



TE WHARE WĀNANGA O
AWANUIĀRANGI

WALKING IN TWO WORLDS

LENA HAMMONS
2020

Creator created
our world. Our oral
traditions tell us
that we were always
here. Each tribe of
our ancestors lived in
communities united
by land, language and
culture—connected
by waterways and
rivers and related
by marriages and
friendships.

Lena Hammons

WALKING IN TWO WORLDS

We, gathered at Tulalip, are one people. We govern ourselves. We will arrive at a time when each and every person has become most capable.

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Abstract

The aim of this thesis is to identify and connect the impact of legal pluralism in Indian country between Federal Indian Laws, Tribal laws and the US Supreme Court cases. The history of Federal Indian law is significant to the treatment of Tribes throughout history by the US government, as we walk through the first US Supreme Court case. The beginning of legal pluralism with Indian¹ Country.

While my own story brings forward an unknown truth of how history impacted me and my family (chapter 1), we must walk through Indian history and the relationship with the US since the arrival of Christopher Columbus in 1492 to understand legal pluralism between Indian Country and the US. Documented stories, oral stories, court cases and Federal law walk us through this history to bring us to now and hopefully the future (chapter 2).

Historically, Tribes resisted the US move towards assimilation into the western ways. Tribes and the US engaged in war. Indian people were impoverished; boarding schools either starved Indian children with the western diet or failed to provide the children with quality health care (chapter 4). Eventually, with the US economic downturn, Boarding Schools provided children with shelter and food.

Tribal members from across the nation tell their stories and thoughts on legal pluralism and sovereignty. They provide the oral history to document in our own Indigenous ways, in our own words. (Chapter 5). While telling their stories, the stories build the response to Indian law. The impact of Indian law on their families and their thoughts on the effectiveness of Indian law throughout history. (Chapter 6)

Tribes strive to protect sovereignty, the ability to govern themselves and their people. They do this this collectively through Tribal, regional, national and

¹ (Merriam-Webster.com, 2019) The terms “Indian”, “Native American” and “Indigenous” are used interchangeable throughout this research. US Federal Laws use the term “Indian” and Tribal members use all three terms for identity.

independent unity organizations. Lobbying efforts, court cases, educating politicians and building strong coalitions are all Tribes response to legal pluralism. (Chapter 7) We walk in two worlds, with a history of struggle, tragedy, survival and resilience. This chapter concludes our walk in two worlds.

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CHAPTER ONE

1.1 Introduction to Thesis

The introduction to this thesis is written in two sections. The first section provides a summary overview of each chapter. The second outlines key questions that have shaped and informed my thinking. While this research recognizes that there are many issues to be sorted through, this research relates aspects that impact the overall social justice theory in Indian Country. Focusing specifically on the positive impacts to identify what works well for the Tribe to see if these can be built on and developed further. Identifying historical elements that lead to these successes of today is key to this research.

Therefore, the purposes of this study are:

1. to investigate the effectiveness of legal pluralism between Tribes and the Federal government
2. to study the impacts of legal pluralism on Tribes.
3. to evaluate the effectiveness of the Federal Indian policies for Tribes.

Chapter One introduces my research topic and provided some background to Tulalip Tribal history that engulfs centuries of Federal Indian law as the United States attempts to colonize and address their Indian problems such as land, hunting, fishing and crime.

Chapter Two is a review of the literature on the topic of the history of Indian law as written by Native Americans in response to Federal Indian law throughout centuries.

This chapter discusses History of Indian law, legal pluralism and how each law relates to the government's issues with the Indians. History of Indian law is developed from relationships with the U.S. government over centuries since the historical "discovery" by Columbus. Did Tribes have laws pre-contact with Columbus? Tribes survived centuries of slaughter and abuse under the doctrine of discovery. Yet Supreme Court decisions are based on a "conquered people". Discovery or conquer, Indian laws were built on these perceptions. Centuries of

treaties between the U.S. and Tribes have created wide-ranging laws governing Tribes. This research is limited to Tribal and Federal legislation that impact crime in Indian Country and Tribal Sovereignty. Tribes address issues with environment, religion, housing, health care and so much more that cannot adequately be addressed in one research project.

Tribal Members from various Tribes were interviewed to provide their individual oral history of Indian law and the events that led up to such laws. Interviewing Tribal elders, leaders, members and others will provide oral history in their own words. Although, any survivors of government boarding schools are no longer with us to provide these stories, our stories are handed down to generations, so we will never forget the truth.

Chapter Three discusses the research frameworks and methodologies within which my research is based. Indigenous methodologies are a means to more accurately reflect the oral history and traditions of Tribes and Indigenous peoples in support of this research. (Smith, 2012). The chapter also describes the methods I have used to seek answers to my research questions. In brief, these Oral tradition/histories and Community Based Participatory Research (CBPR) using interviews, court cases and academic journals/publications written by Native Americans and website research.

Chapter Four asks how Tribes respond to Federal Indian policy. Interviews of Tribal elders, leaders, members and others² to provide the other side of the story. Many will want to discuss the infamous Boldt decision that is the result of the Fish Wars in Washington State. The Washington Fish and Wildlife agents shooting Indian men, women and children for fishing on their own lands in the 1960-1970's. Judge Boldt determined that Tribes had a right to 50% of the available catch. The commercialization of the fishing industry created violent and tragic relationships. The Boldt decision is just one example of government Indian law resulting from government issues with Tribes. This case and many others will address how Tribes respond to Federal Indian policy, while providing

² National organizations leadership

the oral historical record and outlining how Tribes addressed the issues and the laws.

Walking through the missions and stories of Tribal, independent, regional and national organizations tell us the story of Tribes response to Federal Indian policy. Indian Gaming, Missing and Murdered Indigenous Women (MMIW), Northwest Indian Fish Commission, Northwest Indian Court System and other organizations pull Tribes together to bring justice to Tribal communities and to address the US legislators through education and lobbying efforts.

Chapter Five What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian policy? Interviews of Tribal elders, leaders, members and others will provide discussion about their thoughts on Federal Indian policy. Oral history is used to answer this question to develop the impact of federal laws that guide our governance, survival and strength over generations of Tribes.

Chapter Six How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population?

Research of Indian laws that had major impacts on Tribes and books/articles written by Indian authors will guide the answer to promulgate higher standards of efficiency and effectiveness. What did the government promise in their laws and what did they provide to establish successes and failures? What events happened in Indian country that impacted social justice in Indian Country through Federal Indian policy?

Chapter Seven Thesis Overview

Although, assimilation has also guided us through the last few centuries, we also work to balance European expectations with our own traditions and cultural practices. The opportunity to decolonize methodology in effort to tell our story is one to enhance our research, to commingle the two worlds by documenting in

our own words, our oral histories, traditions, culture, while working towards improving our present day and future systems. How can we make it better, effective and efficient to protect our Indigenous people?

Chapter 7 outlines the answers to the research questions, summarizes the findings of the questions in accordance to the Tribal member interviews, stories, books and media publications. What is the history of Indian law? What are Tribes responses to Federal Indian policies? What are their thoughts on effectiveness and efficiency? How can we make the promulgation process better? Each question answered in our own words, for our own story.

1.2 Aim and Research Questions

In order to achieve the aim as described above, the research seeks to first answer a number of questions.

1. What was the history of Federal Indian policy leading to legal pluralism?
2. How do Tribes respond to Federal Indian policy?
3. What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian policy?
4. How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency³ and effectiveness⁴ to protect and serve the Indian population?

The US Supreme Court case *ExParte Crow Dog* is the first US Supreme Court case filed by an Indian. The US Supreme Court overturned Crow Dog's murder conviction for lack of Territory jurisdiction for an Indian on Indian crime committed in Indian country. As a result of this decision, the US promulgated

³ *Efficient* most often describes what is capable of producing desired results without wasting materials, time, or energy. While the word can be applied to both people and things, it is far more commonly applied to things, such as machines, systems, processes, and organizations. The focus of the word is on how little is wasted or lost while the desired results are produced. (Merriam-Webster.com, 2019)

⁴ *Effective* typically describes things—such as policies, treatments, arguments, and techniques—that do what they are intended to do. People can also be described as effective when they accomplish what they set out to accomplish, but the word is far more often applied to things. (Merriam-Webster.com, 2019)

the Major Crimes Act. The Act intended as a general federal law applicable to all persons in the US, describes specific major crimes to give the US jurisdiction over these crimes despite any Tribal or state jurisdictions.

Echohawk provides his written version of Indian history, Indian law theories and the ten worst US Supreme Court cases against Indian country. He describes the impact of the Cherokee Nation v. Georgia (1831) ruling that Cherokee's are not a foreign nation but a domestic dependent nation with inherent sovereign status. Supreme Court Chief Justice wrote that the US is guardian of Tribes under the Federal Trust Responsibility Doctrine. (Echo-hawk, 2010)

In Johnson v. MIntosh (1823) case ruled that Indians do not own their land, but have a right occupy the land, but cannot sell their land to states, states do not have a right to settle aboriginal land claims, and only the federal government could negotiate with Indians over land rights. However, Georgia was able to remove Tribes from their state to the Indian Territory in Oklahoma⁵. For the next ten years, other states followed until that same US Supreme Court Chief Justice Marshall had a change of heart and created new Indian policies with his decisions known as the Marshall trilogies.

In Worcester v. Georgia (1832) case rules that states have no jurisdiction in Indian affairs, as Tribes have inherent sovereignty and authority to govern and enforce their own laws on their own lands. This case, Johnson v. MIntosh and Cherokee Nation v. Georgia (1823) are known as the Marshall Trilogies. Supreme Court Chief Justice Marshall wrote the court opinions for all three cases. (Echo-hawk, 2010) Echohawk describes Cherokee Nation v. Georgia (1823) as one of the ten worst US Supreme Court decisions in history. (Echo-hawk, 2010)

States still attempt to claim jurisdiction over Indian crimes, the Crow Dog decision is still used by Tribes and individual Tribal members as a basis to deny States jurisdiction over Indians. Carpenter v. Murphy (Carpenter v. Murphy,

⁵ Also known as the Trail of Tears

2019) and *Herrera v. Wyoming* are two such cases. They are hunting and fishing treaty rights cases currently pending US Supreme Court decisions. Lower courts ruled in favor of the Tribal members and the states appealed the decision to the US Supreme Court. History of a few US Supreme Court cases demonstrates centuries of States inability to comprehend sovereignty and Tribal jurisdiction.

Theresa Sheldon, Tulalip Tribes, believes that when Tribes take cases to court, we win. We win because we make sure we always cite treaty rights outlined in our respective treaties. Tribes respond to Indian law by using it to our benefit and fighting for what the treaties offer Tribes. We use the Treaties to our benefit in our own Tribal courts and in the US Courts. (Sheldon, 2018) Younger Tribal member Joseph Allen, Modoc Tribe, has different thoughts on Indian law; he does not see them as an opportunity or benefit, but rather to hold Tribes in their places. To make sure we know who the parent is. (Allen, 2017) Interviews of Tribal members across the nation provide the oral stories of Indian law impacts to Tribes. Jamie Hummingbird, Cherokee Nation, describes how the Indian Child Welfare Act (ICWA) impacted his family as Georgia located Cherokee children and returned them to Jamie's family. Jamie understands that ICWA does not always benefit Indian children in the manner that Tribes expect. He is appreciative that Cherokee children are home on their own Indian lands, learning their language and culture. (Hummingbird, 2017) Interviews of Tribal members across the nation provide the oral stories of our people responding to Indian law. They walk us through the impacts of the laws, such as treaties, boarding schools and removal.

