

# **The ‘law and order’ of violence against Native women: A Native feminist analysis of the Tribal Law and Order Act**

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## **Abstract**

In this essay, I aim to engage the growing body of scholarship that employs Indigenous feminist theories to understand and mobilize against the sexual and gendered violence committed against Native peoples. To accomplish this, I construct a Native feminist analysis of the 2010 Tribal Law and Order Act. I posit that despite the overwhelmingly positive characterizations of the legislation as “historic” in its potential to address violence against Native women and reduce crime in Indian country, a Native feminist reading of the Tribal Law and Order Act illuminates the degree to which the Act emerges from, engages with, and advances settler colonial and heteropatriarchal logics that cause violence against Native women in the first place. I suggest that although the Act *does* contain measures that have the potential to alleviate the experience of violence in Native women’s lives, it also diminishes tribal sovereignty, perpetuates the ongoing encroachment of tribal jurisdiction, regulates the boundaries of Native identity, and limits our ability to envision and enact practices of decolonization.

**Keywords:** *settler colonialism; heteropatriarchy; Native feminist theories; violence against Native women; decolonization*

## Introduction

In the introduction to “Native Feminisms: Legacies, Interventions, and Indigenous Sovereignities” (2009), Mishuana Goeman (Tonowanda Seneca) and Jennifer Denetdale (Diné) assert that “there is no one definition of Native feminism; rather, there are multiple definitions and layers of what it means to do Native feminist analysis” (p. 10). In part, the diversity of Native feminist theories can be credited to the fact that those who produce and practice Native feminisms do so from a multitude of “locations” - distinct Indigenous epistemologies, ontologies, histories, and cultures. Joanne Barker (Lenape) argues that the specificity of the “unique governance, territory, and culture of an Indigenous people in a system of (non)human relationships and responsibilities to one another” (2015, p. 2) – what she terms the *polity of the Indigenous* – from which articulations of Native feminisms emerge, “is key to understanding the ethics and analytics of Indigenous feminisms as grounded in but not foreclosed by Indigenous governance, territories, and cultures” (p. 11). At the same time, Maile Arvin (Native Hawaiian), Eve Tuck (Aleut), and Angie Morrill (Modoc/Klamath) argue that, even in their various articulations, Native feminist theories privilege two ideas: (1) that the United States, and many other Western countries are settler colonial nation-states, and (2) that settler colonialism has been and continues to be a gendered process (2013, p. 9).

The negotiation between efforts to examine the nuanced and specific “intersections of Native histories, tribal politics and nations, gender, and colonialism and imperialism” (Goeman and Denetdale, 2009, p. 10) on the one hand, and efforts to advance “understandings of the connections between settler colonialism and both heteropatriarchy and heteropaternalism” (Arvin, Tuck, & Morrill, 2013, p. 11) on the other, has produced a rich and complex body of Indigenous feminist analyses and projects. Sarah Deer’s (Mvskoke) seminal text, *The Beginning and End of Rape: Confronting Sexual Violence in Native America* (2015), is a powerful example of such work. Her Native feminist analysis of sexual violence in Native communities both establishes that “rape has been used—is still used—as a weapon to control and colonize Native peoples” (p. 49) throughout the United States, and also advances tribal-centric solutions for eradicating sexual violence in Native communities. In this essay, I aim to build upon Deer’s analysis and further develop the growing body of scholarship that employs Indigenous feminist theories to understand and mobilize against the sexual and gendered violence committed against Native peoples. To accomplish this, I construct a Native feminist analysis of the 2010 Tribal Law and Order Act (TLOA).

Passed less than a year after President Barack Obama (2009) described violence against Native women as “an assault on our national conscience that we can no longer ignore,” (para. 22) the TLOA is generally lauded as a landmark piece of legislation that aims to address the prevalence of violence against Native women and reduce the severity of crime in Indian country. Since its passing, the TLOA has garnered significant national attention; federal and tribal government officials, Native and non-Native lawyers and scholars, anti-violence advocates, survivors, and others have analyzed the potential impact of the legislation as well as the early efforts to implement the Act’s provisions. While these responses vary in tone, they are fairly

similar in content; they focus on the strengths and/or weaknesses of the various provisions the Act authorizes. Although I appreciate the need to examine the *literal* work that the TLOA accomplishes, I would like to argue that unearthing the *ideological* work that the TLOA performs allows us to more fully comprehend its implications for Native women and Native communities.

In fact, I posit that a Native feminist reading of the legislation illuminates the degree to which the TLOA emerges from, engages with, and advances settler colonial and heteropatriarchal logics that cause violence against Native women in the first place. I suggest that although the Act *does* contain measures that have the potential to alleviate the experience of violence in Native women's lives, it also diminishes tribal sovereignty and perpetuates the ongoing encroachment of tribal jurisdiction, constructs and regulates the boundaries of Native identity, and limits our ability to envision and enact practices of decolonization. Ultimately, I argue, the "law and order" of the TLOA is not an anti- or post-colonial attempt to reverse past wrongs and rescue Native women from lives saturated with violence; rather, it is a continuation of the "law and order" that has sanctioned violence against Native women over the last 500 years. Perhaps most significantly, it also more securely binds us to a "law and order" that ensures settler futurity and Indigenous disappearance.

Before I proceed to my analysis, however, I would like to take a moment to acknowledge and honor the Native women and communities who were involved in the development of this legislation. The TLOA was not conceived by individual senators, President Obama, and/or Congress alone. As I have written elsewhere, the construction and implementation of the TLOA actually builds upon decades of Native anti-violence activism and should be credited to the dedication and perseverance of Native women across Native nations and across generations: survivors, family members, advocates, support workers, lawyers, scholars, service providers, and others (Robertson, 2012a, 2012b). From the earliest congressional hearings to the actual signing of the Act at the White House, Native women were committed and engaged members of the process. For example, in June of 2007 shelter and program directors such as Georgia Little Shield (Lakota) and Karen Artichoker (Lakota) testified at the "Needs and Challenges of Tribal Law Enforcement on Indian Reservations" hearing based on their extensive experiences advocating for Native women. In September of 2007, directors, advocates, and survivors such as Jami Rozell (Cherokee) and Tammy Young (Tlingit) gave statements at the "Examining the Prevalence of and Solutions to Stopping Violence Against Indian Women" hearing. These testimonies recounted incidents and contexts of violence as well as experiences of the discriminatory and jurisdictional barriers to effective law enforcement responses. Additionally, when President Obama signed the TLOA at the White House, Native anti-violence activists such as Sarah Deer (Mvskoke) and Terri Henry (Cherokee) were in attendance and survivor Lisa Marie Iyotte (Lakota) participated in the proceedings. She introduced the President before his signing and courageously shared with the entire nation her story of sexual violence and the failure of federal authorities to prosecute her rapist.

