scholarship. Scholar Kimberly Robertson (Muscogee) posits that this oversight is, “intimately connected to the ways in which urban indigeneity has been and continues to be constructed, marginalized, and excluded by the settler state and Native

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<sup>28</sup> Mark Rifkin, *The Erotics of Sovereignty: Queer Native Writing in the Era of Self-Determination*, (Minneapolis: University of Minnesota Press, 2012), 4.

<sup>29</sup> *Ibid.*, 4.

<sup>30</sup> United States Census Bureau, “Profile America Facts for Features: American Indian and Alaska Native Heritage Month: November 2011,” 2011, accessed May 7, 2015, [https://www.census.gov/newsroom/releases/archives/facts\\_for\\_features\\_special\\_editions/cb11-ff22.html](https://www.census.gov/newsroom/releases/archives/facts_for_features_special_editions/cb11-ff22.html)

peoples.”<sup>31</sup> This becomes another form of elimination through the ongoing logics of settler colonialism.

In 2011 The Urban Indian Health Institute reported that American Indian and Alaska Natives are more likely than urban whites to engage in risky sexual behaviors and to have experienced sexual violence in urban areas. Reports of early sexual initiation and pregnancy were nearly three-fold higher, and reports of being physically forced to have unwanted sex were more than two-fold higher among urban American Indians and Alaska Natives compared to whites.<sup>32</sup> Additionally, the report details that Urban American Indian and Alaska Native young women are particularly vulnerable to reproductive health risks and sexual violence because of factors such as homelessness, isolation from cultural support systems, lack of education, family poverty, health conditions and disabilities, and discrimination and resulting emotional distress. They attribute these vulnerabilities as being directly related to federal government policies directed towards American Indians and Alaska Natives. Lawyer and Professor of Law, Sarah Deer argues, “When speaking with Native American women who have survived rape, it is often difficult for them to separate the more immediate experience of their assault from the larger experience of that their people have experienced through forced removal, displacement, and destruction.”<sup>33</sup> Clinical psychologist and Professor of Psychology, Jane M. Simoni *et al.* revealed in their findings on urban Indian women’s sexual trauma and the subsequent connection to

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<sup>31</sup> Kimberly Robertson, “Un-Settling Questions: The Construction of Indigeneity and Violence against Native Women” (PhD dissertation, University of California Los Angeles, 2012), iii.

<sup>32</sup> Rutman, Shira, Maile Taualii, Dena Ned, and Crystal Tetrick, "Reproductive Health and Sexual Violence Among Urban American Indian and Alaska Native Young Women: Select Findings from the National Survey of Family Growth (2002)." *Maternal and child health journal* 16, (2012): 347-352.

<sup>33</sup> Sarah Deer, "Sovereignty of the Soul: Exploring the Intersection of Rape Law Reform and Federal Indian Law." *Suffolk University Law Review* 38, (2004): 455.

alcohol and injection drug use that American Indian women manifest effects of sexual trauma differently than white women as a result of their experience as indigenous peoples surviving colonial trauma.<sup>34</sup> They also argue that women sexually abused in childhood use alcohol, tranquilizers, and injection drugs; become sex workers; change sexual partners; and engage in sexual activities with strangers or acquaintances more frequently than other women.

Additionally, sexually abused women also have been shown to have more difficulty refusing unwanted sex, to be less assertive with birth control, to have more lifetime partners, to engage in more diverse sexual activities, to have significantly poorer attitudes toward their sexuality, to be younger at first intercourse, to have a greater perceived risk of contracting HIV, and to use illegal substances significantly more often and with more intensity than their non-sexually abused counterparts. Many of these vulnerabilities and coping mechanisms are recognized under United States law as criminal.

Despite the victimization, the ensuing trauma, criminalization, and incarceration, there is much more to urban Indigeneity. Feminist anthropologist Renya Ramirez (Winnebago/Ojibwe) theorizes about Native hubs as a geographical concept that connects landless Native Americans to their tribal homeland and urban spaces through, “participation in cultural circuits and maintenance of social networks, as well as shared activity with other Native Americans in the city and on the reservation.”<sup>35</sup> Ramirez argues that Native women are central to sustaining community by asserting their own notions of culture, community, identity, and belonging. Hubs represent both physical and imagined spaces and activities. They represent unity among Native

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<sup>34</sup> Jane M. Simoni, Shalini Sehgal, and Karina L. Walters. "Triangle of risk: Urban American Indian Women's Sexual Trauma, Injection Drug Use, and HIV Sexual Risk Behaviors." *AIDS and Behavior* 8, (2004): 33-45.

<sup>35</sup> Renya K. Ramirez, *Native Hubs: Culture, Community, and Belonging in Silicon Valley and Beyond*, (Durham: Duke University Press, 2012), 3.

peoples from reservations, landless Natives, federally recognized Natives, non-federally recognized ones, as well as Mixtec Indian women residing illegally in the United States because of current relocation policies. These spaces and activities open up forms of mass organizing by acting as a “collecting center, a hub of Indian peoples’ new ideas, information, culture, community, and imagination.”<sup>36</sup> In a process that Ramirez calls “*hub-making*”, bridges between tribal differences are formed in order to fight for social change. She also notes how “Native Americans who travel back and forth from city to reservation can strengthen and reinvigorate their culture and identity.”<sup>37</sup> Despite the differences in how sexual violence functions on reservations and urban areas, *hub-making* and centering women’s notion of community and sovereignty could be key to addressing these issues. Additionally, Kimberly Robertson describes a Native feminist analytic to dismantle the “colonial mappings and white supremacist, heteropatriarchal logics that insist on fracturing Native communities in efforts to eliminate indigeneity” as well as to, “aid us not only in interrogating the current state of the relationship between violence against Native women and the construction of indigeneity but also in conceptualizing a counterhegemonic and decolonized *future* relationship between the two.”<sup>38</sup> A Native feminist analytic that Robertson describes emerges from a foundation of Native women’s voices, lives, and stories, despite and because of their location.

Putting Native women who come from urban areas as well as reservations in conversation with prison abolitionists can open a dialogue to holding perpetrators accountable without strengthening the prison industrial complex. Prevention, rather than punishment needs to be the main goal, as does offering legitimate support and means of healing for survivors. Native

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<sup>36</sup> Ramirez, *Native Hubs*, 2.

<sup>37</sup> *Ibid.*, 2.