Yet Tribes have collaborated to become united as one through local, regional, national and independent organizations to educate the public and politicians, while lobbying Congress to ensure Tribes are treated fairly and included in laws such as the Violence Against Women Act (VAWA). The focus over generations is violence and addressing the lack of jurisdiction for Tribal, State and Federal law enforcement agencies is key in VAWA, Murdered and Missing Indigenous Women and the Tribal Law & Order Act. Congress moves slowly to amend these Acts to include Tribes. Debbie Parker and Theresa Sheldon are key players in lobbying for Tribal inclusion to these laws. Many Tribal member men, women

and children died with no one held accountable for their deaths because of no jurisdiction by law enforcement.

Public Law 83-280 (PL 280) gave states federal authority to act on federal jurisdiction over Tribes, yet budgets and manpower prevented those law enforcement agencies from providing assistance to Tribes and communities. Tulalip identified this deficiency and retroceded from PL 280 state authority with building its own Tribal police department and court system. Wendy Church, Tulalip Tribal Court Director outlines the successes, goals and vision of the Tulalip justice system; while former Police Chief Jay Goss outlined the PL 280 inefficiencies compared to Tulalip growing success protecting sovereignty and jurisdiction. This is how Tulalip and many other Tribes respond to the efficiency of Federal Indian laws.

John McCoy advises that Tribes need more Tribal members to study US Indian law and more practitioners in the state legislature and in Congress. He also advises that Tribal members who practice in politics must remain Indian, must remember where they come from and educate their politician associates on Indian communities and the impacts of congressional acts on Indians. In 2019, two Indian women were elected into Congress. They wore their regalia to the swearing in ceremonies. Deb Haaland, was elected to the Floor Speaker. She leads the Congressional hearings and committee meetings. First Indian woman to hold such a position. Indian participation in US politics is key to improving the efficiency of Indian law while increasing the standards at the same time.

Jonodev Chauduri, Chairman of the National Indian Gaming Commission, announced the need for Indian people to continue to educate the US politicians and public. Indian laws start with “Congress finds that”. The Indian Gaming Regulatory Act seeks to protect Tribal gaming from organized crime. Jonodev says “In 30 years we haven’t seen that boogie man yet”. Tribes are effectively and efficiently regulating gaming without fears of criminal elements that Congress describes. We have a vested interest in the success of our ventures, the success of our people, and to protect sovereignty by regulating ourselves.

Methodology Comments

After discovering Indigenous methodologies, I strongly focused on oral traditions/history. To provide our story in our own words, using stories from Tribal members across the US is my passion. Much of Indian history was and is written by non-Indians. Contributing to their perspective of what they see, and is usually inaccurate from what actually occurs, yet their inaccurate perception is documented as scholarly and gospel. Our story needs to be told. Oral history, Indian people only knew talk, nothing written but stories handed down through generations (Dietz, 2013). Our stories, our history, our teachings, all belong to us through our children.

We respect our elders; we learn from them, they teach us how to behave through stories. Lessons the boarding schools did not take away from us. Speaking with elders during the interviews brought out sadness and yet great pride in our ancestors' strength and resilience throughout centuries of wars, genocide attempts, starvation, murder, rape and cultural pluralism. We must correct the US history with the truth about us. Yet we must walk in two worlds today.

Interviewing Tribal members, elders and Tribal leaders brought stories, emotions and their history to life. Engaging them all in community based participatory research, earning their trust to speak about history and today's world. Bringing Indigenous Methodologies to life.

Our two worlds collide with written history of us. Giving demeaning and disrespectful perception to others, including our children that Indians (us) are less than worthy of their world. Yet we stand up strong and play their games in their world. We are effective and efficient in their world. We educate ourselves in their world. We go home and be Indian. Our story must be told in our own words.

1.3 Significance

This study is significant for a number of reasons. First, it will extend the Hammons (2013) study on Crime Reporting in Indian Country. This study will provide historical issues that bring federal Indian policy where it is today while researching the effectiveness or ineffectiveness of these policies.

Second, it will provide new information about legal pluralism in Indian country. What does it take to move legislators to develop and process or promulgate new legislation that will actually move forward to provide access to all aspects of the legislation about Indian country? How does technological advances move resources forward to benefit and protect Tribes and local communities? It researches tragedies on Tribal lands that eventually brought legislative action to amend existing legislation or promulgate new legislation to benefit and protect Tribes.

Although, the use of the term “legal pluralism” is described as a basis of this research, it is a technical term to describe a legal relationship between governments. More specifically, the relationship between the federal and Tribal governments. The intention of the term is as the secondary focus of this research in effort to describe the history of federal Indian laws. The primary focus is to describe the impact of Federal Indian laws on Tribes throughout the nation, throughout history and Tribes response to those issues. The term is a colonized word that confirms our walk in two worlds.

As Tribal justice systems grow, Tribes adopt Federal laws as their own. Thereby enforcing Tribal and Federal laws, creating legal pluralism. Then, throw in States and their attempts at obtaining jurisdiction on Tribal lands, while Tribes mitigate those attempts in the federal judicial system. The federal government has joined Tribes in court cases with the States. Therefore, although two separate governments using the same laws and yet sometimes travelling the same journey against a State. These factors are all relevant and important to this research, more so than the term “legal pluralism”. Yet, the term provides easier understanding in certain areas.

1.4 Overview of Methods

The purpose of the study is to investigate the effectiveness of legal pluralism between Tribes and the Federal government; to study the impacts of legal pluralism on Tribes; and to evaluate the effectiveness of the Federal Indian policies for Tribes. Therefore, it is important the research follow Indigenous research methodologies. Indigenous Methodologies is to tell the story from the viewpoint of the people, Indigenous people. Using oral history and traditions through storytelling, listening and asking questions provides a framework of truth and passion for the words spoken from the heart in effort to have our story published in our own words rather than interpreted in mistruths or misunderstanding of our beliefs, struggles and survival. Words from our ancestors handed down so that we may learn and never forget where we came from, how we behave, to love and to be strong for the next seven generations ahead of us.

This study uses a mixture of methods to answer the research questions. This is because Indigenous methodologies have been described as similar but much smaller theories to reach the goal of this research. Using Oral history and traditions as a methodology will provide in depth research to gain perspective from the stories and teaching of Tulalip and Coast Salish Elders, leaders and members as to how legal pluralism has impacted native lives.

Community-Based Participatory Research (CBPR) (Leavy, 1975) has been hailed as an alternative approach to one-sided research endeavor that have traditionally been conducted on communities as opposed to with them. Although CBPR engenders numerous relationship strengths, through its emphasis on co-sharing, mutual benefit, and community capacity building, it is often challenging as well. CBPR requires relationship building with members of the community, earning their trust and listening to their stories without interrupting. Interviews disclosed that many elders and ancestors do not discuss the boarding school years, yet many discussed the strength of those who attended the boarding schools. A strength that brought many Tribes into the successes we experience today.

Research question one – What was the history of Federal Indian policy?

The interview is one method chosen to answer the first research question. Cohen (1994) suggested interviews are useful as a research method because they enable the researcher to use CBPR to allow Tribal elders and Tribal members to fill in the historical record of this research by providing their own version of Tribal history as passed on through generations.

The interviews will be combined with documented historical stories, US Indian laws and US Case law to compare the two sides of the stories. These stories will correlate the increased social justice impacts of Tulalip through economic development, crime reporting problems between Tribal, state and federal law enforcement agencies, the collateral damage caused by US failure to provide the resources they promise in Indian laws and the constant improvement of our systems

Research question two - How Do Tribes respond to Federal Indian policy?

Interviews is one method chosen to answer the second research question. Oral history is a method of collecting narratives from individuals for the purpose of research. In general, qualitative methods of interview all seek to gather data directly from individuals. The kind of information sought varies, but usually covers the following dimensions: • Personal experiences • Memories of events • Attitudes, values, beliefs • Opinions and perspectives. Oral history is a unique, qualitative method of interview. Oral history follows an inductive and open-ended interview model. Oral history is based in on oral tradition of transmitting knowledge. In essence, this method presupposes that individual actors have valuable knowledge to share based on their life experiences, including their behaviors, rituals, attitudes, values and beliefs. Historians often use oral history as a means of documenting and preserving-filling in the historical record. (Leavy, 1975) (Deloria, Custer Died For Your Sins, 1969)

US Supreme Court cases filed by Tribes provide the written response of Tribes and at time the US when the US joins a case on behalf of the filing Tribe. History is full of US Supreme Court cases filed by Tribes and/or Tribal members for treaty violations and Indian laws promulgated by the US. Each has consistently provided precedence for future cases and has increasingly impacted Tribes by

the decisions written by the Supreme Court justices. Some not always fair or consistent with the laws, but used as precedence in the future anyway. Turning a negative into a positive for Tribes.

Research question three - What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian policy?

Interviews is the method chosen to answer the third research question. Elders and Tribal members will assist in filling in the historical record of this research. Providing their version of oral history in accordance to their roles of oral tradition will build the information needed in the specific areas of this research. These stories will correlate with the increased social justice impacts of Tulalip through economic development, increased drug and crime problems and their wishes for constant improvement of our systems. Many of these elders and Tribal members fought years and generations of political battles to preserve and improve sovereignty on behalf of Tribal governments nationwide.

Research question four - How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population

Research will include academic journals by Tribal members to provide and promote statistical data and theories of Indigenous behaviors in our social justice programs. These academic journals will support the growth of Tulalip sovereignty while the impact of crime rates, mental health and addiction created a need and stability of a growing Tribal justice system. Books translated by ancestors will also provide other Native American historical oral stories told to translators for the purpose of documenting their memories, values, beliefs and teachings. This research will support the interviews of today's elders and leader's oral history and traditions that lead the way for a sovereign justice system.

1.5 Introduction to Tulalip Tribes

The purpose of this study is to research the effectiveness of Indian policy and Plurality Tulalip Tribes of Washington and other Tribes across the nation. Generations of changes to Tribal communities, has brought both positive and negative impacts to Tribal members. Gaming operations bring jobs, medical/dental insurance, homes, and cars to the community. There are improved living conditions for those who seek out employment and there are per capita payments⁶ for those Tribal members who choose not to work. Revenues from these operations also pay for higher education to Tribal members who choose to improve their employment opportunities or to continue with higher education in areas of their interest. Higher education successes provide the Tribe with members who can seek out careers that defend sovereignty and improve Tribal operations.

