Injustice in Indian Country

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Jurisdiction, American Law, and Sexual Violence Against Native Women

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To all missing and murdered women
To survivors
And to all those who fight for justice

CHAPTER ONE

Introduction

> We, collectively, find that we are often in the role of the prey, to a predator society […] This occurs on an individual level, but equally, and more significantly on a societal level.
>
> —Winona LaDuke (Anishinaabe)[1]

Lavetta Elk[2] (Oglala Lakota) grew up on the Pine Ridge Indian Reservation in Wounded Knee, South Dakota.[3] Her life-long ambition was to join the U.S. Army. Hoping to follow in the footsteps of her grandfathers, uncle, and brother who had all served in the military, she stated that she "had a dream of being the first woman in our tiyospaye, in my family, to serve in the army."[4] Lavetta was an excellent student and received a full scholarship at Rockhurst University where she studied medicine in hopes of becoming a nurse in the army. In preparation for a military career, she requested enlistment information and Staff Sergeant Joseph Kopf was assigned to work with her. Although Ms. Elk was planning to finish college before enlisting, information from Sergeant Kopf that there was an opening for a medic position helped sway her decision to drop out of college and return home to Pine Ridge. Ms. Elk returned home and on December 17, 2002, was driven by Sergeant Kopf to Sioux Falls, South Dakota where she underwent a physical examination. After returning home, Sergeant Kopf congratulated Ms. Elk, informing her that she had passed the physical and had been accepted into the military.

On January 7, 2003, Sergeant Kopf arrived at Ms. Elk's home in a government vehicle. He informed her that her paperwork had been lost and that she needed to come with him to resubmit her height and weight. Ms. Elk went with Sergeant Kopf as she had done before. This time, however, Sergeant Kopf did not take her to Sioux Falls. Instead, he drove to a remote part of the reservation, locked Ms. Elk in the car, and sexually assaulted her. There had been no medic position in the army. In reality, Ms. Elk had failed her initial physical examination and had never been accepted into the military.

Ms. Elk survived the attack, but was severely traumatized. In the days following the assault, her family stated that she cried hysterically, took frequent showers, became withdrawn, and severely depressed. She experienced vomiting, insomnia, nightmares, loss of appetite, and body aches. Later, medical experts confirmed that she suffers from Post Traumatic Stress Disorder and depression as the result of the attack.

After Ms. Elk was attacked, she immediately reported the assault to tribal police who took a statement. Because Ms. Elk is Native, but Sergeant Kopf is not, American law prohibited tribal police from prosecuting him. Instead, their only option was to refer the case to federal prosecutors. On April 8, 2003, the United States Department of Justice declined to prosecute Kopf. On April 18, 2003, the U.S. Army found that Sergeant Kopf had "commit[ted] an indecent assault […] with intent to gratify [his] sexual desires." Despite this, Sergeant Kopf was not prosecuted in military court. He was not even discharged from the U.S. Army. Instead, he was punished with a reduction in rank from Staff Sergeant to Sergeant and was transferred out of the area for three months.

Despite the military's own admission that Sergeant Kopf did, in fact, sexually assault Ms. Elk, both the U.S. government and military refused to prosecute him. Today he is a free man, employed by the federal government. Like the majority of Native women who have been sexually assaulted by non-Native men in Indian country, Lavetta Elk never saw her perpetrator prosecuted. Unlike other women, however, she did get her day in court. While federal declination prevented Kopf from being prosecuted in criminal court, Ms. Elk pursued a civil case. She sued the United States of America for damages from the assault. She is the first Native individual ever to do so.[5] And she won.