<sup>38</sup> Robertson, “Un-Settling Questions,” 165-166.

women need ways to address their trauma so that they do not need to numb their pain through coping mechanisms that may exacerbate their trauma. This also means taking seriously the differences in how Native women are treated on and off the reservation and the unique challenges they experience. Take for example Tanya Renne George, a single, Sioux Indian pregnant mother living on the streets of San Francisco. George applied for health benefits through the welfare department and was denied. The social worker had assumed that because she had Indian blood she was an enrolled member of her tribe with access to tribal health care. George was not enrolled and was denied access to health benefits by being ignored as a full citizen of the United States.<sup>39</sup> George, like many Native women living off the reservation was marginalized because of her positionality as a woman, Native American, and occupying a lower-class status. Acknowledging the existence of Native peoples in urban areas and addressing their needs in appropriate ways is also important. We need to prioritize creating societies where all people abide by egalitarian doctrines and work to shatter settler colonial heteropatriarchy, authority, rule, and law, where women like Deer Woman can put mass sexual violence to rest. It can begin by connecting women through *hub-making*, prioritizing Native women voices, sensations, and feelings, and by sharing stories of survival.

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<sup>39</sup> Ibid., 16.





### Chapter Three: Teeth that Bite Through Time

“A bad Indian is an Indian who resists in any way he or she can; a bad Indian *survives*. A bad Indian, in other words, is a good Ancestor.”

-Deborah Miranda (Ohlone-Costanoan Esselen)

The following narratives of historical documentation and resistance, as told by Stormy Ogden and Deborah Miranda demonstrate how erasures, silences, and characterizations are tools of genocidal actions that are manifested through contradictions and violations perpetuated by the PIC. Breaking the silence by sharing lived experiences is the vehicle by which both authors begin to challenge the modern day colonial impact prisons have on their people.

In “Prisoner W-20170/Other”, Stormy Ogden traces the violent colonial history back to the arrival of the Spanish in California. She reveals how that same history is reflected through her personal experiences of sexual violence and criminalization. In response to the lack of scholarship on Native women who have been incarcerated, she uses autobiographical vignettes throughout her article. These brief exposés are raw and powerful. They allow others to grasp the pain that she suffered and feel as if they have lived through it as well. Revealing such intimate details of her life is a way to break the silence and lend a voice to other Native American women.

Before she begins her story, she responds to the title of her article, “According to the California Department of Corrections, this was who I was for eight years of my life. For the first five years, I was locked behind their prison walls, the last three I was under the supervision of the state parole office. However, there is more to me than that.”<sup>1</sup> She does this to demonstrate the nature of erasure and dehumanization. This is an effect the PIC has on all prisoners. For

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<sup>1</sup> Stormy Ogden, “Prisoner W-20170/Other” in *Sharing Our Stories of Survival, Native Women Surviving Violence*. Eds. Sarah Deer, Bonnie Clairmont, Carrie A. Martell and Maureen L. (White Eagle: Altamira Press, 2008), 149.

California Indians, it has been a mechanism of elimination and containment that precedes prison. Ogden then begins the story by describing her tribal lineage and then goes abruptly into a description of the beginning of colonization. This symbolic gesture attests to the unforeseen arrival of Europeans and the speed at which they worked to conquer Native Americans and specifically for Ogden, the Tule River Yokuts tribe.

Ogden documents how Europeans worked to eradicate Native Americans both physically and spiritually. One of the first significant policies she writes about is the Europeans' Northwest Ordinance in which Congress stated that, "The UTMOST GOOD FAITH shall always be observed towards the Indians; their property shall never be taken from them without their consent", and further, "for preventing wrongs being done to them, and for preserving peace and friendship with them."<sup>2</sup> This policy was violated immediately. Cultural and physical genocide came through forced assimilation, imprisonment, and slavery. The historical roots of prison can be traced in the military forts, missions, boarding school, and reservations that were erected to destroy Native peoples.<sup>3</sup> Congress worked diligently to eliminate Native presence. Policies, such as the "Indian Offenses Act" forbade Indian religion, replaced Indian names with English names, and outlawed Indian hairstyles.<sup>4</sup> These attempted erasures that Ogden details would have a long lasting impact on Native identities and would affect her within her first days of incarceration.

Attacks on tribal sovereignty through countless policies, doctrines, and treaties, spoken of in previous chapters, not only symbolized erasure, but also broke up egalitarian relationships, putting men at the head of households, enforcing heteropatriarchal ideology within Native American communities. The Major Crimes Act of 1885 gave federal courts jurisdiction over

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<sup>2</sup> Ogden, "Prisoner W-20170/Other," 151.

<sup>3</sup> Ibid., 149.

<sup>4</sup> Ibid., 151.

crimes committed by Indians, “which was in complete disregard for international law, treaty law, and Article VI of the U.S. Constitution.”<sup>5</sup> The Plenary Power Doctrine, Federal-Indian Trust Doctrine, and The Doctrine of Geographical Incorporation are, as Ogden argues, instruments of racism and forms of social control. In this chapter, I will examine the interplay of the laws and policies discussed in chapter two and their affect on the lived experiences of California Indian women.

These acts of erasure and imposed heteropatriarchal ideology translate to Ogden’s personal life, both within and outside of prison. At the age of five, the next-door neighbor’s son “started putting his hand down my panties.” She was advised never to tell anyone for fear of retaliation. When she was twelve, she was raped by four schoolmates while her best friend watched, “these boys tore off my jeans and menstrual napkin, and proceeded to rape me one after the other.” Her vivid account recollects the torment, fear, pain, and humiliation she felt. When she went home, her isolation was compounded, “I remember sitting in the bathtub in the cold water crying. No one was there for me”.<sup>6</sup> In this sense, her pain became invisible. The isolation that she, and many other Native women have felt is a form of erasure. Denied access to social programs and geographically removed from access to law enforcement results in an effective way to erase these occurrences. Ogden turned to drugs and alcohol to erase her identity and to erase her pain. In the years that followed, rapes, beatings, gunshots, and suicide attempts riddled her life. At the age off twenty-two, she was sentenced to five years in the California Rehabilitation Center at Norco.

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<sup>5</sup> Ogden, “Prisoner W-20170/Other,” 151.

<sup>6</sup> *Ibid.*, 154-155.