On the opposite end of the spectrum, inter-generational and historical trauma continues to negatively impact Tribal communities with high rates of alcoholism and drug abuse. Inter-Generational/historical trauma are the result of United States of America Federal Indian policies that have conflicted with Indian way of life. Tribes struggle with providing healing resources to Tribal members while considering federal laws that govern Tribes.

The programs that the Tribe provides to members seek to either reduce or eliminate the impact of social justice processes. The services provided attempt to reduce crime, drug/alcohol addiction, increase child welfare awareness, and other external issues that create policy for Tribes. These policies derive from a paternalistic federal government that believes they are promoting the social health and welfare of Native Americans. Yet those policies hinder services to Tribal members through limited resources and/or access to resources to implement or sustain those services.

⁶ Per capita payments may be funded from various sources. The first and most well-known is gaming proceeds under the Indian Gaming Regulatory Act of 1988, or IGRA. IGRA authorized a distribution of net gaming revenues on a per capita basis and subjected those payments to federal income taxes. Other sources of per capita distributions include income from allotted tribal lands, rents or royalties, the sale of resources, such as timber. (Service, 2016)

Social justice is a broad scope that can be individualized and yet can impact Indigenous peoples globally. It is important to identify the success and failures of social justice policies starting with the Treaties between Tribes and the government, then working through various policy eras. Policies implemented by the federal government such as the boarding school policies that removed children from their homes and families institutionalized and assimilated into the euro-colonized culture. This is a story of struggle, trauma, survival and resilience of a culture that refuses to submit to genocide by federal policies.

This thesis will introduce the research topic of Federal Indian policy, the background to the study, aim and research questions, the significance of the study and an overview of methods (methodology). Finally, an overview of the thesis will discuss the purpose of the study, which is to investigate the effectiveness of legal pluralism between Tribes and the federal government; to study the impacts of legal pluralism on Tribes; to evaluate the effectiveness of the Federal Indian Policies for Tribes.

This research will provide a history of Indian Law, policies and United States Supreme Court cases that outline a series of increasing legal pluralism to address the Indians in the US. This research will collaborate with interviews from Tribal Elders, leaders from National Tribal Organizations and members from Tulalip along with Tribal members from across the nation. These interviews will provide the oral history and traditions of Tribes in dealing with the legal pluralism between Tribes, the US government and at times states. Interviews will support how Tribes and their memberships address legal pluralism, their opinions on Tribal Sovereignty, treaties and the impacts on their families and communities. Finally, an overview of the research will provide a summary of the history of legal pluralism and how it impacts Tribes and Tribal Members.

My Story

I was born in Tacoma, Washington in 1959 to Rosalyn Juanita Jimicum, a Tulalip Tribal Member and Glen (Bud) Boehme, German and Welsh. By 1964, I had three little sisters and two little brothers. My mom, at the age of 22, was a mother

of six and all born within five years. I remember living on the reservation, moving to other towns, but always remember a couple of auntys, grandmothers and my grandfather. One day, probably when I was five or six, I was playing hopscotch on the sidewalk in front of our apartment complex, we had used chalk to draw our outlines for the game on the sidewalk and police cars pulled up and parked beside us. My friends told me the police were there to arrest me for drawing on the sidewalk...my little brothers, sisters and I were gathered up and driven away from my parents. I remember screaming "I won't do it again" over and over. The next thing I remember is being in a big building, we were all crying, including my mom. I do not remember anything that was said or done during that time, but my memory jumps to my paternal grandparent's house, a very small house that we visited often. My grandmother told us we were going to live with them for a while. I do not remember if she told us why.

My baby sister was only about six weeks old, which meant that two others were also still in diapers at the time. My grandfather was retired from Boeing and returned to work at Boeing after we moved in with them. We all moved to Bonney Lake, about two hours away from my mom. We would all wake up while still dark, pile into a station wagon where my grandmother made a bed for us in the back and we would go back to sleep while she drove my grandfather to work in Renton, about two hours away. Then we would drive home, only to drive back to Renton in the afternoon to pick him up from work.

I loved being with my grandparents and probably did not quite understand the extent of our living situation at the time, but I definitely understood that my grandparents would need help taking care of all of us. My grandfather began drinking regularly after we moved in with them. If he drank regularly before, I am not aware of that. However, I never thought much about his drinking, as he was not violent or mean. We had a huge horse that he would put all six of us on and we would ride around the property just giggling and having fun. We also had gardens, chickens, rabbits, some sort of birds, all of which my grandfather was very good at butchering and packaging for my grandmother. This is how we ate, fresh meat and vegetables, pancakes for breakfast every morning and home cooked meals every night. I never wondered why we never went to the

grocery store, but I remember we always had food and I remember how I hated some of the garden vegetables and vowed to never feed my kids those nasty things.

Every summer my grandparents would take us on road trips to Arizona to visit our Aunt and Uncle. They always lived on ranches where we could ride horses and swim in swimming pools. On the way to and from Arizona, we would stop at different Indian reservations and once in a while we would get souvenirs for my mom. I do not recall ever giving them to her though. As, I do not remember seeing her very much at all. My dad would visit us occasionally, we saw him more than my mom. He would show up on a Harley and sometimes we got to visit his friends and get rides on his motorcycle. I remember one time I had the measles, all the kids got a ride with him except me, I cried and cried. But, when the measles was gone he took me for that ride. I was a happy kid that day.

In high school, I was nominated for Valentine's Day Queen; I had no clue how that happened. There were gallon jars placed in one of the hallways. The voting was a penny a vote. My jar was empty for days, then one day our art teacher walked up and put a dollar bill in my jar. I remember thinking he was going to cause a mess of drama and he did. The other candidates were pulling fits, wondering how me and my king were candidates, who nominated us and on and on. So, a candidate meeting was called, and they had all the same questions. I finally said, "I have no clue how I was nominated, but I am not stepping down". The principal told us that we all were nominated out of the school clubs. My king and I were nominated from the Indian club. I did not know I was in a club, especially the Indian club, as I really never told anyone I was Indian, so I wondered how that happened. We won the King and Queen of the Valentine's Day dance. All those other candidates were so angry that the band played "smoke on the water" for our royal dance. For me, it was an amazing dance. I remember my dad came to pick me up, he was on his Harley and I was in my royal dress...riding home.

Then...I was called into the principal's office, always a frightening call when you are a teenager and know that you did not do anything wrong. He told me

that the Modoc Tribe was hosting the National Indian Basketball Tournament and that I was selected as one of the princesses of the tournament. Again, I was confused why I was selected when I really didn't know what an Indian was or what it meant to be Indian and especially not a Modoc Indian. There were four of us; we were definitely treated like royalty. We did radio advertisements; television appearances, we were promoting the tournament. My step mom made me new clothes for each night of the tournament, as a teenage girl, new clothes was always a welcome gift. I later used those clothes to wear during rodeos and horseshows. My dad drove me to Chiloquin every night and picked me up every night except for the last night, he let me stay the night with one of the other girls.

I was in culture shock staying the night at the Modoc reservation. I was not raised around Indians; some of them called me white girl because my skin was seriously pale then. However, I did not take offense since I did not know any better at the time. A Washington team won the championship and so they let me give them the championship trophy. The trophy was taller than I was, so someone carried it to the team for me. The winning team was Grays Harbor, Washington; I never heard of them and still do not know who that Tribe is. After the final game, we drove around the reservation to different parties; I had never been to a party. I was not comfortable being at the parties; even though everyone was drinking alcohol, I did not. I was anxious for the night to be over so I could go home the next day. Yet, I was still excited to be a princess. We were given many gifts and treated exceptionally well. One of my most favorite memories.

At sixteen, I found myself pregnant and married. He was accepted into the Army, so I spent my time travelling around the nation to stay with him. He was later stationed at Ft. Lewis Washington, back to old stomping grounds. I had an Aunt that lived close by, so I still had family to help me through pregnancies and married life. When his tour was over, we moved back home to Klamath Falls, Oregon. We separated for a while, reunited, had two more children and then finally decided to divorce.

A divorce, a violent relationship and four children later, my kids and I moved to Tulalip. While we were all trying to get settled into reservation life, I was in

culture shock again. I did not understand anything, I was an over protective mom. My babies spent many summers at Tulalip with my mom. They knew the reservation and kid life here. Before moving here, I had only attended one funeral, which was my grandma. It seemed there was at least one funeral a week here. My babies went to them all. They helped the cooks, help serve food and clean up. I fought with them trying to get them to stop and I eventually stopped fighting them. My step dad made me attend the funerals, he said I would constantly be looking for them if I did not go say good bye.

I did not want my kids walking around the reservation; I told them I would drive them. That was embarrassing for them and they did not want rides. My heart was broken; I thought they were ashamed of me. When they visited with my mom during the summers, they could do whatever everyone else was doing. I was much stricter than my mom was and they knew more about reservation life than I did. I did not want to fight with them so I would compromise with them.

I was amazed at how constantly broke everyone was and yet always had money for food and alcohol. However, the food was caught from the bay, fresh fish whenever needed or wanted. Hunters would go out, get a deer or an elk, and feed families. Children were fed in this manner and were healthy. I asked my step dad about why the children could live this way. Alcoholic parents, children fed by community members, yet they never missed school and were well dressed so they were taken care of. I still became that motherly influence for those kids. I provided them with hugs and kisses, fixed their owies, fixed their motorcycles, gave them rides, I coached a little league team of all Tribal Members. Yet, still in culture shock.

One day, there was a knock on the door, I answered, and an elderly man was standing there. He introduced himself to me as Uncle LeRoy. I looked at my mom with a puzzled face; she nodded. He said, "Let's go". He took me on a tour of the reservation, told me so many stories that I cannot even remember them, he introduced me to other elders who told me more stories. It was all so overwhelming. Then he told me there was canoe practice on specific days and for me to be there. I asked my mom about this canoe practice, she said, "he's an

elder, you have to do what he says”. Therefore, I went to canoe practice and began my own journey of the legendary canoe journey.

My first canoe journey was in Victoria, Canada. My Uncle told me that we were paddling all the way to Bella Bella, I looked it up on the map...so far away but I decided I would step up and do as I was told. We got on the ferry at Anacortes and I went to sleep. When I woke up, we were in Victoria, Canada. We were booked into a hotel, I was sharing a room with a cousin who was also attending college. We spent a lot of time in our room doing homework. On the day of protocol, there were only three canoes and we went through the long ceremony that I did not understand. We went to their longhouse and they fed us sandwiches, they drummed, sang and danced, it was all so strange to me, but I loved it and decided I wanted to do more of this. As we were leaving in the canoe, the three canoes decided to race. The uncles on our canoe pulled our canoe on top of the water and the canoe moved like it had a motor. I thought this is easy and I can do this canoe thing.

Sometimes my step dad would call me to say we were going to the longhouse and to get ready. I would go; I would watch the drumming, singing and dancing and still did not understand what was going on. I would get heavy feelings and get up go outside for about 15 minutes then go back in. We would be in the longhouse until 2:00 in the morning or later every winter. Then one year, an elder followed me out, without asking me questions he said, “you know, it’s only a fear of the unknown, stay in there and see what happens, you won’t be hurt”. Then I realized my Indian was coming out and I just did not know what was happening to me. The drums were comforting to me and helped me every winter to balance my heart and spirit.