As an Indigenous anti-violence advocate, and a survivor of violence myself, I cannot emphasize strongly enough how much respect and gratitude I have for those who dedicate their bodies, their spirits, their careers, and their lives to enacting social change and alleviating social injustice for Indigenous communities. My own political and intellectual projects are intimately connected to and emerge from this labor. The TLOA is also a result of such work. Thus, even as I proceed to interrogate this legislation, I recognize the immediate and material relief that it may provide Native women and Native communities who have experienced violence. To characterize the Act as merely another nation-statist attempt to solve “the Indian problem,” without taking seriously how the workings of the nation-state demand that Indians have and are problems in the first place, risks marginalizing and devaluing Indigenous anti-violence mobilization. This is not my intention. Quiet the contrary, I urge us to resist the desire to read the TLOA as a completely positive or a completely negative piece of legislation, penned in entirety either by the settler state or by Indigenous anti-violence activists. Rather, I urge us to recognize and address the potential benefits *and risks* of working in partnership with the very settler state that demands our subordination and elimination. Here, again, I build on the work of others who have cautioned that the reformation of federal law, through legislation such as the TLOA, is only one prong in a multi-pronged approach to comprehensively addressing violence against Native women (Deer, 2015). I believe it is wholly possible to acknowledge that some of the provisions of the TLOA have the potential to mitigate the effects of violence against Native women in the short-term while also examining the ways in which the legislation might sustain violence against Native women, and the elimination of Native peoples, in the long-term.

### **The Tribal Law and Order Act: A brief overview**

Between 2007 and 2010, the United States Congress held seventeen hearings on crime, violence, and criminal justice in Indian Country. Based upon the testimonies provided in these hearings, Congress found that: law enforcement presence in Indian country is severely lacking; the complicated jurisdictional structure that exists in Indian country has negatively impacted Native communities; violence against Native women has become an epidemic; tribal communities have also faced a significant increase in other criminal activity; and cooperation/coordination between federal, state, and tribal entities is inadequate. To address these concerns, the TLOA was signed into law by President Barack Obama on July 29, 2010.

The specific purposes of the legislation are stated as follows:

- (1) to clarify the responsibilities of Federal, State, tribal, and local governments with respect to crimes committed in Indian country; (2) to increase coordination and communication among Federal, State, tribal, and local law enforcement agencies; (3) to empower tribal governments with the authority, resources, and information necessary to safely and effectively provide public safety in Indian country; (4) to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against American Indian and Alaska Native

women; (5) to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country; and (6) to increase and standardize the collection of criminal data and the sharing of criminal history information among Federal, State, and tribal officials responsible for responding to and investigating crimes in Indian country.

Thus, the TLOA is multi-faceted – aimed at reducing crime in Indian country in general, and violence against Native women in particular. The Act is divided into six separate subtitles that, when combined, attempt to achieve a variety of goals: Subtitle A concerns federal accountability and coordination; Subtitle B concerns state accountability and coordination; Subtitle C concerns the empowerment of tribal law enforcement agencies and tribal governments; Subtitle D concerns tribal justice systems; Subtitle E concerns Indian country crime data collection and information sharing; and Subtitle F concerns domestic violence and sexual assault prosecution and prevention.

*Violence against Native women: Subtitle F*

Subtitle F – titled, “Domestic Violence and Sexual Assault Prosecution and Prevention” – is the section of the TLOA that most directly addresses violence against Native women. The provisions under Subtitle F focus on enhancing training and coordination to aid in the investigation and prosecution of crimes against Native women and assign specific tasks to various federal and tribal officials and entities. For example, tribal law enforcement officials in Indian country are required to receive specialized training in interviewing victims of domestic and sexual violence, collecting and preserving evidence, and presenting evidence to tribal and federal prosecutors. Tribal law enforcement officials and Indian Health Services are tasked with developing and implementing a standardized sexual assault protocol. Federal officials are required to notify tribal governments when sex offenders are released in Indian country. Federal employees and agencies are required to answer, and comply with, subpoenas or requests to testify in cases of sexual or domestic violence in Indian country that do not violate department policies. And the Controller General is required to conduct a study and compile a report regarding Indian Health Services’ ability to collect and maintain the evidence required for federal prosecution of violence against Native women.

*Violence against Native women: Sections 221 and 234*

While each of the provisions included under Subtitle F have the potential to improve the conditions Native women experience in the aftermath of violence, it is actually two of the provisions found outside of this subtitle that have garnered the most attention in regards to their potential to empower Native nations to more adequately regulate criminal activity and violence against Native women. Both of these provisions – Section 221 and Section 234 – attend to one of the most substantial barriers to addressing violence against Native women: the “jurisdictional

crazy-quilt” (Vollmann, as quoted in Hart, 2010, p. 157) that regulates criminal matters in Indian country and results in a “maze of injustice” (Amnesty International, 2007) for victims of violence. A great deal of scholarship has been devoted to illuminating, historicizing, and critiquing the intersection of federal, state, and tribal jurisdiction over Native peoples and Native lands, so I will not delve too deeply into the issue here. However, before I describe Section 221, Section 234, and their impact, it is necessary that I briefly outline the jurisdictional structure in Indian Country, as it existed prior to the TLOA.

Put simply, federal Indian law has severely limited the ability of Native nations to exercise tribal jurisdiction over their respective communities and has created a convoluted structure of federal, state, and tribal jurisdiction that is practically impossible to navigate. Additionally, and critical to the argument at hand, “tribal governments have lost jurisdiction over the vast majority of sexual violence that happens to Native American women” (Deer, 2005, p. 460). The body of federal Indian law that produces this situation is immense but a handful of legislative acts stand out in their contribution to the convoluted structure of jurisdiction in Indian country: The General Crimes Act (1817), The Major Crimes Act (1885), Public Law 280 (1953), the Indian Civil Rights Act (1968), and *Oliphant v. Suquamish Indian Tribe* (1978).