Once inside, Ogden faced a modern day attempt of systematic identity and cultural eradication that most other racial/ethnic groups in prisons do not experience. At the time of her incarceration, the racial classification system only allowed for identities of White, Black, Hispanic, or Other.<sup>7</sup> These classificatory regimes dehumanize Native prisoners, much like replacing Indian names with Christian names as was the case in the missions. Many women in the missions were stripped of their Indian names and were named Maria or other common Spanish, Catholic names. This was one of the many forms of erasures that Spanish priests imposed on Native women and continues today through various manifestations and can be seen through Ogden's experience of incarceration. As an act of resistance, Ogden would leave her cell everyday for work and cross out the white 3x5 card that listed her last name, state number, and racial classification – "Other" and write "American Indian." Her identity was erased daily. She returned everyday with a card that replaced hers with the original classification and was finally reprimanded and warned. The following morning, "I found a permanent laundry marker, tore the card off the wall, and wrote "American Indian" on the wall."<sup>8</sup> This vignette that appeared within her story reveals the impact of loss and determination that she felt by this system of erasure. It demonstrated the urgency she had to fight on behalf of her ancestors, whose very lands were underneath the prison that she stood in. It was her attempt to prove that colonizers will never erase her identity or the identity of California Indians.

Ogden's historical recollection of colonialism highlights the impact of how Native Americans faced brutal acts of violence at every stage of United States expansion. The land that prisons are built on are predicated by the destruction of the very people that are incarcerated at

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<sup>7</sup> Ogden, "Prisoner W-20170/Other," 157.

<sup>8</sup> *Ibid.*, 157.

higher rates per capita than any other group. The response to this, as seen by Ogden, is to escape any way imaginable. Drug and alcohol abuse in tandem with the fact that, “American Indian women are the victims of crime at a rate that is nearly 50 percent higher than that reported by black males” leaves Native Americans in a vicious cycle that is seen today through the PIC.<sup>9</sup>

For Ogden, being characterized by her non-Indian mother at an early age left her with an internalized identity of deviance. Ogden remembers her mother’s disparaging words, “You are just a dirty Indian like your dad. You are a no good half-breed, and you will grow up to be a drunken Indian, just like your dad.”<sup>10</sup> Dirty. Half-breed. Drunken. These are the very stereotypes that colonizers have used to justify the slaughter of Native people. Each of these words also allowed for an act of cultural violence that Native people live with today. Dirty Indians are inferior to their white counterpart. They are children who need laws and treaties to tell them proper ways to live. A half-breed Indian is a stranger to any group. They deserve to be isolated. A drunken Indian is a buffoon who should be locked away in jail. These characterizations and stereotypes bolster paternalism by white people, create European models that brake up kinship structures, and criminalize Native Americans. At ten years old, Ogden felt hatred from her mother, but as she grew up, she would come to realize what these stereotypes would mean, and how they would translate to her incarceration through the intersections of race, gender, and class.

Ogden depicts one of the most brutal forms of abuse within prisons as inadequate medical care. Based on her experience, “Women are afraid that incompetent medical attention, more than the illness itself, will lead to death.”<sup>11</sup> Revealing the experience of her roommate exposes a frightening reality that women in prison face, and harkens back to women’s experience in the

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<sup>9</sup> Ogden, “Prisoner W-20170/Other,” 156.

<sup>10</sup> Ibid., 154.

<sup>11</sup> Ibid., 159.

missions. Her roommate Rita, a former drug addict, began experiencing stomach pains shortly before her release date. Her pains were so unbearable that Ogden would sit up with her as she cried through the night. The prison staff refused to help as they accused her of wanting free drugs. She hardly ate and often threw up often. After she was released, Ogden received an update on her condition, “We got word a few weeks after release that Rita was taken to the hospital, where she died on the operating table. The cancer had spread like wildfire; there was nothing they could do.”<sup>12</sup> Prison officials determined Rita was just a malinger, perhaps a “lazy” Indian like her ancestors. The ability of the PIC staff to define prisoners freely has devastating and deadly results. It bears witness to the way Native women are seen as expendable. These stories are obscured from mainstream society, much like the way the violence within California missions are omitted from historical accounts. Reporting on these stories should reveal the true nature of prisons. Unfortunately, given the misconstrued perception of prisoners as violent criminals and prisons as necessary to safeguard society from them, it might take more. The way Native people have been defined to justify colonialism is reflected in the stereotypes that persist today.

The Prison Industrial Complex, as defined by Angela Davis, is called so partly in response to the profits made by corporations off of prison labor. According to Davis, “Whether this human raw material is used for purposes of labor or for the consumption of commodities provided by a rising number of corporations directly implicated in the prison industrial complex, it is clear that black bodies are considered dispensable within the “free world” but as a major source of profit in the prison world.”<sup>13</sup> Ogden seeks to correct a misconception of the roots of

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<sup>12</sup> Ogden, “Prisoner W-20170/Other,” 159.

<sup>13</sup> Angela Davis, *Are Prisons Obsolete?* (New York: Seven Stories Press, 2003) 95.

prison labor and fractures the black/white binary, “While researchers have identified the origin of prison labor in the enslavement of African Americans in the southern states, the history of Indian slavery has been overlooked.”<sup>14</sup> Ogden reflects on the ways that during the eighteenth century, the Spanish and Mexican invaders viewed Indians as only useful for labor, which led to enslavement. This particular oppression, according to Ogden, was so severe that escape through alcohol or various other mind-altering means was common for survival. These modes of survival have been criminalized in various ways. Ogden details how the 1850 Act for the Protection and Government of Indians was utilized for this purpose, “A white man could pay the fine and costs of any Indian convicted of an offense punishable before a justice of the peace. Then, the Indian person was required to work for the white man until the fine was paid off.”<sup>15</sup> Stormy Ogden’s life experience mirrors the way her ancestors lived through that cycle of violence and racialization. Her oppression was based on her gender, race, and class. The stereotypes that defined her justified acts of colonial violence, such as rape, gunshots, and broken limbs. Her survival skills; drugs, welfare fraud, and living on the streets, were criminalized and she was forced into labor while incarcerated.

To recall another aspect of the 1850 Act, where impunity was granted for the mass murder of California Indian men, which led to the kidnapping, enslavement, sexual exploitation, and forced labor of California Indian women and children, Ogden, while being forced to labor while incarcerated, was also sexually violated. Specifically for Ogden, this occurred through daily searches, “Many women are victim’s of sexual abuse by staff (male and female). The abuse includes sexually offensive language and inappropriate touching of their breasts and genitals

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<sup>14</sup> Ogden, “Prisoner W-20170/Other,” 153.