Northwest Indian College is an Indian school, with Indian instructors, teaching about Indians. The college offered a program in Tribal Governance and so I continued taking every class I could to increase my knowledge about my culture. The college offered an Introduction to Indian Law class so my employees and I took the course. Three of them were Tribal members. As we went through the course studying the major federal Indian law eras that impacted Tribes, we

learned that we actually were a part of history and the course became quite emotional for us. When brothers, sisters and I were taken away from my parents, the Removal Era was in play at the time. The intent was to once again remove children from reservations and to offer adult Indians jobs in out of state cities in effort to reduce the Indian population on reservations so that Tribes would lose their enrollment quota and their federal recognition as an Indian Tribe.

The course continued indicating all the ways state and federal governments removed Indians from their reservations, including states removing Indian children from homes and not providing due process to the parents or to even tell them what they needed to do for their children to be returned to them. I always wondered why our parents never fought to get us returned to them and a college class taught me why. My mom was never told she could get us back or how she could. A lot of healing occurred during this class just by studying about this era in Indian history. A little too late though, since my mom had already passed away. All the courses I took at this college taught me so much; I tell everyone that is where I found my Indian. I found compassion for my people and an eagerness to promote positive social justice for our people.

While attending Northwest Indian College, I also enrolled at Columbia College for some criminal justice classes to assist me with my job as the Tribal Gaming Director to the Gaming Commission. Since the intent of these classes was to enhance my knowledge for employment purposes, I found them quite interesting and applicable to my duties as the Director. Our Tribal Police Chief at the time also invited us to attend their specialized training and so I gained a lot of knowledge and experience in the criminal justice arena, but it all seemed relative to my goals to help promote social justice in our community. I had no idea how much it would enhance my education goals.

I applied for admission to Evergreen State College Master's Program in Tribal Governance, the Seattle University Masters in Public Administration and Seattle University Law Program. I was accepted into Evergreen State College and Seattle University's Master's program. Just barely missed acceptance into the law program. I was still ecstatic that I was accepted into these two schools and

accepted both. I attended both Evergreen and Seattle University for about a year before Seattle University found out and made me choose between the two. As much as I wanted the Tribal Governance program, I wanted the success of graduating from Seattle University so that I could continue with a doctorate program.

Seattle University was a new culture shock for me. My first day of class I find the parking garage and it is full of BMW's, Mercedes Benz and other high-end vehicles. I get to class and there are NO people of color, a couple of very feminine males and most students in their late 20's. Every new class I identified myself as a Tulalip Tribal member to ease any tension that might occur because of political conversations. Most professors found my Indian-ness interesting and constantly called on me for questions about our tribal policies. My project assignments were always relative to issues that occurred with the Tribe or with Tribes in general. There were a couple of Professors though who did take offense to my first day introduction and seriously made me suffer throughout the class quarter and even gave me a poor grade and I had to retake the courses.

I graduated from Seattle University though with a Master's degree in Public Administration. Three years went by rather quickly, except for the daily three-hour commutes that in my mind cost me study time. Driving home always provided me with reflection time to consider discussions held in class. After driving to Seattle for four years, reflection time was plenty. I was always trying to figure out how I could incorporate theories into my daily life and/or work.

I discovered Te Whare Wananga o Awanuiarangi (Wananga) Doctorate program for Indigenous Studies. I read the program materials and began my wait to enter this program. This is where my heart was and is. Although my topic took time to formulate and become clear in my mind, anxiety began to build as I attempt to get words from my heart, to my brain and then to paper. Events arose that helped to solidify my quest. Although, acceptance of my application to the Wananga coincided with a shooting tragedy for Tulalip and legal pluralism issues intensified for our community and our Tribe. My compassion for social justice for Indigenous people and their governments continues to grow.

We celebrated the graduation of the Marysville Pilchuck High School class of 2015. My grandson Drew graduated. So proud of his strength and accomplishments. He witnessed tragedy, did his best to help his friends escape danger along with his little cousin who shot his cousins and friends in the school cafeteria. Following this tragedy, grandson became a leader to help his friends and family deal with the grief of losing five teenage babies. His wrestling and football team led the school teams to state competitions with tremendous heart in memory of their friends and cousins. The strength of these children during such tragedy will continue to amaze me. They have dealt with this tragedy with strength, pride and endurance and much better than the adults in the aftermath of the funerals. My grandson was still not 18 and yet he left for college in Oregon for football season. Just a proud grandma...

The aftermath of this school tragedy with the loss of five Tribal teenagers and the trauma experienced by our communities, brought attention to the legal pluralism of Tribal, state and federal laws that demonstrated uncooperative relationships and processes that might have prevented this tragedy. Legal loopholes between governments that leaves questions about social impacts on Indian communities and how to address them. Should Tribes step up with a stronger approach to claim what is theirs in the federal laws, should the federal government step up and offer what they promise in their laws? Maybe both?

1.6 Background to the Study

Tulalip Tribes is a sovereign nation located on Tulalip Bay Washington within the Salish Sea. Tulalip is 4500 members strong and growing. The Tulalip Tribes is established through the Point Elliott Treaty of 1855. Treaties are agreements between Tribes and the United States (US) government that exchanges land for land, health care and education for Tribes. The US Constitution, Article 4 states that treaties made by the US are the “Supreme Law of the land” (The United States Constitution). The Point Elliott Treaty outlines the boundaries of the Tulalip reservation assigned for specific tribes to settle while ceding millions of acres of land to the US.

Article 2 of the Treaty states that non-Indians are prohibited from settling within the reservation boundaries unless the Tribes and the Federal government approve. This section also states that roads may be built through the reservation at the Federal government expense for public convenience. Article 3 of the Treaty also states that in exchange for the ceded land, a school will be established for agricultural and industrial education for the Tribes.

Article 5 of the Treaty provides Tulalip Tribes with the right to take fish at usual and accustomed grounds and stations is further secured to said Indians in common with all citizens of the Territory, and of erecting temporary houses for the purposes of curing, together with the privilege of hunting and gathering roots and berries on open and unclaimed lands (Stevens, 1855).

Article 7 of the Treaty gives the President authority to move reservation Indians to other locations that would benefit those Indians, but also requires payment to those Indian’s who have made improvements to their properties taken by the US.

Article 9 of the Treaty outlines the criminal prohibitions, prohibits war with other Tribes except in self-defense. Jurisdiction for disputes will be resolved by the Federal government.

Article 10 of the Treaty prohibits Indians from drinking or possessing alcohol, punishment for alcohol is loss of individual annuities paid by the Federal Government.

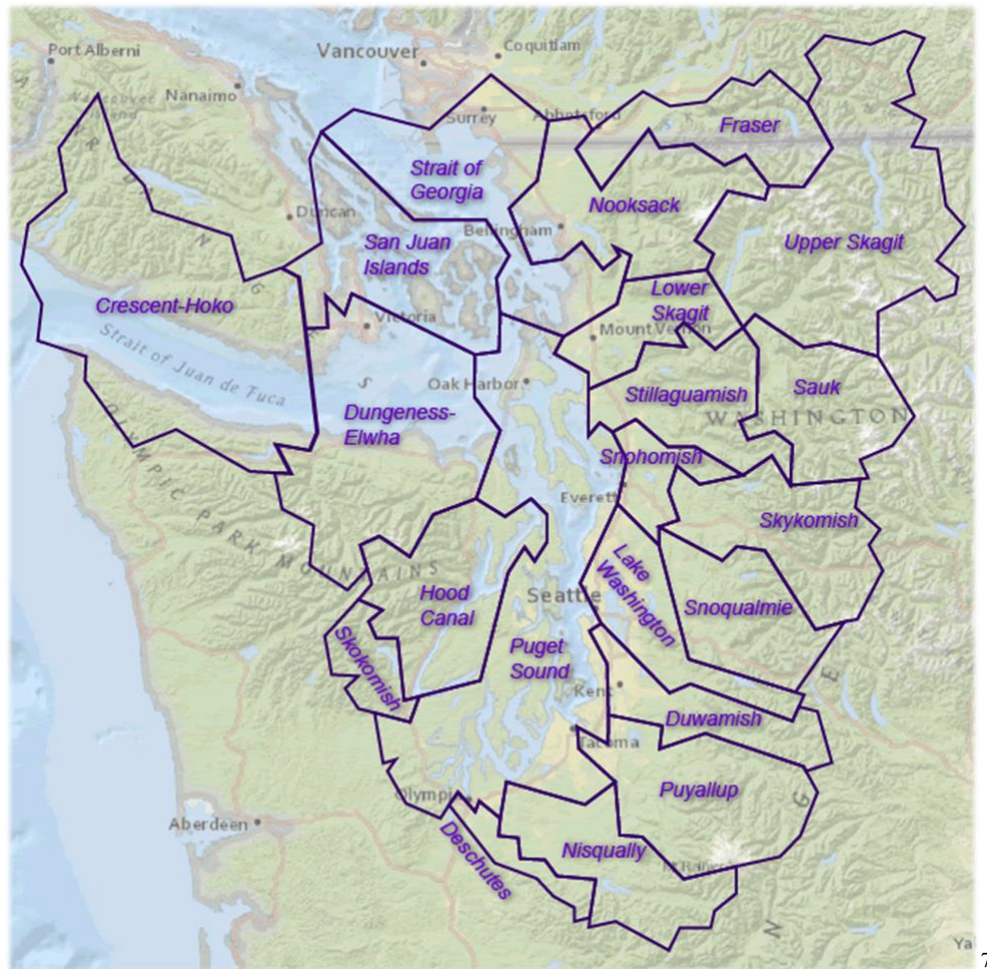
Article 11 of the Treaty requires all slaves to be freed and prohibits future purchase and possession.

Article 14 of the Treaty sets guidelines for the agricultural/industrial school, to provide teachers/instructors to Indian children for 20 years, authorizes children from other Tribes to attend the school, and provides the children with doctors/nurses for medical care. The cost of the school is the responsibility of the Federal government.

Each article of the Treaty obligates the US to provide Tribes with land, health care, education and establishes Tribes rights to hunt, fish and gather in their usual and accustomed places. The Point Elliott Treaty also establishes criminal jurisdiction to the Federal government. Thereby, establishing a Federal Trust Responsibility to Tribes.

Membership as an enrolled member of the Tulalip Tribes is established in the Tulalip Tribes Constitution of 1934. The Federal Government through the Indian Reorganization Act (IRA) mandates tribal constitutions. IRA required Tribes to choose between establishing formal governments that mirrored the US government Constitution and government structures or terminate their Indian

status, which meant losing land and identity as an Indian nation/people.



Our government consists of a seven-member Board of Directors (Tribal Council), government offices and Quil Ceda Village – the first and only federal city within reservation boundaries, a municipality on its own.