The federal government began asserting federal criminal jurisdiction in Indian country shortly after the U.S. Constitution was ratified. In 1817, federal criminal jurisdiction was codified with the passing of the General Crimes Act. This Act extended federal jurisdiction over all matters occurring on Native lands except when (1) a crime was committed by one Indian against another Indian, (2) an Indian who committed a crime against a non-Indian had already been punished under local tribal law, or (3) a treaty reserved exclusive tribal jurisdiction over the crime committed. The first piece of legislation to extend federal jurisdiction over Native peoples who committed crimes against other Native peoples on Native lands was the Major Crimes Act of 1885. This Act placed 15 major crimes under federal jurisdiction regardless of whether the perpetrator was Native or non-Native.<sup>1</sup> These two pieces of legislation do not explicitly divest Native nations of tribal jurisdiction, however, and thus resulted in concurrent federal and tribal jurisdiction over a good portion of the crimes committed in Indian country.

In 1953, in violation of the U.S. Constitution and without consent from Native nations or state governments, Congress passed Public Law 280 (PL 280), which transferred criminal jurisdiction over Indian country from the federal government to state governments in California, Wisconsin, Minnesota, Nebraska, Oregon, and Alaska. Until the Act was amended in 1968, all other states were given the option to voluntarily assume criminal jurisdiction over Native nations upon whose lands they have settled. Like the General Crimes Act and the Major Crimes Act, PL 280 did not explicitly divest Native nations of tribal jurisdiction, and thus, in theory, concurrent state and tribal jurisdiction exists in PL 280 states. However, in practice, the implementation of

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<sup>1</sup> The fifteen major crimes are: murder, manslaughter, kidnapping, maiming, felony sexual abuse, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, assault against a juvenile under age 16, felony child abuse or neglect, arson, burglary, robbery, and felony embezzlement or theft.

PL 280 has devastated Native nations' abilities to develop and/or maintain criminal justice systems (Goldberg and Singleton, 2008) and PL 280 is largely understood to have failed its task of remedying crime in Indian country. In regards to addressing violence against Native women, a 2007 report by the Tribal Law and Policy Institute listed "data collection, training or awareness, lack of resources targeted at tribal communities, lack of well-funded tribal police departments, animosity toward tribal communities and lack of reporting and cooperation from tribal community members" among the unique obstacles presented by PL 280 (p. 6). Additionally, PL 280 has been credited with making an already complicated jurisdictional scheme between the federal government and Native nations even more unintelligible by adding state jurisdiction to the mix (Goldberg and Singleton, 2008).

In 1968 Congress passed the Indian Civil Rights Act (ICRA). This legislation forced Native nations to adopt and protect most of the U.S. Constitution's Bill of Rights. ICRA also seriously restricted tribal power by limiting the authority of tribal courts to sentence offenders when they *are* able to exercise tribal jurisdiction. Regardless of the severity of the crime committed by an individual, tribal courts were limited to imposing a maximum imprisonment of six months and a maximum fine of \$500. In 1986, as part of the federal "War on Drugs," these limitations were raised to one year of incarceration and \$5,000 in fines. So, again, while tribal jurisdiction is not explicitly prohibited by ICRA, it is drastically inhibited, and the message to Native nations becomes increasingly clear – Native nations have little, if any, jurisdiction over criminal offenses in Indian country.

Finally, the 1978 United States Supreme Court decision in *Oliphant v. Suquamish Indian Tribe* stripped Native nations of all tribal criminal jurisdiction over anyone who is not enrolled in a federally recognized tribe. Sarah Deer argues, "This decision has created a crisis situation in some tribal communities, because non-Indian sexual predators, drug manufacturers, pimps, and other violent persons have become attracted to Indian country as a location where crimes can be committed without recourse" (2004, p. 22). The significance of *Oliphant* is immense. This piece of legislation not only further violates the inherent sovereign right that Native nations possess to protect their citizenries and regulate the activities that occur within their territories, *but it also creates a space in which violence and criminal activity can flourish*. This is absolutely crucial to understanding and addressing violence against Native women because it has been demonstrated that the majority of said violence against Native women is committed by non-Native perpetrators (Greenfield and Smith, 1999; Amnesty International, 2007). In fact, Amnesty International reported that at least 86 percent of the sexual violence inflicted upon Native women can be attributed to non-Native men (2007, p. 4).<sup>2</sup>

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<sup>2</sup> The fact that non-Native men commit a significant amount of violence against Native women is frequently invoked to advocate the restoration of tribal criminal authority over non-Natives. We should perhaps not be surprised, then, that there has been some debate about the validity of the interracial data. Sarah Deer has recently argued, however, that this debate is actually a deflection of the real issue because if even one non-Native perpetrator commits an act of violence against a Native woman in Indian country, the Native nation under whose jurisdiction the crime falls should have criminal authority over the matter (2013).

I cannot overstate the severity of the confusion and inaction that results from the jurisdictional situation outlined above. When a crime is committed in Indian country, before any action can be taken, the following factors must be determined: (1) which body (federal, state, and/or tribal) has jurisdictional authority over the location upon which the crime was committed, (2) which body (federal, state, and/or tribal) has jurisdictional authority over the type of crime that was committed, (3) whether the perpetrator of the crime is Native or non-Native, and (4) whether the victim of the crime is Native or non-Native. The considerable amount of time it can take to determine these factors may mean the difference between justice and injustice, or even life and death.

The TLOA responds to and amends the jurisdictional structure in Indian country with Section 221 and Section 234. Section 221 is an important provision for Native nations still under PL 280 because it allows Native nations to request to be placed back under federal jurisdiction. To be clear, though, this provision *does not* finally extend to Native nations the same right of retrocession that was given to states under the 1986 amendment to PL 280. When states elect to return jurisdiction over Indian country to the federal government, federal jurisdiction becomes *exclusive* of state jurisdiction. Under Section 221, Native nations are restricted to requesting that the federal government accept *concurrent* jurisdiction. Since, as I explained above, PL 280 did not divest tribal jurisdiction, Native nations who activate this provision will have concurrent federal, state, and tribal jurisdiction.

Section 234 deals with increasing *tribal* responses to crime. This provision amends ICRA to increase the maximum sentence a Native nation may impose on a Native defendant from one to three years of incarceration and from \$5,000 to \$15,000 in fines, *if certain conditions are met*. In order to activate this provision, first, the defendant must either: (1) have been previously convicted of the same or a similar crime by federal, state, or tribal jurisdiction; or (2) be being prosecuted for an offense comparable to one that would be punishable by more than one year of incarceration under federal or state jurisdiction. Second, the Native nation must guarantee: (1) to provide the defendant with right to counsel at least equal to that guaranteed by the U.S. Constitution; (2) to provide indigent defendants with a defense attorney that has been licensed to practice law by an entity that applies appropriate licensing standards, at the expense of the tribal government; (3) that the judge presiding over the matter has been licensed to practice law and has sufficient legal training to preside over criminal matters; (4) to make all criminal laws, rules of evidence, and rules of procedure publicly available prior to charging the defendant; and (5) to maintain a record of the criminal proceeding.