On April 28, 2009, in *Lavetta Elk v. the United States,* a federal judge awarded Ms. Elk $590,755.06 in damages. To win her case, Ms. Elk leveraged the 1868 Fort Laramie Treaty[6] that states:

> If bad men among the whites, or among other people subject to the authority of the United States shall commit any wrong upon the person or property of the Indians, the United States will […] reimburse the injured person for the loss sustained.[7]

Because Ms. Elk is an enrolled member of the Oglala Lakota Nation, she is a beneficiary of the Fort Laramie Treaty. In *Elk v. U.S.*, Judge Francis Allegra noted that the climate of the era in which the Fort Laramie Treaty was signed was one marked by extreme cases of sexual violence against Native women. Citing the Doolittle Report of 1867, which documented the epidemic of sexual assault and mutilation of Native women and children by white Army officers, Allegra noted that the Native signatories of the Fort Laramie Treaty most likely intended passages like the one above to be used to specifically protect Native women from the sexual assault of "bad men among the whites" who clearly posed an incredible danger to Native women at the time. Significantly, just as the treaty was crafted to protect Native women in the 1800s from the predatory violence of white men, it continues to be leveraged to protect Native women from the predatory violence of "bad men among the whites" today.

Like countless other women, the challenge of prosecuting non-Native on Native crime in Indian country contributed to the declination of Ms. Elk's case by federal prosecutors. As Kopf turned his car away from Sioux Falls and instead towards tribal land, he dramatically increased his chances of sexually assaulting Ms. Elk with impunity. And this turned out to be the case. Because Kopf isn't Native, he was immune from tribal jurisdiction. And because both the federal government and the army declined to prosecute him, he will most likely never face criminal charges for his actions. The message sent from both the federal government and the U.S. military's refusal to prosecute Kopf is that what happened to Ms. Elk simply doesn't matter. Though clearly acknowledging that Kopf sexually violated Ms. Elk, the army appeared to value his service more than the experience of Ms. Elk or the lives of all of the women that he will be sure to encounter as a representative of the U.S. Army.

Ms. Elk's experience exemplifies the complex and multilayered phenomenon of sexual assault against Native women in Indian country. On the surface, her story highlights the predatory nature of non-Native assailants who exploit jurisdiction to prey on Native women. Sergeant Kopf is a non-Native man who singled out a Native woman living in Indian country. Ms. Elk entered Sergeant Kopf's vehicle as the result of a plan carefully fabricated by him in order to lure her into his custody. Once Ms. Elk was in his car, he chose to assault her in a remote area of the reservation. Rather than driving to Sioux Falls as they had before, Kopf avoided state land and instead chose to assault Ms. Elk on the reservation, thereby leveraging his privileged racial status to escape prosecution.

But beyond the assault of one man against one woman, the story of Ms. Elk tells a much deeper and nuanced story. Not only was this a predatory sexual attack

by a non-Native perpetrator against a Native woman carried out on Native land, but it was also done by a representative of the federal government using government property. Using his power as an officer in the U.S. Army, as well as equipment furnished by the federal government (in this case a military vehicle), Sergeant Kopf's sexual assault of Ms. Elk brings the history of American colonial expansion into the present moment.

In the case of Lavetta Elk, the entire narrative of Euro-American colonization was both literally and figuratively inscribed on her body. The creation of the United States as we know it was made possible through the violent relocation of Native people—including Lavetta's ancestors—to reservations.[8] This violent process was legitimated both through a legal system that viewed Native people as problematic and in need of removal, and through social discourse that constructed Native women as inherently rapable and violable.[9] Rape was a central tool in the relocation of Native people and the creation of reservation land. Yet—in brutal irony—it is specifically *because* Ms. Elk is a Native woman living on Native land, that her assault went unpunished. As such, her case demonstrates the ways that the violence of colonization continues to manifest in Native communities and inscribe violence onto the bodies of Native women.