<sup>15</sup> *Ibid.*, 153.



when conducting searches.” Searches are conducted after every meal and after visits with family.<sup>16</sup> Prisons today provide a space where the continued colonization of Native people can be safely harbored and women are routinely groped and sexually assaulted. Her experience is strikingly similar to “Emma” the young Kumeyaay girl who was purchased for labor by the Chase family, as well as thousands of California Indian women in the missions.

Rhetoric that allowed abuse when the Spanish arrived in California, “stories about savages, heathens, pagans, barbarians, and other, lesser, inferior beings” have only slightly changed so that European storytellers, anthropologists, historians, ethnographers, scientists, journalists, teachers, and parents have largely documented that period through a justified discourse.<sup>17</sup> Deborah Miranda wades through the archives to demonstrate how dangerous and violent these narratives are. Her deconstruction (and reconstruction) of coloring books, mission records, prayers, newspaper articles, official documents, journal entries, ethnographies, photographs, paintings, and letters, retell the story of this period. Deborah Miranda begins her story by using these numerous archives to document the vicious, abusive and complex history of California missions. She later transgresses into her personal family history, a history that represents the descendants of the twenty thousand survivors of the California missions. Her story, and the story of her ancestors, “create a space where voices can speak after long and often violently imposed silence”.<sup>18</sup> Story, for Miranda, “is the most powerful force in the world – in our world, maybe in all worlds. Story is culture. Story, like culture, is constantly moving”.<sup>19</sup> Miranda’s stories give voice to those who have been erased, fracturing the dominant discourse. Unfortunately, as

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<sup>16</sup> Ibid., 160-161.

<sup>17</sup> Deborah Miranda, *Bad Indians: A Tribal Memoir*, (Berkeley: Heyday, 2013), xvi.

<sup>18</sup> Ibid., xx.

<sup>19</sup> Ibid., xvi.

demonstrated through Miranda's family history, the legacy of the missions and dominant narratives have proven to be very powerful, and destructive. Miranda's depiction of the rapes, labor and abuse that took place within (and around) the missions, reveals the way California Indians were marked for enduring sexual violence. The sexual violence that persists today and the historical trauma that Native women bear from the sexual violence of their ancestors are part of the many constructs of the deviant behavior that leads to their mass incarceration.

One of Miranda's methodologies was to create poetry out of deconstructed narratives from Spanish Missionaries. This deconstruction imposes a Native woman's (re)telling of the violent archives in which Native women are silenced. In one such poem, Miranda uses Junípero Serra's writings, "We noticed a great flock of birds/swooping out of the heavens just ahead/such as we had never seen before/as if they came to welcome our newly arrived guests/ [...] Both men and women at the sight of them took to their heels/but the women were caught with Spanish ropes./The soldiers, clever as they were at lassoing cows/preyed on the women for their unbridled lust."<sup>20</sup> The use of poetry throughout her memoir depicts the dehumanizing language that called for colonial conquest through sexual violence towards women and the slave labor of men, or "human fuel" for the mission building project.<sup>21</sup> Miranda's poetry, stories, humor, and anecdotes, unveil the violence that took place during the mission era through an alternative perspective.

Over two hundred years after the mission era, Deborah Miranda is a six-year-old girl. Her father is in jail for rape and she is living with her mother. She is playing with a little boy. The little boy starts teasing Deborah so Deborah goes into her house and asks her mother for a butter

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<sup>20</sup> Miranda, *Bad Indians*, 3.

<sup>21</sup> *Ibid.*, 17.

knife to dig rocks out of the ground. She says, “I take the shiny blade and walk outside into the sun... I hold the knife to the boy’s thin brown throat. I tell him, “Don’t say that again.”<sup>22</sup> A year later she stands up to another boy who is teasing her and refuses to back down. In this way, Miranda has become a bad Indian. She speaks up for herself, she refuses to be abused by others. She is angry, but she hides it, “Nobody says anything about the sharp hungry part of me” she reveals, “Except Buddy”. Buddy is her mom’s “friend”. Miranda revels in the compliments adorned to her by Buddy, but would shriek when he would watch her undress. But Miranda is a bad Indian who deserves bad things. And she knows Buddy knows this. One night, Miranda writes, “Buddy’s wife sleeps hard, goes shopping the next day. It is here, in his house that night, and in the orchard the next day, that Buddy finally rapes me.... I can’t tell because there is nobody who wants to hear.”<sup>23</sup> This is a good Indian. Raped and silenced. The rage Miranda hid prior to that day in the orchard, seeped out of her and manifested itself in a lifetime of terror and loneliness. Her rage touched everyone around her, including her children. Deborah Miranda escaped the prison system, but by her own account, just barely. As seen through Stormy Ogden’s experience, the research done by Luan Ross, as told by Deborah Miranda, and as lived by countless Native women, many Native women who are survivors of sexual violence are revictimized through the prison system. Social and Cultural Studies Professor, Zeus Leonardo contends, “white supremacy is forged in the historical process. It does not form out of random acts of hatred, although these are condemnable, but rather out of a patterned and enduring treatment of social groups”.<sup>24</sup> Deborah Miranda’s storytelling clearly demonstrates the social and

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<sup>22</sup> Ibid., 109.

<sup>23</sup> Miranda, *Bad Indians*, 111 – 112.

<sup>24</sup> Noelani Goodyear-Ka’ōpua, *The Seeds We Planted: Portraits of a Native Hawaiian Charter School*, (Minneapolis: University of Minnesota Press, 2013), 25/

historical origins of certain behaviors. But her story does much more than that, “it was a move to ground present healing in a past properly understood, *felt*, and moved beyond.”<sup>25</sup> As a survivor of sexual violence, Deborah Miranda has demonstrated, through her felt experience that sharing one’s story and the stories of others exposes how sexual violence assists in colonization. At a talk Stormy Ogden gave to a UCLA class, Ogden explained that she felt alone in her fight.<sup>26</sup> She attributed this to a traditional culture in which Native women do not speak openly about injustices they have faced individually. Her story speaks to those women and allows for a dialogue that addresses acts of violence that occur to Native women.