That Section 221 and Section 234 have received considerably more attention than Subtitle F in their potential to address violence against Native women is understandable. Enhanced training and coordination aimed to aid in the investigation and prosecution of crimes against Native women have virtually no impact if issues of jurisdiction and inadequate sentencing are not addressed. In other words, competently collecting and preserving evidence is only important if such evidence can be used to adequately prosecute acts of violence. Without being attached to the increased sentencing provision and the ability for Native nations to tackle



the jurisdictional gaps created by PL 280, Subtitle F is little more than a symbolic gesture toward taking violence against Native women seriously.

*General responses to the TLOA*

A number of different parties have speculated about the possible impact of the TLOA and evaluated the early implementations of the legislation. The majority of these assessments have been positive and characterize the Act as a “historic” piece of legislation that “will allow us to write a new and much better chapter in the history books regarding law enforcement in Indian communities” (Dorgan, as quoted in Toensing, 2010, para. 11). In regards to addressing violence against Native women, the provisions in Subtitle F have been praised for offering “a much-needed opportunity to meet the needs of survivors and to address the larger system factors that are associated with sexual violence” (Gebhardt, 2012, p. 241). There have also, however, been reviews of the legislation that emphasize the Act’s limitations. For example, Gideon Hart, law clerk to the United States District Court for the Northern District of Ohio, argues that “the TLOA places a federal band-aid over the current crime crisis, but it certainly does not do enough to foster long-term solutions to the problems” (2010, p. 141). Likewise, Suzianne Painter-Thorne, Associate Professor at Mercer University School of Law, calls the Act “a half-measure that would do little to address the underlying impediment to effective tribal law enforcement” (2011, p. 5).

Again, the provisions of the TLOA that deal with jurisdiction have garnered the most attention. Section 221, for instance, has been recognized for its potential to reverse the negative effects of PL 280, for it allows Native nations to request that the federal government step back in to fill the gaps in law enforcement and criminal justice that PL 280 created (Hart, 2010, p. 169). Yet, the fact that Native nations cannot divest state jurisdiction through their request for federal jurisdiction, as states can, as well as the fact that Native nations cannot elect for exclusive jurisdiction has been noted and critiqued (Owens, 2012). Furthermore, it has been argued that the three party concurrent jurisdiction that section 221 does authorize simply increases the potential for jurisdictional uncertainty and inaction: “Adding another layer exacerbates the confusion and will result in less accountability for all agencies. The jurisdictional system is already overly complex. Subtitle B, by giving concurrent jurisdiction to federal courts over public law states, further complicates the matter” (Owens, 2012, p. 519).

To date, five nations have requested to activate concurrent jurisdiction under Section 221. Two nations’ requests have been approved – the White Earth nation and the Mille Lacs Band of Ojibwe (Lee, 2016). In a presentation prepared for the California Indian Law Association’s 2015 Indian Law Conference, Indian Law and Order Commission member Tom Gede cautions that although concurrent jurisdiction “can ease the burden of overstretched or reluctant state/local criminal law enforcement and judicial resources, and overstretched or developing tribal law enforcement and judicial resources,” it is also significantly limited. For example, Gede notes, the “congratulatory letter” that informs the White Earth nation that their application for concurrent jurisdiction has been approved includes the following caveats: (1) the Department of Justice will

have the final say in deciding which cases involving federal criminal jurisdiction will be investigated and/or prosecuted, (2) the assumption of concurrent jurisdiction does not mean that the department of Justice will prosecute all crimes or even all major crimes that occur on the White Earth reservation, and (3) since the Department of Justice will only pursue those cases which can be most effectively prosecuted at the federal level, it does not anticipate that a large number of cases will be impacted by concurrent jurisdiction. Thus, Gede argues, “TLOA Section 221 presents as many challenges as opportunities” (2015).

Hailed as one of the TLOA’s “most important and controversial provisions” (Hart, 2010, p. 139), Section 234 has been similarly commended and critiqued. For instance, it has been argued that increasing the sentencing authority of tribal courts “significantly expands the ability of tribal justice systems to provide proportional punishments and deterrence” (Hart, 2010, p. 178). Yet, it has also been posited that because Congress did not provide Native nations with the financial resources needed to meet the increased sentencing authority requirements, the TLOA may result in privileging a small number of wealthier nations while actually leaving most nations with less sentencing power than they had prior to the TLOA (Fortin, 2013). The National Tribal Judicial Center’s analysis of the “lessons learned” from the nine tribes who have thus far exercised the enhanced sentencing provisions confirms that securing financial resources is one of the greatest impediments to implementing enhanced sentencing authority (Folsom-Smith, 2015).

The sentencing maximums have also attracted commentary. They have been described as “shockingly low” (Schmelzer, 2010, para. 12) in relation to the severity of the crimes they attempt to address and one scholar highlights their ineffectiveness by contrasting the 36 months a tribal court is authorized to imprison an offender with national averages: “Nationally, the average sentence for rape is 136 months, while the average for other sexual assaults is ninety-two months. Thus a sexual offender who commits his crime in Indian country would be subject to one-third to one-quarter the penalty” (Painter-Thorne, 2011, p. 44).

These critiques make important contributions toward illuminating the potential shortcomings of the TLOA, and, as I posited at the beginning of this essay, assessing the literal work that the TLOA does or does not accomplish is an important task. However, I would like to suggest that these reproaches of the TLOA barely skim the surface of identifying the implications of the legislation and its relationship to violence against Native women. In fact, I argue that these critiques, like the Act itself, overlook the settler colonial and heteropatriarchal contexts from which the Act emerges and in which the Act operates. That is, although the critiques outlined above admonish the TLOA for being a half-hearted attempt at reducing crime in Indian country, I posit that they too fall short in identifying, and thus redressing, the “underlying impediment” to effective tribal responses to crime because they fail to recognize the role that the ongoing imposition of heteropatriarchal settler colonial “law and order” plays in diminishing tribal sovereignty and eliminating Indigeneity.