While Lavetta Elk's assault reveals a deeper history of American colonialism, so too does her activism and personal agency. Just like her ancestors who fought and died to codify their sovereignty, Ms. Elk carried a long tradition of Native resistance into the present by leveraging treaty rights to exert agency in the face of adversity. And in that way, despite the message that was sent by the declination of her case, the message sent by the ruling in *Elk v. U.S.* might speak even louder. From Ms. Elk's victory we can see that Native women and Native communities can subvert colonial power structures to shape their own lives. And though treaties have often been used as a method to oppress Native people (as colonial tools that legitimated U.S. conquest and Indian relocation, and later as documents that were abrogated under continued colonization) *Elk v. U.S.* demonstrates that despite their tenuous history, Native treaties are still legally binding and can be used strategically by the Native community. Operating from this standpoint, and setting a precedent that Native individuals can sue for damages, Ms. Elk has cleared a path for lawsuits that use treaties to address the myriad ways that Native individuals and communities endure lasting pain from historic and contemporary colonization.[10, 11]

The bravery of Ms. Elk to come forward, endure a public trial, and fight for reparations for this traumatic experience has been widely celebrated. Native and non-Native communities alike have applauded this victory as being one for sexual assault survivors, Native women, and Native communities as a whole.[12] According to many in the Native community, this case not only gave Ms. Elk a sense that

justice has been served, but also sent an important message to the American public that treaties are still the law of the land and that Native people have the right to sue for pain and suffering under them.[13]

Despite being hailed as a great victory for Native women and the Native community, we must also problematize notions of "justice" and "victory" in *Elk v. U.S*. While Ms. Elk was able to leverage the Fort Laramie Treaty to receive compensation for pain and suffering, Kopf himself was never prosecuted. The federal government and the U.S. Army's failure to pursue the case still sends a powerful message about violence against Native women, and illustrates the impunity with which non-Native men may assault them. After all, Kopf did not pay for his crime—the United States of America did. What many call "justice" for Ms. Elk was in reality *reparations* for an assault that had already been committed. Perhaps true justice for Ms. Elk and others would go beyond reparations or even prosecution. Perhaps true justice would be shaping a world in which sexual violence is not an epidemic within Native communities at all.

Injustice in Indian Country

Violence against Native women is not traditional. Before Europeans arrived in what is now known as the United States of America, sexual violence against Native women was virtually unheard of.[14] In the rare instances in which it did occur, Native communities used their own functioning justice systems to swiftly address the perpetrator and restore balance to the community.[15]

Today, rates of sexual violence against Native women exceed any other demographic in the United States. According to the U.S. Department of Justice, Native women are 2.5 times more likely to be raped than any other woman in America, and 34.1% of Native women will be raped in their lifetimes.[16] While there are no statistics that describe the rates of violence in Indian country specifically, some sources indicate that rates of sexual violence on many reservations are, in fact, much higher than statistics for Native women in general. In some communities, rape has become the number one reported crime.[17] In other Native nations, informal polls in rural areas indicate that up to 100% of Native women interviewed have experienced sexual assault at least once in their lifetime.[18] Referring to the statistic that one in three Native women will be raped in their lifetime, Native journalist Mary Annette Pember notes, "I and all the Indian women I know want to know, however, who those other two women are who haven't been assaulted—because we've never met them. The truth is that it's been open season on Indian women for a very, very long time."[19]

Understanding how sexual assault has transitioned from being virtually non-existent to reaching epidemic levels in Indian country in which it is "open season" on Native women, requires us to confront the project of Euro-American colonization. While westward expansion forced Native people onto the reservations, rancherias, and pueblos that compose modern Indian country,[20] the U.S. federal government also created a series of complex, contradictory, and competing laws that govern who has the authority to manage the people and activity within these spaces. Because of this, when a Native woman is sexually assaulted in or around Indian country, her experiences of the attack and visions for justice are rarely centered by the response of the modern American criminal justice system. Because of the complexity of modern criminal jurisdiction in Indian country, police often marginalize the lived experiences of survivors to instead focus on the jurisdictional determinants of their investigations.