Quil Ceda Village (“Quil Ceda” or the “Village”) is a municipal corporation chartered under Tulalip law. The municipality encompasses approximately 2,163 acres of land within the Tulalip Reservation, all of which are held in trust by the United States for the benefit of the Tribe. The Village is recognized as a political subdivision of an Indian tribal government by the United States under federal statute. The Village is delegated and exercises its broad governmental

⁷ Tulalip is located where the map says “Snohomish”. Snohomish is one of five bands of Tribes signatory to the Point Elliot Treaty that placed them on the Tulalip Reservation.

powers within Village boundaries, including taxing and policing powers. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

The US acknowledged the Tulalip Reservation by Treaty and added additional lands to it by federal Executive Order. Through numerous federal statutes and regulations, as well as federal financial investment and assistance, the US supported the establishment, leasing of tribal lands, economic development, and provision of government services at Quil Ceda Village. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

After developing the necessary infrastructure, Tulalip entered into long-term Leases on its trust lands at Quil Ceda with retailers such as Wal-Mart and Home Depot. Tulalip also entered into build-to-suit leases on its trust lands at Quil Ceda with retailers such as Cabela's. Tulalip owns the building in which Cabela's conducts its operations. Tulalip completed additional build-to-suit infrastructure on Village lands for Chelsea Property Group and Seattle Premium Outlets, which today have approximately 140 subleases. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

Tulalip constructed, owns, and operates an additional 16-storefront Tulalip Retail Center within the Village, which includes a tribally owned pharmacy, United Parcel Service store, salon, restaurants, and the Greater Marysville Tulalip Chamber of Commerce, which Tulalip financially supports. Tulalip owns, operates, and leases additional trust lands for other retail and business purposes within Quil Ceda Village. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

The Quil Ceda Village Administration Center is located within the Village. The Tribe also built and operates its own hotel, resort, gaming facilities, amphitheater, cultural center, and natural areas within Quil Ceda Village. Quil Ceda Village includes tribal artwork, tribal signage, and tribal businesses that contribute to its unique character and atmosphere as an upscale tribal retail and

Entertainment destination. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

Through their planning, design, and development activities, their investment in infrastructure, their provision of government services and amenities, and their selection and management of commercial tenants, Tulalip and the Village have implemented federal goals of, inter alia, tribal economic development, self-sufficiency, and self-determination, arising out of federal statutes and regulations, and have converted a vacant stretch of land on the Tulalip Reservation into a thriving regional retail and entertainment destination. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

Tulalip and the Village have attracted more than 150 businesses, millions of dollars of commercial investment, and hundreds of thousands of visitors to the Reservation. In doing so, they have generated hundreds of millions of dollars in annual sales activities and tens of millions of dollars in annual tax revenues. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

Tulalip Board of Directors are Tulalip Tribal members elected by the Tribal membership annually for three-year terms. Tulalip Tribes supports itself economically through two casino operations, one Bingo operation and other revenue venues that all provide revenue for support services to the membership. This includes employment, higher education, recovery programs, youth services such as sports and education support, a police department and court system.

Tulalip's justice system is an award-winning program⁸ for its efforts in restorative and healing justice. Collaborative efforts between the court, police and recovery programs provide healing to the Tribal members who find themselves addicted to substances by providing services to them, while holding Tribal members accountable for their actions and giving them opportunity to become a whole person in their community.

⁸ 2013 Harvard School of Law Honoring Nations Award: recognizing Tulalip's Alternative Sentencing Program.

Initially, Tulalip's police department was cross-deputized with Snohomish County Sheriff's Department due to the number of non-Indians residing within the reservation boundaries as well as those guests who visit the gaming operations. On their own, Tulalip Police did not possess criminal jurisdiction over non-Indians because of the United States Supreme Court decision *Oliphant v. Suquamish* (1978). Snohomish County Sheriff's department manpower was insufficient to address criminal activity on and off the Tulalip reservation leaving a need for the Tulalip Police department to assert a proactive approach in protecting our lands and people. Tulalip practices sovereignty which includes its police department and court system, relying on Tribal and federal laws to provide resources and authority to implement and maintain an effective and efficient justice system. Federal and state systems require collaborative relationships for effective and efficient Tribal justice systems and yet fail to provide access to such resources needed to protect Tribal members and residents.

Legal pluralism describes the situation in which different legal systems co-exist in the same geographic area. We continue to see clashes between state power and Indigenous justice throughout the world, much of it exacerbated by the spread of Western law (Pimentel, 2010). Jurisdictional arguments between Tribes, states and federal governments for any crime continue to create a maze of legalities with legal pluralism. While legal pluralism exists, and federal court cases continue to lay a foundation to support legal pluralism, tracking crimes in Indian country and other jurisdictions is a puzzle to be resolved at a detriment to Native people.

Historical Supreme Court Cases directs the Bureau of Indian (BIA) to monitor crime on Indian lands. This history will begin with describing the first Indian crime in the Supreme Court and laws leading to crime reporting for Indian offenders. Local, state and federal law enforcement agencies each subscribe to a crime reporting system that allows police officers to access and enter crime incidents as they occur. Accessing the crime reporting system also provides government officials with the ability to determine crime trends, types of crime and crime demographic reports to determine the level of efficiency of laws and

policing. Tribes have had access to crime information in the state and federal crime databases, but until 2016 could not enter Tribal crime data into these databases.

Legal documents such as Protection Orders filed with Tribal Court in effort to protect a Tribal member from violence could not be entered into the State and Federal crime databases, even though Federal laws such as the Violence Against Women Act and the Tribal Law & Order Act granted Tribal Law Enforcement Agencies such access. The result is that other Tribes, local/state/federal law enforcement agencies were not notified of the Tribal Protection Orders. Tribal crime data was not available for civil or criminal background investigations. These background investigations are usually used for employment purposes or for family placement of foster children by Tribal, local or state agencies or for individuals who wish to purchase guns.

After the arrival of Columbus and the formation of colonies, the United States authorized specific people, usually state governors to negotiate and enter into Treaties with Indian Tribes across the nation. The Treaties held that the United States possessed jurisdiction for crimes committed by non-Indians on Indian Lands and that the Indian Nations possessed jurisdiction for crimes between Indians on Indian Lands. In the 1880's, the Sioux Tribal Chief, Crow Dog, killed another Indian – Spotted Tail (Pimentel, 2010). The Sioux Tribe sentenced Crow Dog to a lifetime of caring for Spotted Tail's family because he took the life of their care giver and family provider. The District Courts of the Dakota Territory determined the Tribes sentence for Crow Dog as insufficient and arrested Crow Dog for murder. Crow Dog was tried by the Dakota Territory, found guilty and sentenced to hang. Crow Dog appealed to the Supreme Court who ruled in 1883 that the Dakota Territory lacked jurisdiction in this case and that the United States had specific jurisdiction in the case (*Ex Parte Crow Dog*, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883)). The Supreme Court found the Treaties with Indian Tribes to be obsolete, yet enforceable by the United States only in a crime of loss of life (The Major Crimes Act 18-U.S.C. 1153, 1885). Crow Dog was released to his Tribe to serve out the sentence ordered by the Tribe.

In 1885, the federal government promulgated the Major Crimes Act in response to the Supreme Court Decision of Crow Dog. As a result, the federal government obtained exclusive jurisdiction for Indian against Indian crimes that are specifically listed in the act to ensure that Indians were tried and prosecuted for such crimes (The Major Crimes Act 18-U.S.C. 1153, 1885) in accordance to federal standards. The Major Crimes Act granted the United States exclusive criminal jurisdiction over specific crimes such as felony sexual assault, kidnapping, maiming, manslaughter and murder involving Indians and then delegated such authority to monitor crimes in Indian country to the U.S. Department of the Interior (DOI). The Federal Bureau of Investigations (FBI) and Tribal Police investigate Major Crime cases. Then, if accepted by the US Attorney's office, Federal Courts hear the cases. The FBI enters these types of cases into the Federal Crime Reporting System, but the victim, the perpetrator and the Tribe are not identified nor will the crime be reported as a crime committed by an Indian.

The Ex Parte Crow Dog decision listed several factors for the DOI (DOI in 1800's known then as the Indian Agency) to begin tracking crimes in Indian Country. Therefore, the implementation and beginning of crime reporting and legal pluralism in Indian Country allegedly began.

All aspects of federal Indian policy are relative to Indian history in the U.S. Case law developed as a result of the U.S. government attempting to assimilate the Indian into their culture or Tribes stepping up to challenge either the laws that impact Tribes or challenging how Indian people are treated by state and/or federal agencies. Tribes have stepped up by incorporating court systems similar to U.S. Systems, assimilated in theory and yet in practice true restorative/healing justice as indicated by the Harvard Award the Tulalip Tribal Court received.

Tribes practice sovereignty on the verge of legal pluralism through Tribal Court Systems, Tribal laws are adopted as needs arise or planning for the future, or when state/federal laws are promulgated that require Tribes to adopt particular laws in effort to gain resources. Gaming is a prime example of legal pluralism and will be discussed later.

The following chart depicts the history of Tulalip beginning with the first European contact through boarding schools at Tulalip, court cases and federal laws that impacted northwest Tribes:

Chronology of Tulalip History (TTT, 2018)

1792	Snohomish tribes meet explorer Captain George Vancouver, who concludes that they had not met Europeans or Americans before.
1820	Fur trade routes established though Puget Sound region.
1833	Possible date of Camano Head falling and burying a Snohomish village below it, causing a large number of deaths.
h1841	Captain Charles Wilkes is the first American to chart the waters of Puget Sound.
1842	Settlers start to move into the Puget Sound region. U.S. Government starts to sell land and open areas for homesteads without having title to the land.
1848	The Oregon Territory is created with the provision that Indian lands and property cannot be taken without Indian consent.
1853	The Washington Territory is created as a separate entity from the Oregon Territory with the provision that the United States has the right to regulate Indian land, property and other rights.
1853	Several Americans build a sawmill and homesteads on Tulalip Bay. After the Treaty of Point Elliott is signed, the U.S. Government pays these settlers for their improvements.
1855	On January 22nd, Governor Isaac Stevens concludes the Treaty of Point Elliott at Mukilteo, which establishes the Tulalip Reservation.
1855	Hostilities erupt between Native Americans and whites in the Puget Sound Region, but the people in the area around the Tulalip Reservation are not involved.

- 1857- 1863 Father E.C. Chirouse, a French Roman Catholic of the Oblates of Mary the Immaculate, establishes and conducts a school for boys on the Tulalip Reservation.
- 1859 Treaty ratified by U.S. Congress, and soon, the Tribes that agreed to the treaty begin to settle in the vicinity of Tulalip Bay.
- 1860 More than 200 Indians have settled near Father Chirouse and he has 15 pupils. At Tulalip, an agency is established under the Washington Superintendence and an agent is assigned.
- 1859- 1869 Political appointees serve as Tulalip agents, followed by military officers.
- 1861 Revenue cutter Jeff Davis disembarks a detachment of troops to supervise the disposition of supplies to the Indians. In August, Growler arrives with first cargo of annuity goods promised by the treaty. The following month goods are unloaded and distributed to approximately 2,300 Indian people.
- 1861 Snohomish County is created.
- 1863 Father Chirouse opens a new school on the Tulalip Reservation.
- 1868 Sisters of Charity of Montreal begin the education of Indian girls on the Tulalip Reservation.
- 1869 Father Chirouse receives a contract with U.S. Government to support the Tulalip Mission School of St. Anne.
- 1875 Congress extends the homestead laws to Indians willing to abandon their tribal affiliation.
- 1875 Canning process improves and a large commercial fishery begins to develop.
- 1878 Oblate fathers lease Tulalip Mission School and the U.S. Government transfers boys to Sisters of Charity school in the same location.
- 1883 John Slocum founds the Indian Shaker Church near Olympia, a form of religion that some Tulalip people will join.
- 1884 Allotment of Tulalip Reservation begins.