## **Complicating the story: A Native feminist analysis of the Tribal Law and Order Act**

The discipline of settler colonial studies delineates the specific form of colonialism “which operates in the United States or other nation-states in which the colonizer comes to stay” (Tuck and Yang, 2012, p. 5). Settler colonialism is understood as “a persistent social and political formation in which newcomers/colonizers/settlers come to a place, claim it as their own, and do whatever it takes to disappear the Indigenous peoples that are there” (Arvin, Tuck, & Morrill, 2013, p. 12). Territorial acquisition, and the establishment of a settler sovereign, is the primary motive for settler colonial projects, and, thus, settlers should not be confused with immigrants: “Immigrants are beholden to the Indigenous laws and epistemologies of the lands they migrate to. Settlers become the law, supplanting Indigenous laws and epistemologies” (Tuck and Yang, 2012, p. 5). The organizing logic of settler colonialism is the elimination of Native peoples, whose very existence (as sovereign peoples with prior claims to and relationships with land) threatens the legitimacy of settler colonial formations. As long as Native peoples (laws, epistemologies, claims to land, etc.) have not yet been entirely disappeared, practices of elimination must be maintained. Accordingly, settler colonialism is understood as a structure, a continuous process, *not* a historical event located in the distant past, and the particular practices of elimination employed at any one time depend on the circumstances (social, political, economic, etc.) of the particular historical moment.

As I mentioned previously, Native feminist theories posit that settler colonialism is a gendered process. Indeed, Native feminist theories have established that the imposition and naturalization of heteropatriarchy is intimately enmeshed with the creation and maintenance of the settler state.<sup>3</sup> Consequently, a number of Native feminist scholars have theorized the ways in which various eliminatory strategies emerge from and/or result in the heteropatriarchal subordination of Indigenous peoples, whether they target Native peoples at the individual level or whether they target Native politics and structures. That violence against Native women operates as a severely gendered strategy to eliminate Native peoples has been addressed (Allen, 1986; Smith, 2005; Agtuca, 2008; Deer, 2015). However, I argue that when we employ a Native feminist analytic to interrogate the TLOA we find that settler state-oriented “solutions,” purportedly developed to combat said gendered violence, can also operationalize the elimination of Indigeneity. This is achieved, I argue, through: (1) the erosion of tribal sovereignty and the ongoing encroachment upon tribal jurisdiction, (2) the construction and regulation of Indigenous identity, and (3) the curtailment of Indigenous efforts to envision and enact practices of decolonization.

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<sup>3</sup> While the focus of this paper is the employment of a Native feminist analytic, I would like to note that the development of this analytic has been produced alongside and in conversation with queer Indigenous critiques. For a more detailed look at the relationship between Native feminist theories and queer Indigenous theories, see, for example, “Karangatia: Calling Out Gender and Sexuality in Settler Societies,” edited by Michelle Erai and Scott Morgensen (2013).

*Sovereignty and jurisdiction*

When European colonization of the Americas began, there were approximately twelve million Native people living upon the land that would eventually become occupied by the United States (Stiffarm and Lane, 1992). These Indigenous peoples were organized into hundreds of distinct nations and, pursuant to international law, European nations recognized them as such by entering into treaties with them. Whether these treaties were made because Europeans intended to recognize and affirm the sovereignty of Indigenous peoples or because treaties ensured that European territorial claims over Native lands would be recognized by other European nations, the fact remains that European nations (and later, the United States) entered into nation-to-nation agreements with Native nations. In fact, the United States entered into 371 separate treaty agreements with Native nations and also affirmed tribal sovereignty in the U.S. Constitution (Barker, 2005, p. 9). Nevertheless, as a settler colonial nation, the primary preoccupation of the United States has been to diminish, and ultimately eliminate, the sovereign status of Native nations.

As a concept and as a practice, understandings and articulations of tribal sovereignty are ever evolving, historically contingent, and socially constructed. In fact, some Indigenous scholars and activists argue that, as a European concept saturated with the legacies of colonialism, the discourse of sovereignty is incommensurable with Indigenous perspectives of law, governance, culture, and identities (Barker, 2005). Nevertheless, for many Indigenous peoples, “fiercely claiming an identity as sovereign, and including multiple sociocultural issues under its rubric, has been a strategy of not merely deflecting globalization’s reinvention of colonial processes but of reasserting a politically empowered self-identity within, besides, and against colonization” (Barker, 2005, p. 20).

Jurisdiction – the power of a nation to govern its citizens and all internal civil and criminal affairs – is an essential component of sovereignty (Kidwell and Velie, 2005). The erosion of tribal jurisdiction, through the creation of the “jurisdictional nightmare” that I outlined above, has thus been an essential component of settler colonialism and efforts to diminish tribal sovereignty. Dian Million (Athabaskan) has theorized the relationship between tribal sovereignty and jurisdiction. She argues, “establishing jurisdiction over Native lands and lives was, and is, the most important and negotiated issue between Native peoples and the U.S. government” (2000, p. 104), because the continued presence of Native peoples, despite historical genocide, necessitates that the U.S. “continue to negotiate with *Indians* and to work for their erasure by assimilation or other means” (2000, p. 105). How has the imposition of Western law and the usurpation of Indigenous jurisdictional authority been accomplished? Through the construction and employment of the concept of “crime” (p. 106). Native polities have been both racialized and criminalized.

If we return to the jurisdictional structure that I outlined above, we can see the operation of this process. For instance, when PL 280 was passed in the 1950s, the federal government feigned that this was done in response to the “lawlessness” of American Indian reservations. The

legislative history of PL 280 is saturated with characterizations of reservations as “places of rampant crime and disorder” and tribal justice systems were described as “weakened and ineffectual” (Goldberg-Ambrose, 1997). Similarly, when the Indian Civil Rights Act was passed in 1968, its primary purpose “was to impose the provisions of the Bill of Rights against tribal governments to cure alleged due process abuses by tribal courts” (Hart, 2010, p. 153). The TLOA replicates this cyclical pattern of: (1) “identifying” unchecked criminal activity in Indian country, (2) citing the weakness and/or dysfunction of tribal criminal justice systems to explain the crime, (3) further imposing settler colonial models of “law and order” to address the issue, and (4) ultimately causing ever-greater levels of so-called crime. These pieces of legislation rarely acknowledge the role that the settler colonial justice system plays in *creating* the “lawlessness” it purports to address time and time again. According to historical evidence, Native nations had powerful and effective justice systems prior to colonization (Deer, 2004, p. 19). It is the settler colonial need to eliminate Native peoples, in any way possible, that has eroded these systems to such a degree that they barely resemble their prior selves.