In Indian country, investigating authorities must not only determine the exact location of an assault, but they must also determine the racial identity of both the perpetrator(s) and the victim(s) as well as their relationship to each other and to the community as a whole in order to conclude who has the power to prosecute. Given complicated systems of land ownership in Indian country, as well as unclear definitions of racial identity and relationship status, the challenge of determining these factors often leaves authorities unsure of who has jurisdiction over any given case.[21]

As a result of this complicated system of jurisdiction, sexual predators have learned that Indian country is the most opportune place to prey on women.[22] Non-Native sexual predators like Sergeant Kopf realize that their chances of assaulting someone with impunity dramatically increase when they specifically target a Native woman in Indian country. Here, not only does a complicated system of jurisdictional authority create confusion, but the nature of current jurisdictional law also privileges non-Native identity while simultaneously oppressing Native identity. In Indian country, tribal police are often the only law enforcement agencies for hundreds of miles, yet jurisdictional law makes tribal governments powerless to prosecute most non-Native perpetrators. And, while jurisdiction is relatively straightforward for *non*-Native women who are assaulted in Indian country (with jurisdiction defaulting to the state), the sexual assault of a *Native* woman signals the involvement of three (or more) separate sovereigns. When a Native woman is assaulted, jurisdiction may go to the federal government, the state government, the tribal government, or a combination of the three (and—as in *Elk v. U.S.*—in some cases the military may also step in as a fourth sovereign entity). Determining which combination can be extremely complicated. Often, multiple sovereigns compete for jurisdiction, compromising the

investigation of each as evidence is mishandled and perpetrators flee. Alternatively, no sovereign chooses to become involved in the investigation because of real or perceived jurisdictional barriers.[23] Therefore, jurisdictional conflicts do not simply create a climate of impunity in Indian country for men who prey on women in general. Instead, American jurisdiction creates a space in which *non*-Native men often specifically target *Native* women for sexual violence.

As a result, not only do Native women in Indian country have the highest rates of victimization in the nation, they are also the least likely demographic to have their cases of sexual assault investigated, see their perpetrators arrested, and have their cases go to trial. Additionally, while the vast majority of women who experience sexual violence report their attackers as being of the same race, Native women are the one glaring exception.[24] Instead, 86% of Native women who are raped describe their attacker as a non-Native man, and 80% of Native women who survive sexual assault report that their attacker is white.[25, 26]

Native scholar and activist Winona LaDuke tells us that Native women are often in the role of prey to predators.[27] This is clearly illustrated by the climate of impunity in Indian country in which Native women are specifically targeted. However, LaDuke also reminds us that this predation occurs on "an individual level, but equally, and more significantly on a societal level." When a non-Native man specifically targets a Native woman in Indian country for sexual assault because jurisdictional conflicts allow him to, we must contextualize these conflicts in a larger narrative of predatory violence that occurs on a societal level. Rather than occurring as an *individual* pathology in which sexual predators manipulate jurisdiction to get away with sexual assault, jurisdiction in the prosecution of sexual violence against Native women must be read as part of a *colonial* pathology that has *always* constructed Native women as inherently rapable and violable.

As this book will show, Euro-American colonization has always been characterized by both legal and sexual violence. Since first contact, law has been used as a means to legitimate the theft of Native resources and control Native communities.[28] Similarly, the construction of Native women as inherently rapable by white men has also been used as a weapon in the colonial project that seeks to disappear Native peoples as a whole.[29] So important were both legal and sexual violence to the project of American colonization that they, in fact, became enmeshed. Throughout the history of Euro-American colonization, sexual violence became central to federal law and policy, while federal law and policy itself became structured by the logic of sexual violence.