Constitutive violence results from fostering a harsh environment (missions) that imposes certain actions and abjectifies the performing group or individual. Social Justice scholar, Sherene Razack describes the establishment of white settler society as structuring a racial hierarchy through, “the dispossession and near extermination of Indigenous populations by the conquering Europeans.”<sup>27</sup> She later expands on the formation of racial hierarchies as those that include gender and class hierarchies as they come into existence through patriarchy and capitalism. In the missions, patriarchy was established through the teachings of Catholicism, the division of labor, and the sexual violence towards women. Stormy Ogden’s experience of incarceration underscores how Catholicism, labor, and sexual violence are perpetrated through the PIC. Capitalism was seen through the sacrifice of Native bodies to construct buildings for future tourists to visit and the profit of Native corpses, “Involuntary labor by Indians was a crucial,

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<sup>25</sup> Dian Millon, “Felt Theory: An Indigenous Feminist Approach to Affect and History.” *Wicazo Sa Review*, 24, 2 (2009), 73.

<sup>26</sup> Stormy Ogden, 2010, “Indigenous Women and State Violence.” Lecture presented at University of California Los Angeles, May 12, 2010.

<sup>27</sup> Sherene Razack, *Race, Space, and the Law: Unmapping a White Settler Society*, (Ontario: Between the Lines, 2002), 1.

endemic part of California's Anglo-American economy."<sup>28</sup> The manifestation of racialized space must be understood both materially and symbolically. The adobe bricks, the clay, the bells, the carved doors, the mosaics, the Native skeletons, the mission itself; this is the material space. The symbolic comes from, "a social system where status derives from one's position in the means of production."<sup>29</sup> For California mission Indians, this literally occurred through the labor of their own prisons and cemeteries. The material produces the symbolic and results in "constitutive violence"; making possible subjects who are legitimate and who are not. For example, when a Native woman in the mission is a witness to the torture and murder of her family, becomes impregnated by her rapist and performs infanticide, she is then described (specifically by Padre Lasuen) as, "barbarous, ferocious and ignorant" and "requires more frequent punishment than a nation which is cultured, educated and of gentle and moderate customs."<sup>30</sup>

Razack refers to Foucault to think about the production of subjects in space. She describes his use of discipline and punishment as the tools of, "the establishment of states and citizen subjects". Razack describes discipline as that which makes subjects, but that making requires a "mechanism that coerces by means of observation". Surveillance allows the production of two kinds of bodies, "the normal and the abnormal body, the former belonging to a homogenous social body, the latter exiled and spatially separated."<sup>31</sup>

Later in her book, and later in history, Miranda shares personal stories about her physically and sexually abusive father. For her, "It is our father whose body is the source of the most precious part of our identity, and the most damning legacies of our history."<sup>32</sup> The social

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<sup>28</sup> Miranda, *Bad Indians*, 47.

<sup>29</sup> Razack, *Race, Space, and the Law*, 8.

<sup>30</sup> *Ibid.*, 11.

<sup>31</sup> Razack, *Race, Space, and the Law*, 11.

<sup>32</sup> Miranda, *Bad Indians*, 172.

production of space is seen through Al Miranda. His violent nature, not representative of his ancestors pre-contact, is indicative of how space produces bodies. The legacies of the physical and sexual abuse that occurred in the missions to his ancestors as well as Al's reproduction of such abuses shows, "how subjects come to know themselves in and through space and within multiple systems of domination."<sup>33</sup> Al's ancestors survived the missions, but their children survived boarding schools, reservations, slavery, and other forms of colonization that Al inherited.

What Miranda reveals by sharing the painful memories of her father is how this history has been internalized and the way has it seeped into the very being of many Native American families. While detailing the abuse lashed out by her father, Miranda writes, "those times, we tried to be very small, hide, but we would have had to be invisible to avoid his reach."<sup>34</sup> You can almost hear these same words spoken by young California Indian girls in the missions when a priest would walk into the room. It is in her life that Miranda knows her ancestors pain. It is with her rape as a seven-year-old girl, with the fist and belt of her father, the loss of her mother, grandparents, and siblings that Miranda knows her ancestors. Ultimately, Miranda's courage to speak out uncovers that despite violent victimization, it is through the courage of her ancestors that Miranda comes to know herself.

The archives that Miranda uses throughout her book, coloring books, mission records, prayers, newspaper articles, official documents, journal entries, ethnographies, photographs, paintings, and letters, allow for an understanding of how modalities of knowing materialized. Since then, many historians have referenced these and similar archives to tell a different story

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<sup>33</sup> Razack, *Race, Space, and the Law*, 17.

<sup>34</sup> Miranda, *Bad Indians*, 168.

than Miranda does, one that informs imperial knowledge. Many anthropologists have mirrored a colonial sentiment and have shared research that further marked Native peoples as the Other. Anthropologist Audra Simpson discusses the consequences that linger today from such accounts; specifically, how law is formed based on this “knowledge”. The false perceptions of what occurred through colonization are used, “to claim, to define capacities for self-rule, to apportion social and political possibilities, to, in effect, empower and disempower Indigenous peoples in the present.”<sup>35</sup> These histories have informed theories which then, “emboldened the laws of nation-states.” The ideology and the violence that predicated the formation of the nation-states robbed Native people of their legal rights. Simpson remarks, “and so it is that concepts have teeth and teeth that bite through time.”<sup>36</sup>

Laws have continued to create criminals and constitutive violence criminalizes gendered and racialized bodies for actions that are almost impossible to avoid. As noted, California’s 1850 Act for the Government and Protection of the Indians made it legal to arrest Native people for public intoxication and allowed for white people to bail them out of jail. In return, Native individual had to work off their debt. As an extra bonus, the white debtor would then supply them with alcohol. This is criminalization through constitutive violence and continues today through ongoing sexual violence and criminalization. With the proliferation of prisons and laws that are designed to protect white racial hierarchies, Native peoples are at a particular disadvantage. Scholar Lisa Marie Cacho theorizes these bodies as “ineligible for personhood – as populations subjected to laws but refused the legal means to contest those laws as well as

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<sup>35</sup> Audra Simpson, “On Ethnographic Refusal: Indigeneity, ‘Voice’, and Colonial Citizenship”, *Junctures: The Journal for Thematic Dialogue*, 9, (2011), 69.