An Indigenous feminist analytic unveils the way in which the erosion of tribal sovereignty and the usurpation of tribal jurisdiction are specifically gendered and sexualized processes. Deer (2005, 2015) argues that the sovereignty of Native nations is intimately tied to their ability to address sexual violence against Native women. In fact, she posits, “were it not for the widespread rape of Native American women, many of our towns, counties, and states might not exist” (2005, p. 459). Centering the heteropatriarchal nature of settler colonialism, as it manifests in violence against Native women, enables us to consider the particularly gendered result of the settler state’s investment in maintaining “crime” so that it may justify jurisdictional encroachment and “continue to make Native women particularly vulnerable to violence” (Deer, 2004, p. 19). As Native feminist theories have demonstrated, that Native women (as well as Native queer, Two-Spirit, and gender non-conforming peoples) have been targeted for violent degradation that results in loss of status and disempowerment is not coincidental (Allen, 1986). Pre-contact, Indigenous peoples had complex structures of kinship and governance wherein which Native women held considerable social, cultural, political, economic, and spiritual authority (Agtuca, 2008). Thus, their strong identities and important roles challenged the presumably “natural” and “superior” hierarchal and oppressive organization of heteropatriarchal settler colonial nations. To address this challenge, the settler state set about violently imposing and naturalizing heteropatriarchal logics that disempower Native women and eliminate Indigenous conceptualizations of gender and kinship.

With this in mind, let us return to the provisions of the TLOA. Again, Subtitle F is aimed at empowering federal and tribal officials to more adequately investigate and prosecute crimes of violence against Native women and sections 221 and 234 aim to address issues of jurisdiction and sentencing. When coupled, it has been argued, these provisions – enhanced training and coordination for more effective investigation and prosecution of crimes against Native women and enhanced jurisdictional and sentencing power of Native nations – have the potential to lessen the extent of violence in the lives of Native women. Critiques of these provisions rest on the

argument that they are steps in the right direction, but simply do not travel the full distance needed to significantly deter crime. In other words, more funding and longer sentencing maximums, it has been argued, would strengthen the provisions. What is *not* considered in the critiques of these provisions, however, is their ideological labor to locate violence against Native women as an inherently Indigenous problem (that originates and resides in Indigenous governance, territories, and cultures) rather than a problem of settler colonialism. The TLOA identifies violence against Native women as a problem, and then responds to the problem by primarily strengthening the federal government's ability to address the issue. This implies that the settler state is not the primary perpetrator of violence against Native women. Then, to the degree to which the TLOA strengthens tribal governments' abilities to address the problem, it leaves the inability for Native nations to execute authority over non-Native perpetrators entirely intact while calling the increased sentencing authority of Native nations "historic" in its potential to lessen violence against Native women. This implies, again, that the settler state (and non-Native settlers) is not the primary perpetrator of said violence and that the increased sentencing provision will make a significant impact on the problem when, in reality, it only has the potential to apply to the roughly fourteen percent of sexual violence against Native women it has been estimated Native men perpetrate.

### *Indigenous identity*

The settler state's desire to regulate Indigenous jurisdiction works hand in hand with its desire to regulate Indigenous identity. Like jurisdiction, the right to determine one's own citizenry – including membership and enrollment criteria – is purported to be included within the range of powers that Native nations are able to exercise under tribal sovereignty. Yet, the settler state is so highly invested in the matter of defining Indigenous identity (through racialized and biological logics such as blood quantum that almost certainly ensure Indigenous disappearance) that over three hundred different definitions of Indian identity can be found within Bureau of Indian Affairs documents alone (Barker, 2003, p. 32). This preoccupation with Indigenous identity is telling for it reveals that, "the ability of Native nations to exceed or overdetermine the physical and discursive boundaries of 'Indian-ness' serves as a constant annoyance to the state" (Million, 2000, p. 115).

The attachment of the TLOA to the Indian Arts and Crafts Amendments Act of 2010 (IACAA) is a particularly poignant example of the way in which the settler state coerces Native nations to adopt colonially constructed definitions of Indigeneity. Co-authored by Senators Jon Kyle and John McCain, the IACAA was signed into law with very little attention, amendment, or debate and is rarely mentioned in relation to the TLOA that is appended to it. The IACAA amends the Indian Arts and Crafts Act of 1990 to expand and clarify the authority of federal law enforcement to bring criminal and civil actions against offenders involved in the sale of misrepresented Indian-produced goods or products. Described as a "truth-in-advertising law," the 1990 Act was passed to both respond to "growing sales in the billion dollar U.S. Indian arts and

crafts market of products misrepresented or erroneously represented as produced by Indians,” and better carry out the aims of a 1935 Act of the same name whose stated purpose was to create a board to assist in the promotion of the “economic welfare of Indian tribes and the Indian wards of Government through the development of Indian arts and crafts and the expansion of the market for the products of Indian art and craftsmanship.”

The initial 1935 legislation succeeded in instituting the Indian Arts and Crafts Board, but because it limited penalties to a \$500 fine and/or six months of imprisonment, it was considered inadequate as a meaningful deterrent to the fraudulent sale and marketing of imitation Indian arts and crafts. The Act of 1990 increased maximum penalties to \$250,000 in fines and/or 5 years of imprisonment for individual violations and \$1,000,000 in fines for business violations.<sup>4</sup> The real significance of the IACAA does not lie in its ability to “protect” Native artists, Native nations, and their patrons from the fraudulent and sinister intent of those who would market “products as ‘Indian made’ when the products are not, in fact, made by Indians as defined in the Act,” (Indian Arts and Crafts Act, 1990), as much as it lies in the legislation’s vested interest in defining and controlling Native identity. For the purposes of the various reauthorizations of the Indian Arts and Crafts Act, those who *are* defined as “Indian” and authorized to produce and sell “Indian made” arts and crafts are enrolled members of federally recognized tribes. All other Native peoples – those who are enrolled in non-federally recognized tribes, those who do not meet enrollment criteria, those who are unable to enroll because of lack of proper documentation, and those who may refuse to enroll – are prohibited from marketing their creations as “Indian made” (Barker, 2003).

Accordingly, in an essay titled “Indian™ U.S.A.,” Barker (2003) reads the 1990 Indian Arts and Crafts Act not as a measure to halt the appropriation and commodification of Native aesthetic expression but as simply another piece of settler colonial legislation “embedded within histories of U.S. federal and tribal identification or membership policies” (p. 27) that make Indigenous people “‘governable’ by roll or certificate or blood” and allows the United States “to reinvent its power to govern indigenous people as citizens ‘of a particular kind’—as those who can be enrolled, recognized, qualified, and eliminated” (p. 32). That is, similar to the way in which tribal sovereignty is only affirmed to the degree that Native nations replicate settler colonial models of “law and order,” Native peoples are only recognized as Native to the degree that they adhere to racialized discourses of Indigeneity that maintain settler colonialism (Barker, 2011). Similarly, Million (2000) argues that the very creation of the concept “Indian” is a negation of the tribal sovereignty and the cultural and political specificity of over 500 distinct Native polities: “In short, the construction of the federal ‘Indian’ negates the inherent sovereignty of the Nee Mee Poo, Dineh, Xwlemi, the Swinomish, etc.” (p. 114). Like Barker, she

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<sup>4</sup> The severity of the consequences the federal government can administer to those who attempt to “play Indian” for the purposes of selling fraudulent Indian arts and crafts in comparison to the consequences tribal governments can administer to those who sexually violate Native women should not be overlooked.

too reads the regulation of Native identity as an effort to discipline tribal sovereignty and Native articulations of identity.