Significantly—and not coincidentally—it is at the crossroads of both legal and sexual violence that we find jurisdictional conflicts in Indian country today. Legal violence that legitimated the dispossession and relocation of Native peoples,

coupled with sexual violence against Native women as a tool of colonization, has created Indian country as we know it.[30] And today, it is in these colonial spaces that federal Indian policy has made it exceedingly difficult to prosecute sexual violence against Native women. Today in Indian country, sexual assault becomes a twice-told tale of colonial violence: the history of colonization which became possible because of the rape of Native women by white men, continues—through jurisdictional conflicts—to construct colonial spaces in which Native women are again sexually assaulted by non-Native men with impunity. In this way, we must read modern jurisdictional conflicts as both *shaped by* a history of sexual and legal violence while also *shaping* the experience of violence in Native communities. Therefore, I argue modern jurisdictional conflicts in Indian country are not only *legacies* of colonialism, but actively *maintain* and *inscribe* colonial violence on the bodies of Native women.

Despite the clear relationship between colonization, sexual violence, and the law, a comprehensive body of work has yet to contextualize American jurisdiction within a colonial narrative while incorporating Native women as active agents. This book challenges dominant approaches that marginalize Native communities and fail to historicize jurisdictional conflicts by tracing a historical legacy of colonization while centering the experiences of Native women and communities. In doing so, this book generates awareness of American jurisdiction in the prosecution of sexual violence in Indian country, addresses the shortcomings of existing scholarship, and contributes to an emerging body of literature that theorizes race, gender, violence, and colonization using an intersectional approach.

Chapter Two reviews the scholarly literature that discusses federal Indian policy, violence against Native women, and methods to address jurisdiction in Indian country. Here, I explore the ways that scholarship has consistently divorced jurisdictional conflicts from their colonial context while marginalizing the experience of Native women and communities. I also discuss the methodological interventions I have crafted in order to address these shortcomings.

Chapter Three explores the major pieces of federal law and policy that have created the modern jurisdictional schema in Indian country. By historicizing jurisdictional conflicts in the context of these pieces, I argue that rather than emerging from the benign neglect of the federal government, jurisdictional conflicts have emerged from a colonial narrative that consistently invests in white American hegemony while divesting in Native sovereignty. In demonstrating the common colonial themes that emerge from their creation, I argue that jurisdictional conflicts must themselves be read in this colonial context—and that

when jurisdictional conflicts operate in Indian country, that they themselves are characterized by these colonial themes.

Chapter Four illustrates the way that jurisdictional conflicts in Indian country affect Native women today. Taking my point of departure from literature that is often uncritical of the colonial context of violence, Chapter Four also explores the history of sexual assault against Native women under colonization, highlighting the ways that sexual and legal violence became enmeshed historically. In doing so, Chapter Four demonstrates that jurisdictional conflicts are part of a larger colonial narrative that has always viewed Native women as inherently violable. From this, I support my thesis that jurisdictional conflicts are not simply part of a colonial legacy—rather, they maintain and inscribe colonial violence on the bodies of Native women in Indian country.

Chapters Five and Six shift the focus from identifying problems to forging solutions. These chapters examine the Tribal Law and Order Act of 2010 (TLOA) and the Violence Against Women Reauthorization Act of 2013 (VAWA 2013) to identify the ways that the federal government has framed solutions to jurisdictional conflicts. As the most recent manifestations of federal Indian policy that also purport to solve jurisdictional problems and sexual violence against Native women, attention to the TLOA and VAWA 2013 is important in that it has the power to reveal how the federal government may or may not continue to invest in white American hegemony while marginalizing Native communities. In measuring the TLOA and VAWA 2013 against the federal Indian policies discussed in Chapter Three, Chapters Five and Six begin to contemplate the possibility of legislating solutions to the problem of jurisdiction and sexual violence in a way that both invests in and enfranchises Native communities.

As a concluding chapter, Chapter Seven surveys approaches to solving jurisdictional conflicts and sexual violence against Native women to understand how various forms of resistance create possibilities for social change. Focusing on the lived experiences of Native women and solutions that center Native communities, this chapter highlights the tension within the Native anti-violence movement over the role that colonial power structures should play in crafting solutions. While some scholars argue that American institutions can never be effective in solving jurisdictional problems, this chapter uses Chela Sandoval's theory of differential consciousness and Kevin Bruyneel's theory of a "third space" of sovereignty to give credence to strategies that Native women like Lavetta Elk use to strategically leverage colonial power structures to shape their own lives. Using Native activist Sarah Deer's essay "What She Say, It Be Law," I argue that the best solutions to jurisdictional conflicts and sexual violence against Native women come from honoring the diverse experiences and visions for justice of Native women themselves.