<sup>36</sup> Simpson, “On Ethnographic Refusal”, 69 – 70.

denied both the political legitimacy and moral credibility necessary to question them.”<sup>37</sup> Being ineligible for personhood, Cacho argues, is a form of social death, creating a space, “of living death and populations dead-to-others”.<sup>38</sup> Similar to constitutive violence, social death is also the criminalization of individuals that, “can operate through instituting laws that cannot be followed [...] because U.S. laws targets their being and their bodies, not their behavior.”<sup>39</sup> As spaces became racialized, laws were created from an invisible privilege. Razack points out, “although whiteness was an empty category, white settlers came to know themselves from what they were not, a process to which Indian-ness was central.”<sup>40</sup> This becomes particularly problematic for Native women. Miranda points out that three-fourths of native women are sexually assaulted, with ninety percent of perpetrators being non-Native. Being marked as inherently rapeable, has far-reaching consequences within the modern legal system. For one, laws such as Public Law 280 protect the perpetrators by setting up state authority over criminal activity and violence. Within this system, there is a lack of response to violence against women. On the other hand, Native women become criminalized through the very behaviors and skills associated with survivors of sexual abuse (sex work, drug and alcohol abuse, homelessness, etc.).

Miranda deconstructs her historical sources and in the process decolonizes the archives. Writing, telling, and sharing stories does the same, “maybe it’s each woman telling her truth in a language forged from every knife held to her throat, or wielded in self-defense.”<sup>41</sup> Writing is a decolonizing tool that gives her permanence in a place that is always trying to erase her. Her

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<sup>37</sup> Lisa Marie Cacho, *Social Death: Racialized Rightlessness and the Criminalization of the Unprotected (Nation of Nations)*, (New York: New York University Press, 2012), 6.

<sup>38</sup> Cacho, *Social Death*, 7.

<sup>39</sup> Cacho, *Social Death*, 6.

<sup>40</sup> Razack, *Race, Space, and the Law*, 54.

<sup>41</sup> Miranda, *Bad Indians*, 118.



writing gives permanence to the nine hundred and eighty thousand who were murdered, and to her ancestors who survived. Miranda found a letter written by a J.P. Harrington, an ethnologist/linguist, in the Smithsonian archives that tells a story about a young girl named Vicenta and was disclosed to him by a California Indian woman named Isabel Meadows. Vicenta was raped by a priest, Father Real, and after, went running home and told what had happened. Shortly after, Father Real disappeared, “erasure is a bitch, isn’t it?”<sup>42</sup> Vicenta told. Someone who heard her was proud enough of her so she told. It was told so often that one hundred years later Isabella told. Miranda told, and now I am telling. Vicenta’s permanence prevails. This is the power of writing, telling, and sharing stories. Decolonization can begin with healing, and stories heal.

Stormy Ogden’s personal accounts and connection to California history and Deborah Miranda’s personal memoir, poetry, historical depictions of the California missions, and presentations of colonial archives are all x-marks. Professor of Native American Studies, Scott Lyons (Ojibwe) uses the metaphor of an x-mark, which was at once a treaty signature that signified Native peoples legal assent, to describe the modern endeavors that Native peoples engage with today.<sup>43</sup> X-marks are unintended positive outcomes that are a result of a negative event, it’s “making the best call you can under conditions not of your making.”<sup>44</sup> These negative events tend to be a consequence of colonialism. As Lyons points out, “X-marks are always made in the political context of discursive formations that never emanate from organic indigenous communities.”<sup>45</sup> Ogden and Miranda’s narrations of these events reveal a complex history that is

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<sup>42</sup> Miranda, *Bad Indians*, 25.

<sup>43</sup> Scott Lyons, *X-Marks: Native Signatures of Assent (Indigenous Americas)*, (Minneapolis: Regents of the University of Minnesota, 2010).

<sup>44</sup> Lyons, *X-Marks*, 70.

<sup>45</sup> *Ibid.*, 24.

responsible for the violence that is seen through and inflicted on Native peoples today. They hold this history accountable but also show a personal accountability to themselves, their family, and their community. Ogden and Miranda's awareness of this accountability and their inspiration to do so for others is their x-mark. This is the power of writing, telling, and sharing stories. Sharing stories of survival, speaking out and destabilizing the historical logics of a legal system that protect white people's location of privilege are crucial tools for healing. In this sense, bad Indians such as Deborah Miranda, Stormy Ogden, and Vicenta, who expose these issues through storytelling and inspire others to do so are like wild flowers that emerge through the bones of their ancestors.



## Conclusion

It has to be something in our blood  
Or something in our song  
It has to be something in our soul  
That makes Native Women strong  
-Jayci Malone (Stockbridge-Munsee Mohican)

Luana Ross argues, “Twentieth-century laws and their enforcement can readily be seen as instruments for creating and maintaining social and economic stratification created centuries before.”<sup>1</sup> In California, sexual violence did not become rampant until Spanish priests and soldiers arrived. California Indians were gendered and racialized through sexual violence and those legacies continue today. Native peoples were forced on reservations where legislation was constantly shifting to protect perpetrators of sexual violence. Many factors, including assimilationist policies, contributed to the mass relocation of Native peoples who flocked to urban areas where they faced similar vulnerabilities under different conditions. The logics of containment and elimination that has been traced throughout this paper is best seen today through the prison industrial complex. The PIC is a manifestation of settler colonialism and as demonstrated, impacts Native women much like the California missions did nearly one hundred and fifty years ago. The voices of many Native women have been presented throughout this paper to demonstrate these ongoing logics. It is also Native women’s voices that offer the solutions to social change.

Native peoples have been silenced in various ways. This can sometimes be attributed to criminalizing Native belief systems, practices, and identity, forced assimilation, and internalized

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<sup>1</sup> Luana Ross, *Inventing the Savage: The Social Construction of Native American Criminality* (Austin: University of Texas Press, 1998), 267.

colonization. The different forms of oppression that have been mentioned throughout this paper are demonstrative of the fear colonizers have of Native mobilization. Native voices banded together would reveal history as it actually happened. This could potentially collapse the foundation of colonialism. It would uproot and expose the true savages and the lies that the United States is predicated on.

Ogden's later disclosure of what she feels is solitary work on behalf of Native women prisoners makes clear that something outside of their culture is keeping other women from speaking up. If traditional Native values promote collectivism rather than individualism, then why are there not more Native voices sharing their experiences? It seems containment and elimination have been a constant reminder of visibility for Native peoples, and more particularly, Native women.