Such readings of federal legislation concerned with policing the boundaries of Indian identity, like the IACAA, lend a hand in analyzing the ideological work performed by the TLOA. In fact, I posit, the attachment of the TLOA to the IACAA is not coincidental. As I have argued elsewhere, anti-violence legislation that operates within the settler state's legal construction of federal recognition and Indigenous identity is severely limited in its ability to adequately address violence against Native women (Robertson, 2012b). Like the IACAA, it blatantly excludes a considerable number of Indigenous peoples: those who (for various reasons) are unable to or choose not to enroll in federally recognized tribes, those who are enrolled in non-federally recognized tribes, those who are enrolled in federally terminated tribes, and those Indigenous peoples who originate from outside the settler constructed borders of the United States, but who live in the United States today. In this way, the TLOA facilitates the federal government's ongoing complicity with violence against Native women. At the very same time that the legislation denounces the egregious rates of violence against Native women, it enacts settler colonial logics that prevent a sizeable number of Indigenous women from benefitting from the legislation. In this way, the settler state is able to feign intolerance for violence against Native women while leaving the settler state structures that rely upon the continuing assault against Native women entirely intact.

The settler state's inherent preoccupation with regulating Indigenous identity (as a strategy of Indigenous elimination) is matched by its efforts to *represent* Indigenous identity in ways that also facilitate the eventual elimination of Indigeneity. The United States has a long history of portraying Native women (and children) as victims that need to be rescued from oppressive Native polities and criminally violent Native men. For example, Andrea Smith (2005) posits that while early colonial documents reveal the violent and relentless subjugation of Native women at the hands of settlers, these same settlers argued that they were actually liberating Native women from the oppression they experienced within Native nations. Simultaneously, Native men were portrayed as the *real* perpetrators of violence against women (Native and non-Native alike) and constructed as savage and sexually perverse. Furthermore, Arvin, Tuck, and Morrill (2013) argue that "the very categories of "man" and "woman" are creations of heteropatriarchy and settler colonialism" that are then employed to validate "the conventional assumption that women are singularly oppressed by men" (p. 18). In reality, they posit, "Native men are not the root cause of Native women's problems; rather, Native women's critiques implicate the historical and ongoing imposition of colonial, heteropatriarchal structures onto their societies" (p. 18). I posit that the story of Indigeneity that the TLOA purports to address similarly constructs Native women as victims and Native men as criminals in efforts to scapegoat Native men for the violence of settler colonialism.

Proponents of the TLOA testified before Congress that, "it is difficult to overstate the severity of the problem" since "violent crime in American Indian and Alaska Native communities is at unacceptable levels" (Perelli, 2009). Still others spoke of lawless Native



communities plagued with violence against women, gang activity, and methamphetamine use.<sup>5</sup> Additionally, the root causes of criminal activity in Native communities were identified as “substance abuse, poverty, and lack of educational and employment opportunities” (Perelli, 2009). Similar language was included in the legislation itself. For instance, the section titled “Findings” asserts that “domestic and sexual violence against American Indian and Alaska Native women has reached epidemic proportions” and then recites the percentages of Native women who will be subjected to sexual and domestic violence in their lifetimes. Additionally, Congress finds that “Indian tribes have faced significant increases in instances of domestic violence, burglary, assault, and child abuse as a direct result of increased methamphetamine use on Indian reservations.” Among the stated “Purposes” of the legislation, as I quoted previously, are: “to reduce the prevalence of violent crime in Indian country and to combat sexual and domestic violence against American Indian and Alaska Native women” and “to prevent drug trafficking and reduce rates of alcohol and drug addiction in Indian country.” Again, I argue that this construction of Indigeneity (of Native women as victims and Native men as violent, criminal, and sexually perverse) result in the provisions of the TLOA that mask the violence of settler colonialism and criminalize Native nations.

In *Inventing the Savage: The Social Construction of Native American Criminality* (1998), Luana Ross (Salish) addresses this issue extensively and theorizes the relationship between the social construction of “Native deviance” and settler colonialism. She describes the process by which the criminalization of Natives peoples occurred as such: “Pre-contact Native criminal justice was primarily a system of restitution—a system of mediation between families, of compensation, of recuperation. But this system of justice was changed into a shadow of itself. Attempts were made to make Natives like white people, first by means of war and, when the gunsmoke cleared, by means of laws—Native people instead became ‘criminals.’ *Criminal* meant to be other than Euro-American” (p. 14). Thus, when the “threat” of Native populations could not be entirely disabled through genocide, laws were enacted to criminalize Natives and subject them to other forms of social control (in this case, incarceration). She continues, “the stereotype of the ‘savage, inferior’ Native was carefully developed, and Natives were seen and treated as deviant” (p. 16). It is this deviancy (as victims and criminals) that continues to mark Native peoples today for “the product is a system that imposes on indigenous populations cradle-to-grave control designed to obliterate worldview, political independence, and economic control. To resist is to be criminal, risking the wrath of multiple state law enforcement agencies. In the Americas, this exploitation has been the backbone of a colonial relationship now hundreds of years old yet still vigorous” (p. 29).