A Note on Specificity

This project recognizes the heterogeneity of the Indigenous population of the United States and makes every effort to discuss Native nations in terms of their individual and unique histories under colonization. However, despite the incredible diversity of Native nations, federal Indian policy has insisted on collapsing ethnic identity into a monolithic racial category, often referring to all Native people as "Indians." Thus, while this book recognizes the unique character of each Native nation, its discussion of jurisdiction and federal Indian policy has the tendency to homogenize all Native nations precisely because the federal government itself does so. In other words, while I am loathe to speak of Native people and Native nations as having a common colonial identity, the fact that federal Indian policy often makes laws that apply to all "Indians," "tribes," and "Indian country," requires me to speak in generalities when discussing the ways that jurisdiction operates in the lives of Native women.

Additionally, jurisdiction in Indian country affects other crimes besides sexual violence. Any "major crime"[31] in Indian country (including felonies like murder, kidnapping and arson) also signals the involvement of multiple sovereigns that often conflict and subsequently marginalize Native people. I have chosen to focus on sexual violence against Native women for several reasons. As I have mentioned, rape has become the number one crime in many Native communities. Sexual violence against Native women has reached epidemic levels that often exceed those of other crimes in Indian country. As such, it necessitates specific attention. Furthermore, examining sexual violence against Native women in Indian country in the context of modern jurisdictional conflicts facilitates a nuanced discussion of the way that both legal and sexual violence have operated under colonization. Finally, while there is much awareness of the high rates of poverty and violence in American Indian communities, the systematic denial of justice to Native women and the systematic privileging of non-Native identity in crimes of sexual assault is only beginning to garner attention outside of Native communities. As such, this text aims to promote awareness of an important social problem with the possibility of mobilizing a broad base of constituents to address it.

A Note on Terminology

I define "jurisdictional conflicts" as any instance in which overlapping or competing authority by federal, state, and/or tribal entities delays or denies justice to a Native woman who has experienced sexual violence. This includes occasions in

which multiple entities compete for jurisdiction, compromising the investigation of each, as well as instances in which no entity exercises jurisdiction. I consciously engage the term "conflict" in this discussion both because jurisdiction in Indian country often signals a conflict between competing sovereigns, but also because jurisdiction in Indian country signals violent conflicts between bodies. Acknowledging the way that jurisdiction plays a significant role in the epidemic levels of interracial violence against Native women in Indian country, the term "jurisdictional conflict" is meant to invoke larger colonial discussions of power, sovereignty, and violence.

This text uses a variety of terms to refer to the Indigenous people of what is now known as the United States of America. Many Native people conceptualize themselves as citizens of their own Native nations, and as such I make an effort to frame identities in terms of individual membership. When referring to individuals broadly, I employ the term "Native" to indicate those who identify as being Indigenous to the United States. This term, however, is fluid throughout the text, always with attention to the way that individuals and communities self-identify. Furthermore, for the purposes of discussing federal legislation, I sometime use the term "Indian" as this is still the legal term the federal government uses to refer to Native people.

Prior to colonization, Indigenous peoples existed as sovereign, autonomous nations with their own laws, policies, governments and territories. As such, I choose to use the term "Native nations" rather than "tribe" when referring to communities of Indigenous peoples. However, at times it is valuable to employ the term "tribe" or "tribal," especially as it relates to definitions under federal law. Furthermore, some Native communities prefer to use the word "tribe" rather than "nation." Such is the case for the community in which I worked, the Washoe Tribe of Nevada and California. At all times in this research, I strive to use terminology that reflects self-identification and the wishes of individuals and communities.