Dian Million reveals how the legacies of colonization are reflected in the violence that Native women face today, which includes these modes of silencing.<sup>2</sup> Million calls on tribes to exercise sovereignty in ways that focus on the foundational conditions that contribute to this type of violence. Million also contends that victims of abuse become more entwined with policing and imprisonment and refers to the significance of speaking out so that Native women have a platform for making the colonial conditions of their life known, which is exactly what Deborah Miranda and Stormy Ogden have done. For Million, one of the goals of speaking out is to dismantle the colonial structures that are contributing to the violence of Native women. As mentioned in the Introduction, Million also contends that her concept of "Felt Theory" challenges settler colonial "truths" which deny Native peoples visibility when Native women apply their emotional knowledge and acknowledge their own

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<sup>2</sup> Dian Million, *Therapeutic Nations: Healing in an Age of Indigenous Human Rights*. (Tucson: University of Arizona Press, 2013).

existence through a framework of intersectionality.<sup>3</sup> Felt theory addresses both lived experiences and feelings that have evolved from historical trauma.

Author Charlene LaPointe (Lakota) notes, “We desperately need women who are in the thriving stage of their recovery from incest and sexual abuse. We need healthy Native women who can go straight into the minds, emotions, and souls of our women and children to teach them how to revive their own spirit.”<sup>4</sup> LaPointe also refers to traditional healing practices that helped her heal after being repeatedly sexually violated throughout her life, starting at a young age. She writes, “The single most powerful influence that helped me regain my sanity and sense of spirit was the *Inipi*, our purification ceremony that cleanses and renews our spirit.”<sup>5</sup> Another detrimental aspect to eradicating sexual violence is to not only rely on Native women’s voices, experiences and feelings, but to also illuminate the roles of Native women in their communities. For LaPointe, this means to keep natural tribal women teachings intact, such as, “woman healing tears; woman ceremonies; woman touch; woman intellect; women language woman song; woman spirit. We can heal wounds inflicted from the sharp edges of a nontribal, linear world.”<sup>6</sup>

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<sup>3</sup> The feminist theory of intersectionality was introduced by Kimberly Crenshaw who argues that women of color experience violence that is shaped by many dimensions of society such as race, class, gender, sexuality, as well as experiences of colonization. Crenshaw suggests that “ignoring difference within groups contributes to tension among groups [...] Feminist efforts to politicize experiences of women and antiracist efforts to politicize experiences of people of color have frequently proceeded as through the issues and experiences they each detail occur on mutually exclusive terrains.” See Kimberly Crenshaw, “Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color,” *Stanford Law Review*, 43, no. 6 (1991): 1241-1242.

<sup>4</sup> Charlene LaPointe, “Sexual Violence: An Introduction to the Social and Legal Issues for Native Women,” in *Sharing Our Stories of Survival, Native Women Surviving Violence*. Eds. Sarah Deer, Bonnie Clairmont, Carrie A. Martell and Maureen L. (White Eagle: Altamira Press, 2008), 43.

<sup>5</sup> *Ibid.*, 43.

<sup>6</sup> LaPointe, “Sexual Violence,” 44.

The story of Deer Woman and others like it, need to be (re)evaluated and (re)imagined in all communities that are impacted by sexual violence. Sarah Deer notes, “As ancient sovereign nations, we must look to our histories, beliefs, resources, and experiences to reclaim safety and empowerment for all women.”<sup>7</sup> And also adds, ”Stories, ceremonies, and spiritual teachings have always played a central role in indigenous responses to crime. When determining the best way for any particular community to respond to sexual violence, it will be beneficial to revisit some of these stories and beliefs.”<sup>8</sup>

Prison abolition can work to abrogate the lasting effects of colonialism on Native peoples. This includes sexual violence that functions today as a way to maintain elimination and containment through the PIC. Some of the goals of abolitionists include exposing the injustices that occur behind bars, alternatives to prison that look outside of the use of punishment, implementing social programs that can offer relief from poverty-related issues, and reversing the impact of the PIC on our world.<sup>9</sup> Native experiences of victimization and criminalization exacerbate the need for this kind of work. Critical Resistance is an organization that works towards prison abolition. One aspect of their mission suggests, “The success of the movement requires that it reflect communities most affected by the PIC”.<sup>10</sup> Native American communities are one of the most affected by the PIC. The logics of containment and elimination have demonstrated that violence against Native women is constantly adapting in innovative ways to remain justified and legal. Thus, the success of prison abolition depends on decolonization.

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<sup>7</sup> Sarah Deer, “Towards an Indigenous Jurisprudence of Rape,” *Kansas Journal of Law and Public Policy*, 14 (2004), 143.

<sup>8</sup> *Ibid.*, 140.

<sup>9</sup> Angela Davis, *Are Prisons Obsolete?*. (New York: Seven Stories Press, 2003), 111.

<sup>10</sup> Critical Resistance, “Critical Resistance,” *Critical Resistance*, accessed April 14, 2015, <http://www.criticalresistance.org>.

Centering Native Americans in the discourse that surrounds prison abolition is imperative, as the PIC can be partially, and significantly, understood through colonial tactics that were developed to eliminate and contain Native peoples. Additionally, abolitionists borrow from traditional Native law to suggest alternatives to the PIC. For example, Angela Davis proposes the adoption of a model that uses strategies of reparation, rather than retribution.<sup>11</sup> She suggests restorative justice models that employ approaches to justice and democratic possibilities.<sup>12</sup> Anti-violence activist and Cultural Studies Professor Andrea Smith describes the restorative justice model with a more thorough depiction. It involves that the perpetrator, the victim, and community members appropriate the most effective response to the crime committed. The intended result is healing the victim and the perpetrator. Each member involved in the process participates by holding the perpetrator accountable.<sup>13</sup> In order for this approach to be implemented it is important to understand that while it was successful prior to European arrival, much has changed since then. Rather than just borrowing models that were once used by Native people, studying the societies that allowed for the success of restorative justice is necessary. For example, Smith also points out, “if a Native man rapes someone, he subscribes to white values rather than Native values, because rape is not an Indian tradition.”<sup>14</sup> Analyzing what those Native values were (are) and how to apply those values to non-Native societies can begin the process of decolonization.

Sarah Deer analyzes The 1934 Indian Reorganization act and the ways in which tribal governments fostered an Anglo-American model that replaced legal systems of oral traditions. In this case, laws became dictated by the government, not the voices of women who have been victimized. This approach

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<sup>11</sup> Davis, *Are Prisons Obsolete?*, 113.