- 1887 Congress passes the General Allotment Act, also called the Dawes Severalty Act, which allots land on reservations to individual Indians. Remaining reservation lands are then sold. The Tulalip Reservation will be completely allotted to tribal members.
- 1889 Washington becomes a state.
- 1891 Seattle and Montana Railway is completed through Marysville. This rail service is the first in the vicinity of the Tulalip Reservation.
- 1896 Congress objects to federal support of sectarian schools and reduces financial support to the Tulalip Mission School. The Catholic Bureau of Indian Missions increases its contributions to the boarding school on the Tulalip Reservation.
- 1900 Government assumes possession of school buildings and begins conducting its own school.
- 1901 Position of Tulalip Indian agent abolished in favor of a school superintendent. The first superintendent is Dr. Charles M. Buchanan.
- 1902 A new school is built on Tulalip Reservation, called the Tulalip Indian Boarding School.
- 1915 A Tulalip Indian is jailed for hunting on contested reservation land. Buchanan writes to Washington State Legislature urging recognition of Indians' treaty rights.
- 1920 Dr. Buchanan serves until his death.
- 1912 First Tulalip Treaty Days celebration is held through the efforts of William Shelton to preserve the songs and dances.
- 1916 Destruction of fish habitat begins through logging, dredging, agriculture, industry and the creation of dams, sewage systems and housing developments.
- 1924 Indian Citizenship Act passed by Congress. Indians become citizens and can now vote.
- 1924 Steelhead becomes a game fish.

1928	The Problem of Indian Administration, also called the Meriam Report, is presented and is highly critical of U.S. Indian policy and urges reforms. Improvement in Indian welfare follows.
1930	Beginning of fish ladders being installed on dams.
1933	Steelhead becomes a sport fish.
1934	Indian Reorganization Act is passed by Congress, enabling tribes to organize in local self-government and elect leaders.
1935	Indians of the Tulalip Reservation write a constitution and vote to approve it.
1936	The secretary of the Interior approves the Tulalip Constitution, and Tulalips elect their first Board of Directors.
1939	Tulalips begin to lease land for homes on Tulalip Bay.
1946	Congress creates Indian Claims Commission to settle disputes between Indians and the Federal Government.
1950	Tulalip Agency of the BIA is moved from Tulalip Reservation and the new Western Agency is located in Everett, Washington.
1968	Puyallup Tribes v. Washington Department of Game (U.S. Supreme Court) allows the state to regulate Indian fishing for conservation purposes.
1973	Washington Department of Game v. Puyallup (U.S. Supreme Court) gives Indians the right to fish steelhead.
1974	U.S. v. Washington State (the Boldt decision) gives Washington Indian Tribes the right to co-manage fishing resources and take 50 percent of the harvestable fish.
1975	The Indian Self-Determination and Education Assistance Act is passed, allowing Tribes to assume responsibilities formerly reserved to the BIA.
1978	The American Indian Religious Freedom Act passed, which protects the traditional religious practices of Native Americans.

1979	U.S. Supreme Court upholds the 1974 decision of U.S. v. Washington (the Boldt decision).
1979	Tulalip revives the First Salmon Ceremony, which continues to be held annually.
1985	Pacific Salmon Treaty signed between the United States and Canada.
1985	Puget Sound Salmon Management Plan adopted by the Washington Department of Fisheries and the Indian Tribes with the Puget Sound Region.
1985	Puget Sound Water Quality Authority is created by Gov. Booth Gardner, with Tribal representatives being appointed to it.
1990	Native American Graves Protection and Repatriation Act passed by U.S. Congress.

1.7 Chapter summary

This chapter introduces the proposal, research questions and the methodology framework that chosen for this research. The topics of each chapter describe the relationships between the federal government and Tribes through legislation and US Supreme Court decisions. Using Indigenous Methodologies allows the research to practice oral histories and traditions to express and document this history and the impacts of federal legislation on Tribes across the nation. Using Federal Indian laws, policies and Supreme Court cases collaborates stories from elders, Tribal leaders and other Tribal Organizations that will demonstrate two sides of centuries of stories.

Interviews of Tribal members across the nation provide the answers to research questions three and four. Their responses address Tribes responses to Indian law and their thoughts on effectiveness and efficiency of those laws. The interviews also provide processes for improving the promulgation of Indian law through Indian participation in US politics. Lobbying efforts, running for national

political positions, education the politicians and the public are all efforts in place to make changes to Indian law

CHAPTER TWO

Literature Review

2.1 Introduction

On July 4, 1776, the US drafted and approved the Declaration of Independence in effort to document the separation and freedom from the British government. The preamble to the declaration sites:

“We hold these truths to be self-evident, that all men are created equal with certain unaliable rights that among these are life, liberty and the pursuit of happiness”. (Government, National Archives, 1776)

The Declaration of Independence was signed in 1776, yet Indian people were not granted US citizenship until 1924 when the US promulgated the Indian Citizenship Act of 1924. Indians were not considered US citizens until then and yet the Declaration of Independence declared all men equal in 1776. (National Archives, 2019). This history is a prime example of the treatment of Indians after centuries of US attempts to assimilate the Indian into US culture. A prime example of failed legal pluralism between US laws and Tribal rights considered equal under assimilation practices. Not all Indian laws promulgated by the US had negative impacts on Tribes. This research provides the impact of legal pluralism to Tribes.

Personal experience as a Tribal Court Family Law Advocate and career student introduced me to Blacks Law Dictionary. Blacks Law Dictionary is used by US academics and justice systems in both US and Tribal court systems. The dictionary provides definitions for many forms of the term “justice”. Blacks primary definition of justice is “the fair and proper administration of laws” (Garner, 1996). Blacks defines Social justice as “Justice that conforms to a moral principle, such as that all people are treated equal”. (Garner, 1996). Since the US constitution was promulgated on September 17, 1787, to formally adopt the US government and the Bill of Rights (Constitution amendments) in 1776, the timing of the documents does not appear to include assimilation theories for

tribal governments. Treaties with Tribes were executed that are highly supported by Tribes and US Courts to this day and the US Constitution. However, equality of men⁹ was not practiced by the US under their own laws until 1924. Leaving legal and cultural pluralism¹⁰ in an unbalanced scale of justice.

Oral history and traditions will be the basis for researching the Indian version of legal history and the impacts these laws, court cases and state interference influenced generations of Indian people. Stories from interviews, books written by Indians, court cases and specific laws are identified throughout the research in effort to identify successes and failures of legal pluralism between the US and Tribes. Stories from the research will identify the impact of boarding schools, court cases used throughout history to support or denounce Tribal sovereignty and Tribal jurisdiction.

This research will relate elements that impact the overall social justice realm for Tribes. Positive impact and solutions are the primary focus of this research with relative negative impacts identified only in instances to identify historical elements leading to successes of today. The historical relationship between Tribes and the Federal government has created many Indian law polices in attempt to resolve the “Indian Problem”. History provides trending attempts to assume paternalistic patterns (not equality) while Tribes attempt to maintain sovereignty to govern their own people.

a. Oral Stories

Tribe’s use of oral stories and tradition provide researchers with vast amounts of information just by listening to the stories and learning from them. This research uses oral stories of history and traditions as the primary methodology and as a basis to support social justice impacts caused by legal pluralism. Some instances

⁹ US Constitution Bill of Rights “all men are created equal”. Another equality issue by excluding women.

¹⁰ Cultural Pluralism – living within two or more cultures.

bring cultural pluralism; cultural pluralism commingles US attempts at assimilation of Indian people into US society.

Interviews conducted by this researcher, of Tribal members across the US to hear their stories and document those stories in their own words. Stories primarily about how Indian boarding schools, assimilation and federal Indian laws impacted their families and Tribes. The Tribal members also provide their thoughts, expertise and experiences with Federal laws. Many Tribal Members have climbed mountains to reach their goal in effort to make a difference for Tribes, their members and communities. Many attended years of college to educate themselves in the dominant society, to be able to walk in two worlds, not just to survive but also to make a change in Indian country. They became lawyers, politicians, doctors, nurses, teachers, and/or Tribal Council. At all times, they become leaders in Indian Country.

Gabe Galanda, Round Valley Tribal member was interviewed in his law office, to hear his life stories that influenced his life. Gabe's family is from the Round Valley Tribe, California. He now lives and works in Seattle, Washington as an attorney. Gabe's family moved to Washington when Gabe was a child. His parents loved the northwest and decided to settle here. Although Gabe grew up around the Lower Elwha Tribe, he did not grow up on a reservation. He did, however, have friends from the Lower Elwha Tribe. (Galanda, 2018)

Gabe primarily focuses on assisting individual Tribal Members with court cases in Tribal Courts. Currently, he is helping over 300 Nooksack Tribal Members disenrolled from their Tribe by their Tribe (Galanda, 2018). Gabe does not believe in disenrollment of Tribal members from their respective Tribes. He believes that disenrollment is another form of assimilation practice of US government and not a true value of Indian ways of family. (Galanda, 2018) Gabe assisted Tribal members with fishing cases in Washington State and Tribal Courts as well as Employment cases where Tribal Members were terminated from their jobs. Gabe is not afraid to take on Tribes on behalf of individual Indians. He is a force for the people in the name of justice. Gabe's stories tell of his family history with boarding schools, his ancestors who attended the

boarding schools, his thoughts on social justice impacts today, and how they have influenced him. (Galanda, 2018)

Jamie Hummingbird is an Oklahoma Cherokee Tribal Member. Jamie's children attend the Cherokee Immersion School, modeled after the Maori Immersion Schools. His daughter will graduate with the first graduating class. Jamie is employed as the Tribal Gaming Director for the Cherokee Gaming Commission. Cherokee Nation has ten casinos throughout the Tulsa Oklahoma area. Jamie is also the Chairman of the National Tribal Gaming Commissioners and Regulators (NTGCR) organization. Jamie works very hard to protect the assets and integrity of the ten gaming operations he is responsible for. His Chairmanship of the NTGCR helps to provide guidance and influence on new Tribal Gaming regulators to protect the assets and integrity of gaming across the US. (Hummingbird, 2017)

Jamie's compassion for protecting Tribal Gaming assets and integrity stems from his children and their future as Cherokee people. Jamie has family in both Cherokee nations of North Carolina and Oklahoma. Cherokee history is well documented from the western views and their treaty with the US. However, Jamie thrives to protect what provides important services to his people across the nation. Protecting gaming assets protects the future of Indian children in all matters Tribal. Sovereignty is protected by Tribal Gaming regulators who strive to be the primary regulator of Indian gaming, however Jamie feels the challenges to sovereignty as the Cherokee Nation Tribal Gaming Director and the NTGCR Chairman. Every NTGCR Conference, Jamie discusses the importance of protecting the assets and integrity of Indian Gaming as our number one priority. (Hummingbird, 2017)