Furthermore, to emphasize the agency of Native women, this research makes a conscious effort to refer to those who experience sexual violence as "survivors." Often, Native women who experience sexual violence are referred to as "victims," and are constructed as passive subjects. While the colonial context of jurisdiction in Indian country often demonstrates the way that Native women are systematically marginalized by federal Indian policy, to portray Native women as passive victims is incorrect. The goal of this research is to show how Native women do not just survive sexual violence, but that they play a meaningful role in navigating colonial power structures to shape their own lives and agitate for social change. Unfortunately however, we also know that not all women who experience sexual assault survive. Statistics show that as part of the climate of impunity in Indian country,

sexual assault against Native women is not only more prevalent, but more violent. When compared to non-Native women, Native women in the U.S. are more likely to be sexually assaulted by multiple perpetrators, are more likely to have their sexual assault result in a completed rape, are more likely to have their perpetrator use a weapon, and are more likely to suffer physical injuries and hospitalization in addition to the assault.[32] As a result, some Native women do not survive their sexual assaults. Therefore, at times it becomes necessary for me to refer to Native women as victims. But I use this term with caution, and always with an attempt to emphasize the agency of each woman in every case.

What Is Justice?

This text argues that jurisdictional conflicts in the prosecution of sexual violence systematically deny justice to Native women in Indian country. As such, it is important to discuss what I mean by "justice" in this piece. Western notions of law and order often frame justice in terms of arrest, prosecution and incarceration. Though laws in Indian country often allow non-Native perpetrators to avoid arrest and conviction, it is limiting to frame justice solely in these terms. As Cherokee scholar Andrea Smith points out, the Western criminal justice system only functions at the point of crisis after violence in communities has already happened.[33] Thus, part of conceptualizing justice for Native women must focus on the crisis itself. Facilitating the arrest of non-Native perpetrators might reduce the rates of interracial sexual assault against Native women, but would still leave the colonial context of violence intact. Therefore, this research also incorporates broader conceptualizations of justice that address the context of violence and the need for Native communities to heal from historical trauma.

Cherokee activist Jacqueline Agtuca reminds us that ultimately, justice must be articulated from Native women themselves.[34] Though many scholars claim that Native women should find justice either entirely within the Western criminal justice system, or entirely outside of it,[35] this research reveals that justice to Native women is more complex and can be comprised of many things. Often, to Native women "justice" includes using the Western criminal justice system while also working simultaneously to shape a world in which that justice system is no longer a part of Native communities.[36] As such, I make every effort to honor the diverse voices, experiences, and articulations of individuals and communities themselves when discussing justice. It is with this survivor-centered and community-centered approach that we can begin to frame notions of justice in the face of what is clearly an incredible injustice in Indian country.