<sup>12</sup> *Ibid.*, 114.

<sup>13</sup> Smith, *Conquest*, 140.

<sup>14</sup> *Ibid.*, 142.



puts victims in the position to have to face the perpetrator in order for the case to move forward. The person with the most rights is the perpetrator, the only right granted to the victim, is the right to remain silent. This is in contrast to traditional communal systems of justice which, favors a group or family response to violence as opposed to an isolated, individual response.”<sup>15</sup> Many Native people worry that long-term incarceration with no possibility of rehabilitation is not the proper way to hold perpetrators accountable. Deer also worries about the reality of actually rehabilitating sexual assault offenders. She recommends that, “a Native feminist model of justice must address the long-term consequences of sexual violence, keeping in mind the nature of predatory behavior and the likeliness of recidivism.”<sup>16</sup>

Many scholars of Indigenous law suggest the Peacemaking model because it includes talking circles, family meetings, and restorative principles, all of which are reminiscent of traditional Native practices. Deer believes that this approach may offer an appropriate solution to smaller scale crimes. However, applying the Peacemaking model to felony cases such as sexual assault poses many problems. Peacemaking has offered isolation as a consequence for perpetrators of sexual assault. However, simply isolating the perpetrators from the victim minimizes the emotional, intellectual, and spiritual scars that victims are left with. This obviously leaves the perpetrator in a position to freely commit offenses on others. Safety, coercion, excusing criminal behavior, and recidivism are other possible consequences of the Peacemaking model. Additionally, requiring survivors to face the perpetrator in an informal setting can re-victimize the survivor and compromise their feelings of safety. It also puts pressure on the victim to feel as though she is responsible for the perpetrators ability to understand the gravity of the actions.

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<sup>15</sup> Smith, *Conquest*, 154.

<sup>16</sup> *Ibid.*, 155.

They may feel pressure to make peace with her or his rapist. Deer believes, “A Native feminist analysis requires accountability and responsibility rather than acquiescence and acceptance.”<sup>17</sup>

Deer suggests two recommendations as starting points for tribal communities, “The first, a civil protection order process, which allows a victim of sexual assault to obtain a protection order against her assailant. The second recommendation concerns criminal courts to some extent but goes further by suggesting a re-examination of the nature of contemporary criminal jurisprudence.”<sup>18</sup> She looks at an alternative that is used in South Africa, where rape courts are designed to focus solely on sexual assault crimes. Judges and lawyers receive specialized training in regards to sexual violence. She acknowledges that there still remains a problem with the ability to bring non-Native perpetrators to courts that are on tribal lands. Social change work is also paramount to addressing the rape epidemic that Native women face. Centering the recommendations of Native women who have been exposed to sexual violence can improve the communities’ response. Additionally, “community activism, speak-outs, and public education” can shape the way the community understands the importance of this crisis.<sup>19</sup>

Rethinking prison abolition in terms of settler colonialism also means healing the perpetrator by listening to their individual and collective history. While prison abolition seeks to decriminalize women’s survival strategies, it is also important to correct the social structures in play that lead to these strategies. These should be done in the context of dismantling colonization. Reframing questions to address one of the roots of the PIC as an extension of settler colonialism should create the foundation for abolitionists.

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<sup>17</sup> Sarah Deer, “Decolonizing Rape Law: A Native Feminist Synthesis of Safety and Sovereignty”, *Wicazo Sa Review* 24, no 2 (2009), 159.

<sup>18</sup> Deer, “Decolonizing Rape Law”, 162.

<sup>19</sup> *Ibid.*, 164.

A book entitled, *Instead of Prisons: A Handbook for Abolitionists* states, “If researchers went from community to community in the poor urban centers of our nation, there is little doubt that the shopping lists for resources and services would be very similar.”<sup>20</sup> This is untrue. A Native feminist analytic reveals that this type of statement universalizes the issues that all prisoners face. The only way to affect the communities that are most directly impacted by the PIC is by looking at the intersectionality that Native American women, and all people of color, face as well.

Andrea Smith, who has been a supporter of Critical Resistance since its conception, goes into meticulous depth providing strategies that examines interpersonal acts of gender violence that simultaneously address state violence.<sup>21</sup> Some of the strategies include: anchoring violence against women within the larger context of racism, colonialism, and inequality, restorative justice and peacemaking, develop accountability strategies that ensure safety for survivors, and emphasizing base-building approaches that view victims of domestic violence as potential organizers rather than clients. She also recommends expanding our definition of community, building transnational relationships, and organizing outside of the “nonprofit industrial complex”. The idea behind restorative justice is particularly important when the affects of the criminal justice system on Native peoples are taken into account. Restorative justice is an “umbrella term that describe a wide range of programs which attempt to address crime from a restorative and reconciliatory rather than a punitive framework.”<sup>22</sup> It involves all parties in determining the appropriate response to a crime. Decentering criminalization from the analysis that targets violence in Native communities is key. Lastly, Luana

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<sup>20</sup> Fay Honey Knopp, Barbara Boward, Mark Morris, and Morris Bartel Schnapper. *Instead of Prisons: A Handbook for Abolitionists*. (Syracuse: Prison Research Education Action Project, 1976), 168.

<sup>21</sup> Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005).

<sup>22</sup> Smith, *Conquest*, 139.

Ross contends, “One way tribes can exercise their sovereign rights, and thereby regain control over their communities and nations, is to design and direct rehabilitative programs.”<sup>23</sup> Again, centering Native women in this analysis opens up approaches that can address interpersonal, state, and structural violence.

External systems of justice need to be excluded entirely from the theory and practice of law and order that is thought to address the astronomical rates of sexual violence that impacts Native women, both on and off the reservation. If the carceral state relies on sexual violence as part of its ability to sustain itself, then working to eradicate sexual violence could begin to dismantle the foundation of the carceral state. This can be done by analyzing the suggestions listed above in tandem with encouraging Native women to define one’s self in the context of empowerment through storytelling as potential ways of both prevention and healing that should be explored. Understanding the place of courage that inspired the two young girls who were raped by three soldiers in 1773, Vicenta, Stormy Ogden, and Deborah Miranda to share their stories of survival may offer solutions for many Native women to do the same. It is time to reverse the social and economic stratifications that began in the California missions that are maintained today through the prison industrial complex.

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