Jamie discusses how the Federal Indian laws has worked for his family in areas of the Indian Child Welfare Act (ICWA), how gaming has impacted his life and his thoughts on sovereignty. The ICWA is not discussed in this research other than Jamie's interview. ICWA is a topic that can result in multiple research papers as it relates to the care and placement of Indian children and gives jurisdiction of Indian children back to the Tribes. It is important to Jamie, as the

Act worked in favor of his family, to bring Cherokee children home from Georgia rather than placing them in non-Indian foster homes. (Hummingbird, 2017)

Celeste Hughes is a Cahuilla Tribal Member from California. Celeste also worked for the Soboba Gaming Commission and a board member on the NTGCR. Celeste expresses concerns for California Tribes and the lack of cooperation those Tribes receive in the justice environment. Celeste has moved on to work for her Tribe in the environmental arena. Celeste now fights for Tribal water rights, global warming, and environmental impacts to the Tribe. She feels she is in a much better position to improve social justice issues that affect California Tribes and would like to see more efforts towards acts of Tribal sovereignty in California. Celeste states that there is no due process for Tribes in California, as there are no treaties in California. California Tribes are recognized by Executive Order of the US President. (Hughes, 2017)

Although, an Executive Order does not necessarily identify Tribes as a sovereign nation, they are granted sovereign status and allowed to conduct gaming on their reservations. The California Tribes formed their own Tribal governments in the same manner as Treaty Tribes. Celeste strives to either improve relationships with other governments or to ensure due process for her people as Tribes. (Hughes, 2017)

Celeste's ancestors attended Carlisle and Haskell boarding schools, although they were not taken by force to attend the schools. Her great grandparents knew their children would be provided with safe shelter and food during the US depression era. Their stories greatly influenced her to return to those boarding schools that are now Universities. She wanted to make her education a full circle from her ancestors. (Hughes, 2017)

Mark Powless is an Oneida Tribal member and elder from Wisconsin. Mark's stories are always amazingly informative. Mark did not want to comply with the interview questions, but he explained Oneida history at length. Mark provided in depth stories about the Oneida's forced move from New York State to

Wisconsin, history of Crow Dog that is not printed in the court orders or documented in reports, books or history. Mark did not want those stories discussed in this research, as he feels the stories are family matters and only his opinion. Yet, he wanted to acknowledge the untold history of the Crow Dog case. His acknowledgment of the Crow Dog case is to address inappropriate behavior and how Tribes addressed such behavior prior to European contact with Tribes. (Powless, 2017)

Mark explained how the Oneida Tribe joined the Iroquois Confederation; he explained how Tribal issues are addressed historically and today. Mark demonstrated immense compassion for the Confederacy and pride in maintaining historical processes still today. He speaks of the confederacy as matriarchal with clan mothers who attend the council meetings with seats behind the men. The Clan mothers can overturn decisions made by their respective chiefs if the decisions are not in the best interest of the Tribe. He states that the council members remain at the table until all Chiefs reach consensus. Centuries of tradition continues today. (Powless, 2017)

Mark is also the Vice Chairman of the NTGCR. Each conference and meeting Mark bring his stories to influence younger generations and teach them the importance of protecting Tribal assets and integrity. While NTGCR leaders use Tribal, State, and Federal laws to provide guidance to new regulators, Mark uses oral history to demonstrate Tribal Sovereignty in relation to Indian Gaming. (Powless, 2017)

Joseph Allen, is a young member of the Klamath/Modoc/Yahooskin Tribe in southern Oregon. When asked if he grew up on a reservation, his response was “I did grow up on Indian Territory but not on a reservation because my Tribe no longer has recognized land due to termination”. His parents or grandparents did not attend boarding schools; he believes that they were born after the removal of Indian children from their parents by the US government. Joseph is currently a college student, an up and coming tribal leader with compassion for improving the lives of his people. (Allen, 2017)

Many Tulalip Tribal members of various ages were interviewed. Some of them share families and similar stories of boarding school days, years of poverty that in their minds were normal lifestyles. Misty Napeahi, a Tulalip Tribal member, remembers when Clarence Hatch returned to Tulalip, she was unaware that he was sent away as part of the US Removal Era. An era that sent Indians away to large cities for work, yet the intent was to reduce the Indian population on reservations in effort to remove their federal recognition as an Indian Tribe. Misty only knew that his return was a happy time in Tulalip. (Napeahi, 2018)

Misty shared her thoughts and stories on sovereignty, social justice issues and growing up on a reservation. Misty is quite vocal about issues she is passionate about and how those issues impacted her as a child growing up in Tulalip and her beliefs as a Tribal member in adulthood. (Napeahi, 2018)

Les Parks and Debbie Posey are cousins; they both recall not having running water, electricity, or plumbing in their homes as late as 1976. Both remember their parents moving them off the reservation to find employment, they were excited to move into homes with water and plumbing, they felt rich. Debbie and Les share a grandmother who attended the Tulalip Boarding school. Their grandmother rarely spoke about the boarding school; both believe the boarding school made her a strong Indian woman as she grew up to be the first woman on Tulalip Tribal Council. Their grandmother is a tremendous influence in Les and Debbie's leadership styles, always remember who we are, where we came from with compassion for our community. Debbie is a former Tribal Council member and a retired Gaming Commissioner; and Les is a current Tribal Council member. (Parks, 2018) (Posey, 2018)

John McCoy is a Tulalip Tribal member. He talked about his dad attending boarding school in Chemawa, Oregon. His dad would not talk about the boarding school. John's dad was a fluent Lushootseed speaker, but the boarding school beat it out of him. He did tell John stories about the elders gathering and speaking the language when they could. John states that his dad was not raised the Indian way, so his dad could not teach him. John's dad entered the Navy, so he did not grow up on the reservation. John always wanted to return to Tulalip,

as he grew up feeling removed from his home. John did return to Tulalip and hired as Tribes Governmental Affairs Director. John spent many travel days to state and federal government meetings on behalf of Tulalip. He is currently a Washington state Senator; he is still working on behalf of Tulalip and Tribes. (McCoy, Senator, 2017)

John introduced an education bill to the Washington state legislature that requires the state school system to teach actual Indian history. The bill requires a curriculum development that includes Tribal representatives to consult on the history. This is important to get the truth into the education system and since true Tribal history is traditionally oral, Tribal consultation is imperative. As a US Senator, John must find that balance between his compassion for Tribal rights and sovereignty with US system of law and justice. John is a prime example of living in two worlds. (McCoy, Senator, 2017)

Marci Fryberg is a Tulalip Tribal member and the Vice President of Gaming Operations for Tulalip. Marci commenced employment with Tulalip as a teenager and worked her way to the top. She recently graduated Northwest Indian College with her bachelor's degree, and she is foster parent to her very young nephews. Marci states that her parents met at boarding school in Fort Sill, Oklahoma. Her grandmother sent her mom to the boarding school so that she would have food, shelter and receive an education. Marci's family story is similar to those identified by Child's stories in Boarding School Seasons, where Indian parents eventually placed their children in the boarding schools with the same goals as Marci's grandmother. (Fryberg, 2018)

Theresa Sheldon is a Tulalip Tribal member and Board member at the time of her interview. Theresa's stories are of struggle and hardship for her grandparents, mom and her own childhood. Yet, Theresa is also a story of hard work to improve her life and the lives of her families next generation. Her great grandparents both attended boarding schools yet the only conversations they had were that they learned skills. Both of her grandparents died before she was born, her maternal grandmother left her mom to move to Alaska. She blames boarding school trauma for the generations of dysfunction in her family. (Sheldon, 2018)

Theresa strongly believes in sovereignty and following processes to ensure we stay strong and sovereign. Although she is no longer on Tribal council, she still travels to Washington DC to lobby for education, violence against women and fair Indian policies in general. She believes that when Tulalip files in the US court system for wrong doings or to clarify legal language between states and Tribes, Tulalip wins those cases. If we do not win the first time, we appeal until we do win. Theresa has used her life struggles to make a positive life and influential role model for our current and future generations. (Sheldon, 2018)

Rico Fernandez is a Tulalip Tribal member and cousin to Marci Fryberg. Rico states that both his grandparents attended boarding school but did not offer stories. Currently, Rico built a needle exchange program to help drug addicts remain somewhat healthy. Rico organizes needle and drug paraphernalia cleanup days throughout the Tulalip community, even if volunteers do not attend the cleanup, Rico will do the work on his own. He is extremely passionate about his work. Rico worked for over one year on a Tribal law that protects Tribal members with arrest warrants if they call emergency responders when another is overdosing on drugs. The law, called Lulu's law after his mom. The intent is to save lives by assuring Tribal members they will not be arrested during an overdose incident. Rico is extremely passionate about protecting this law. Rico believes strongly in Tribal sovereignty but believes if Tribes worked as one rather than individually, Tribes would be stronger against State and Federal governments. (Fernandez, 2017)

One interview wished to remain anonymous. She did not grow up on her reservation but grew up close to another one in Oregon. Her parents and grandparents did not attend boarding schools, but she believes that boarding schools have a tremendous impact on the health of Tribes today. Her ancestors left the East Coast before the Trail of Tears¹¹. They left with a man named "Dangerous Man". A group of Cherokees left and settled along Oklahoma,

¹¹ Trail of Tears – the US government moved Tribes from southern states to "Indian Territory" in Oklahoma. They marched to Oklahoma with military escort to ensure none of them escaped. Many died along the way.