Notes

1. As quoted in Devon Abbott Mihesuah, *Indigenous American Women: Decolonization, Empowerment, Activism* (Lincoln: University of Nebraska Press, 2003): 41.
2. Information regarding Ms. Elk is gathered from publically available sources. Additionally, Ms. Elk gave her consent to have her story shared in this book.
3. Unless otherwise noted, all facts pertaining to Lavetta Elk are found in *Lavetta Elk v. the United States*, No. 05–186L. U.S. Court of Federal Claims. 28 Apr. 2009.
4. Jim Kent, "Lakota Woman Accuses U.S. Army Recruiter of Sexual Assault; Forfeits Full College Scholarship to 'Live Her Dream,'" *News From Indian Country* 2 Jun. 2003: 10A.
5. "Miami Attorney Wins Unprecedented Sex Case Using 1868 Indian Treaty." *SNAP*. 2009.
6. 1868 treaty guaranteeing land ownership, hunting rights, and jurisdictional authority among other things (15 Stat. 635. 29 Apr. 1868). See Appendix B: Law and Policy Reference.
7. Quoted in *Elk v. U.S.*
8. Deer, "Sovereignty of the Soul" 458.
9. Ibid. See also Andrea Smith, *Conquest: Sexual Violence and American Indian Genocide* (Cambridge: South End Press, 2005).
10. For example, the Elk decision invites Native nations with similar treaties to sue the federal government for pain and suffering caused by Indian boarding schools.
11. Bill Donovan, "S.D. Court Case May Allow Claims Against the U.S.," *Navajo Times* 7 May 2009: A4.
12. Matthew Gruchow, "Native Woman Wins Unprecedented Case," *Ojibwe News* 1 May 2009: 1–2; SNAP, "Miami Attorney."
13. Ibid.
14. Hilary Weaver, "The Colonial Context of Violence," *Journal of Interpersonal Violence* 24.9 (2009): 1555.
15. Ibid.
16. 2004 United States Department of Justice Statistics as quoted in Amnesty International *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA* (New York: Amnesty International Publications, 2007) 2. See also Patricia Tjaden and Nancy Thoennes, "Full Report of the Prevalence, Incidence, and Consequences of Violence Against Women," a study prepared at the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. NCJ 183781. Nov. 2004.
17. Paula Gunn Allen, "Violence and the American Indian Woman," *The Speaking Profits Us: Violence in the Lives of Women of Color*, ed. Maryviolet C. Burns (Seattle: Center for the Prevention of Sexual and Domestic Violence, 1986) 6.
18. Eleanor Ned-Sunnyboy, "Special Issues Facing Alaska Native Women Survivors of Violence," *Sharing Our Stories of Survival*, eds. Sarah Deer, Bonnie Clairmont et al. (New York: Altamira Press, 2007) 72.
19. Mary Annette Pember, "Tribes Gain New Clout Against Crime," *Daily Yonder*. Web. 12 Aug. 2010. <dailyyonder.com/tribes-gain-new-clout-against-crime/2010/08/11/2884> Accessed 12 Apr. 2011.

20. "Indian country" is the legal term used by the federal government to refer to "all land within the limits of any Indian reservation under the jurisdiction of the United States government." This definition also includes land within the bounds of other dependent Indian communities including pueblos and rancherias, as well as Indian allotments and Indian titles to lands outside of reservations. See 18 U.S.C § 1151. For a glossary of terms used in this research see Appendix A: Glossary of Terms.
21. Amnesty International, *Maze*.
22. Louis Gray, "Protecting Indian Women Vital For Native Communities," *Native American Times* 14 Oct, 2005: 8.
23. Amnesty International, *Maze*.
24. 2004 USDOJ statistics as quoted in Amnesty International, *Maze* 4–5.
25. Ibid. See also Steven Perry, "Measuring Crime and Justice in Indian Country," *Bureau of Justice Statistics* 9 Dec. 2004: 9–10.
26. I acknowledge that not all cases of sexual violence consist of a male perpetrator and a female victim. Sexual violence can happen between men, between women, and between a female perpetrator and a male victim. This research focuses on male perpetrated sexual violence against Native women because it characterizes the majority of sexual assaults in Indian country, as well as reflects the history of Euro-American colonization. Further research is needed to examine the way that other types of sexual assault may shape the lives of Native people in Indian country.
27. See epigraph.
28. Ward Churchill, *Perversions of Justice: Indigenous Peoples and Angloamerican Law* (San Francisco: City Lights Books, 2003).
29. Smith, *Conquest*; Brenda Hill, "The Role of Advocates in the Tribal Legal System: Context is Everything," *Sharing Our Stories of Survival*.
30. Deer, "Sovereignty of the Soul."
31. For more on this, see Chapter Three.
32. Tjaden and Thoennes, "Full Report" 51–56.
33. Smith, *Conquest* 169.
34. Jacqueline Agtuca, "Beloved Women: Life Givers, Caretakers, Teachers of Future Generations," *Sharing Our Stories of Survival* 4–5.
35. For more on this, see Chapters Two and Six.
36. Agtuca, "Beloved Women."