Ross’s argument illuminates the violence the TLOA itself commits against Native peoples. The legislation works hand in hand with pre-existing constructions of Native criminality in order to both further diminish tribal sovereignty and eliminate Indigeneity through jurisdiction

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<sup>5</sup> For numerous examples of such descriptions, see, among others, the *H.R. 1924, The Tribal Law and Order Act of 2009* testimonies before the Committee on Crime, Terrorism, and Homeland Security, 11<sup>th</sup> Congress (December 10, 2009).

and through the criminalization and incarceration of Native people. If we consider the increased sentencing provision again, it is important to remember that Native nations can only enact this provision *if they meet certain conditions* outlined by the legislation and the settler state. This means that Native nations must adopt technologies of justice that are carbon copies of the settler state model, despite the fact that settler state technologies of justice have employed criminalization and incarceration as logics of elimination aimed at Native peoples since contact. Native peoples are disproportionately represented in the settler state's criminal justice system: "Native Americans are only 0.6 percent of the total population, yet they comprise 2.9 percent of federal and state prisoner populations," and the disproportion "is more clearly seen at the state level, where they account for 33.2 percent of the total prisoner population in Alaska, 23.6 percent in South Dakota, 16.9 percent in North Dakota, and 17.3 percent in Montana compared to approximately 15 percent, 7 percent, 4 percent, and 6 percent of the overall state populations, respectively" (Ross, 1998, p. 89).<sup>6</sup> Indeed, the incarceration of Native peoples has become so prevalent that "it is common for Native people either to have been incarcerated or to have relatives who have been imprisoned" (Ross, 1998, p. 1). Thus, the significance of the fact that the increased sentencing provision only applies to Native perpetrators cannot be overstated.

Furthermore, we must take seriously the implications of legislation that demands Native peoples adopt the very same settler colonial apparatus of justice that discursively produces the identity of the Native criminal. In other words, if we recognize the settler state's investment in "punishment" as a productive rather than reductive act, (Foucault, 1977, p. 31) we begin to see how legislation such as the TLOA does more to perpetuate the production of criminal populations than it does to reduce so-called criminality. When Native peoples are coerced and/or forced to accept and employ such notions of justice, they find themselves working within a system that ever more frequently categorizes and criminalizes their populations in order to better regulate, manage and eventually, eliminate them. That is, Native peoples become differentiated and individuated *by* the settler-state and *from* the settler state in a process that marks them as delinquents necessitating surveillance and jurisdictional control while it normalizes the settler state, its actions, and its citizens. If Native peoples choose not to comply, choose not to think of themselves as inherently criminal, or even choose not to adopt the mandated provisions of the TLOA, they find themselves further criminalized (and, ironically, the recognition of their sovereignty is further limited) for being too Native. Either way, to be Native in the eyes of the settler state is to be "other than Euro-American" and comes with violent consequences.

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<sup>6</sup> Although Ross' analysis of American Indians and incarceration was published in 1998, more recent reports on the incarceration of Native peoples come to the same conclusion regarding the disproportionality Natives in the U.S. criminal justice system. For example, a *Huffington Post* article published in 2010 asserted that Native peoples are incarcerated at a rate 38% higher than the national rate (Bell, 2010).

## **Conclusion: Settler futurity and Indigenous disappearance**

Violence against Native women exists. Substance abuse, poverty, and crime in Native communities also exist. These realities must be spoken of if they are ever to be lessened and/or eradicated. But, they must be spoken of more complexly, in ways that account for and interrogate the settler colonial and heteropatriarchal contexts from which they emerge. If this is not done, like “damage-centered research” (Tuck, 2009) that ultimately pathologizes the Indigenous pain it purports to redress, *damage-centered legislation* such as the TLOA will further pathologize the Native communities it purports to “protect.” The TLOA transforms collective social distress in the face of unrelenting settler colonialism into individual pathologies. Pathologization is not a trivial matter. It is employed to warrant the increased surveillance and regulation of the physical and discursive boundaries of Indigeneity, and it aids in justifying the ongoing and ever-evolving logic of elimination around which settler colonialism is organized.

My purpose in interrogating the TLOA, however, is not to suggest that we abandon this particular piece of legislation or that we cease advocating for the reform of federal policies that negatively impact Native peoples altogether. The horrendous impact that sexual violence against Native women has on both the “political sovereignty and personal sovereignty” (Deer, 2015) of Indigenous peoples does not afford us the option of simply refusing to engage with the settler state in our anti-violence efforts. Rather, I urge us to refrain from privileging federal reform efforts as *the* most effective solution, or even *one of the* most effective solutions, to eradicating violence against Native women. We must remain vigilant in assessing the risks that accompany the potential benefits of working in partnership with the very settler state that demands our subordination and elimination. We must consider the ways in which our support of and participation in the development of legislation like the TLOA more securely binds us to a settler colonial and heteropatriarchal “law and order” that ensures settler futurity and Indigenous disappearance.

The reformation of federal policies may be a necessary component of decolonizing Native nations and restoring bodily integrity to our communities, but it should not be advanced at the expense of tribal-centric and community-based solutions.<sup>7</sup> Even if we concede that the TLOA may mitigate the effects of violence against Native women and restore a slight degree of tribal sovereignty to Native nations, we must ask ourselves what the articulation of tribal sovereignty under the TLOA looks like. Is it rooted in Indigenous ontologies, epistemologies, and practices? Does it reflect Indigenous constructions of gender, sexuality, kinship, and relationality? Does it account for both the histories and traumas of sexual violence that our ancestors survived as well as serve us on our journeys toward justice in the present moment? Does it foreground an Indigenous futurity, which “foreclose[s] settler colonialism and settler epistemologies” (Tuck & Gaztambide-Fernández, 2013, p. 80)?

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<sup>7</sup> Laura Harjo, Jenell Navarro and I discuss the wide range of constantly evolving strategies that exist within Indigenous anti-violence movements, as well as the critical role that community-centered approaches play in these efforts, in “Leading With Our Hearts: Anti-Violence Work, Community Action, and Beading as Colonial Resistance” (forthcoming).

Moreover, if we take seriously Barker's (2011) assertion that, "the articulation of Native culture and identity to legal status and rights" has ethical implications "for the kinds of sovereignties and social relationships Native peoples (seek to) make with one another" (p. 218), we must interrogate the ethics of the settler state-oriented strategies we choose to employ in our effort to mobilize against violence. More to the point, we must ask ourselves, who is served by the TLOA and who is not? To what degree do we wish to perpetuate definitions of Indigeneity that have been discursively produced by the settler state to advance the project of settler colonialism? Does violence against Native women adhere to the boundaries of Indigeneity as they are defined by the settler state? What about "the unrecognized and the terminated, the *un-* and *dis-* enrolled, and those treated as undesirable for purposes of defining and asserting Native nationhood and citizenship" (Barker, 2011, pp. 23-24)? Do we accept the further victimization of these relatives in return for the limited degree of short-term "safety" legislation such as the TLOA offers *authentic* "Indians"? If we truly aim to decolonize our nations, our governments, our bodies, *and* to restore Indigenous understandings/relationships of gender and kinship to our communities, the answer to this final question must be an emphatic, "No!" Otherwise, we risk employing the very settler colonial and heteropatriarchal logics that cause violence against Native women and advance the elimination of Indigeneity.

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