Arkansas and Missouri borders. They had a treaty with Spain; the treaty did not follow them when France became owner of the territory. US purchased the land from France so there is no treaty in effect because of the move. (1, 2017)

When the Indian Commission was performing the enrollment rolls, her Great Grandmother and her brothers lived in Missouri where it was illegal to be Indian. So, there are no birth records to establish proof of ancestry. Her Great Grandmother told census takers that she was French and told her grandfather not to disclose that he was Indian. Her Grandfather left home at 14 and never went back. His dad had three families, Indian, white and black. He disappeared. Her Grandfather told her dad that there were no records of family because of no records at both Osage and Cherokee. The lack of birth and ancestry records prevented her from enrolling in either Tribe. She states that she has experienced discrimination in employment, education resources, health care and she is treated as if she were a fraud. (1, 2017)

Anonymous currently works within the Northwest Tribes judicial systems as a Tribal Court Judge and she has a private legal practice where her priority is helping smaller Tribes with their legal matters. Protecting sovereignty through Tribal court systems is her contribution to ensuring that Tribes are protected from state and federal interference. She believes that the US relationship is deteriorating and is more of a pendulum with US Supreme Court decisions ruling against Tribes especially since the election of Donald Trump into the US Presidency. President Trump is and has always been anti-Indian. (1, 2017)

b. Documented Stories

Katie Gale

Katie Gale was an Indian woman from the White River area, arguably from a village where some predecessors of the present-day Puyallup Tribe of Indians had lived. She moved to Oyster Bay or Mud Bay when she was still a child, sometime in the 1860's. She was likely taken in by relatives, for she was

orphaned at a young age. She married a white man, ran a business, and raised children until her death in 1899 from tuberculosis. (Danaan, 2013)

In the 1800's, an immigrant married Katie Gale, not out of love, but for the pursuit to claim her highly productive oyster beds in the Puget Sound peninsula. Her Oyster beds provided sustenance to her family and people for generations prior to European contact with Tribes. Upon arrival of colonizers, oysters became a highly valued commodity. Katie farmed her oyster beds with expertise that protected existing crops along with future growth. She knew over harvesting would devastate her crops. The constant arrival of westerners created a high demand for oysters and created competition for Katie and her Oysters. While the westerners over harvested, industrial revolution grows rapidly along the Puget Sound waterways causing extensive pollution that killed sea life, Katie planned her future harvests. Katie knew enough to protect her interest as she eventually determined that her husband did not marry her for love. (Danaan, 2013)

Although Katie Gale did not speak English when she married, she educated herself on behalf of her children to protect their future interest in her inheritance. Katie could not afford an attorney to represent her in the newly formed western court system, yet she was able to defend herself and her personal property in a court system designed by European immigrants and successfully maintained possession of her property, her oyster business and divorced her husband. Katie established court precedence for women and Native Americans in this newly formed American justice system long before northwest Tribes knew anything about legal pluralism and justice systems. (Danaan, 2013)

Katie Gale was born into this world. It was in this world of change, of loss, of shifting US policies, and of ever-expanding populations of European and American settlers and entrepreneurs that she was compelled to make her life. (Danaan, 2013)

Joyce Cheeka

The Rememberer tells the true story of Joyce Cheeka, a young Squaxin Island girl, forcibly taken from her home and placed in a government run school in 1911. As the chosen “Rememberer” for her Tribe,...an honor passed down to her from her grandfather, Mud Bay Sam...it is Joyce’s duty to pass on the stories, history and wisdom of her people. However, the aims of the white boarding school are quite the opposite. They feel the way for the Native Americans to survive is to be assimilated by society and therefore try to eliminate any trace of Joyce’s heritage. (Dietz, 2013)

She is forbidden to use her native language and customs. Through her friendship with the headmaster at the school, and with the help of her “spirit guide” Joyce succeeds in forming a bridge between this new world and the world of her ancestors. Through her patience, grit, humor, curiosity, and inclusiveness of spirit, she does honor to the words of her elders. “Each day is a gift, and to waste that day is inexcusable. Account for yourself and be useful”. (Dietz, 2013)

Joyce Cheeka, a Squaxin Tribal member, she spent a lot of time with her grandfather Mud Bay Sam. Mud Bay Sam was the Rememberer of the Squaxin Island Tribe, handing down his teachings to Joyce. Joyce is captured and forced to travel to the Indian Boarding School in Tulalip. Joyce hands, tied to the wagon she traveled in. The wagon picked up Children up along the way. Joyce screamed out to them to run. Yet they were caught. (Dietz, 2013)

Joyce tells her story about how the government started with the children, stating they needed to be taken from their homes at an early age – before their parents could instill in them the principles of Indian life. With the girls, one of the first things they did was to cut off their hair. They had been raised to be very careful with their hair, to let it grow and take care of it – because our hair has a connection to our life, and mistreatment of it could bring harm to us. And if someone in your family died, you would cut your hair as a way of mourning, and to show honor to the dead. But, no one said anything about that. They just sat there. None of the girls cried until they were alone in their rooms. (Dietz, 2013)

The school dispersed uniforms and shoes to the students and then they were marched outside to meet the other students. They still had not told them where they were or why they were brought there. They met Dr. Buchanan, the head of the Tulalip Boarding School. He gave the students a tour of the property, that included a schoolhouse, a shop, a hospital, an office, a sawmill, a laundry, the headmasters house and dormitories (one for the girls and one for the boys). He explained to the students that they are there to read, write and do basic arithmetic. (Dietz, 2013)

The students constantly asked when they would go home. The school staff never answered their questions. Joyce remembers home, her family, the stories told to her by her elders. She sees their presence in her room at night. They are talking to her. An unknown woman is talking to her, but she refuses to disclose her identity to Joyce. She appears several times to Joyce, her presence annoys Joyce. Joyce jumps out of her window to run away from the boarding school. The unknown woman appears and tells Joyce that she will arrive where she is meant to be. Joyce finds herself back at the boarding school. (Dietz, 2013)

The school nurse appoints Joyce as the Student Nurses Aide. Influenza hits the schools. Students and teachers become deathly ill. The Military burial services will not arrive for a week. The basement becomes the storage for the deceased until the burial services arrive. Joyce describes the deceased bodies wrapped in blankets and sheets are stacked in the basement. Joyce finds it strange that they stayed in the same building as the dead. A cultural conflict for Joyce, as traditionally her Tribe tears down buildings where death occurred or the building was left empty for one year until the spirit of death had passed. (Dietz, 2013)

Joyce talks about her cousin Henry. Henry disappeared for a while. When he finally arrived home, he wore a suit rather than traditional Tribal clothing. Joyce and the other children laughed at his clothes. Henry did not want to play games with the children; he only wanted to read books. Henry saw another world from his Tribal world. He no longer believed in the spiritual world or superstitions. Until his dad made him go fishing for the potlatch. Henry felt the Tribal ways

were wrong and his Tribal family felt Henry was acting wrong. Then the military abducts Joyce to attend Boarding school.

Darron Longfeather has multiple scars on his back. Joyce questions Darron about his scars. He does not respond to her until Joyce pushes him to anger. He responds with:

“Do you want to know what I did? I said my mother’s name. At night, in my sleep. I said my mother’s name. And they heard me. “NO INDIAN NAMES,” they said, “NO INDIAN NAMES”. So, the next night, they made me sleep on the wood floor, without a blanket. And they watched me. And, I closed my eyes and I tried with all my heart to forget my mother’s name. But, in my sleep, I said it again. So, the next night they took me to the barn. And they stuffed cloth in my mouth. And, they all stood around me while I slept. I tried to stay awake. I tried not to think about her, or her face, or her voice. I tried to pretend my mother was dead. But, in the middle of the night, they woke me up and tied my hands to a post. They told me I’d said her name again in my sleep. And I swore I’d never do it again but they said it was too late. That I would have to be taught a lesson. They took off my shirt. One of the men took off his belt. And he started hitting me. And, I didn’t cry. Because I could hear my mother’s voice saying: “You’ll be home soon, my beautiful boy. You’ll be home soon”. (Dietz, 2013)

Joyce takes us on a journey across time to a fascinating world whose very existence is imperiled. To remember is a way to keep it alive, and it is the young who must carry it forward. (Dietz, 2013)

Chief Leschi

Framing Chief Leschi (Blee, 2014) tells the story of Nisqually Chief Leschi’s conviction for war crimes in the 1800’s. On December 25, 1854, Native headman and hundreds of Indian spectators from Nisqually, Puyallup and Squaxin Island Tribes met with US officials at the treaty council grounds

expecting to negotiate the Medicine Creek Treaty. Washington State Governor Stevens had no intentions on negotiating and presented a treaty that ceded 2.2 million acres of Indian land from those Tribes. The treaty land did not include any watersheds or access to the Nisqually River for fishing. The Governor heard rumblings of dissatisfaction of the treaty land exchange and sent the treaty to the Congress for approval anyway. In the summer of 1855, war erupted in eastern Washington on the Yakama reservation following treaty negotiations. The US war party was fired on from behind, killing two soldiers. (Blee, 2014)

On October 31, 1855, a report indicated that the Nisqually Chief killed the two US soldiers during a war in the Washington Territory. The US convicted Leschi of murder immediately and sentenced him to death by hanging. Leschi was hung in a field near Steilacoom, Washington on February 19, 1858. (Blee, 2014)

In 2001, family members and the Nisqually Tribe implemented a plan to legally exonerate Leschi. Recently, a petition was filed in state court to overturn the conviction on his behalf to restore his legacy. In 2004, a historical court was formed with a court date for December 2004. Judges, prosecutors and defense attorneys were all organized in effort to ensure an accurate record of facts could be gathered for the 150-year-old case. (Blee, 2014)

Tribal Elders were called as experts to testify on behalf of oral history to support the lack of documentation required for the court's consideration of the petition. Documentation is required to support evidence in court proceedings, yet Tribes only had oral history and their stories, so they could not provide this documentation to the courts. The court accepted the elder witnesses' testimonies as evidence to support their petition. The court did exonerate the historical conviction and restored Leschi's legacy. The acceptance of Tribal elder testimony by a state court contributes to the practice of Tribal Oral History and Traditions in academics, justice and much more. (Blee, 2014)

On December 10, 2004, the historical court issued the following ruling:

We have unanimously concluded...that on October 31, 1855...a state of war existed between federal Territory of Washington and several Indian

Tribes, including the Nisqually Indian Tribe. A.B. Moses was a combatant in that war as a member of the Territorial Militia,...his death occurred in this war, and therefore Chief Leschi should not, as a matter of law, have been tried for the crime of murder. Therefore, because that is the case, the historical court would exonerate Chief Leschi. (Blee, 2014)

Although Chief Leschi, convicted of war crimes, the Tribes refused to recognize the conviction as part of his legacy. Chief Leschi is honored throughout Washington State for his status as Chief and for his war efforts against the continued arrival of European immigrants. The Puyallup Tribe built a Tribal School and named it after Leschi. Washington state history tells a different story about the war crimes, correcting these one-sided stories is the purpose of the Time Immemorial program legislation requiring schools to teach actual Indian history in Washington State. (Blee, 2014)

Captain Jack – Modoc

Other Chief's, such as Captain Jack, from the Modoc Tribe in Southern Oregon, was also convicted of war crimes during the Modoc war. Captain Jack also killed military officers during wartime. Captain Jack had the ability to use the landscape of his land to hide from the military for many years before his capture. Captain Jack was convicted by the military for war crimes; he was sentenced to hang and then buried alongside a river on his land. Prior to burial, the soldiers removed his head; his head is at the Smithsonian Institute in Washington DC. (Riddle, 1914)¹²

Captain Jack's father and his people live quietly on the shores of a beautiful body of water, which was named Wrett Lake, or Tule Lake California, by the white people. They hunted deer and bear on the hills and mountains that hemmed in Tule Lake. They shot ducks and geese with their bows and reed arrows and

¹² All language from Riddle 1914 are direct words from his book. He advises to remember he is an uneducated man with only 6 weeks of school. He asks forgiveness from his readers.

caught fish in Lost River. The women gathered roots, cammus and wocus for winter use. They lived in peace and harmony with all the Tribes that joined from all sides. They were living thus until white people began to travel through their country; that must have been in the year 1848 or 1849. (Riddle, 1914)

In 1853, a neighboring Tribe, The Pit River Tribe killed settlers coming into the area. Local volunteers gathered at the scene to bury the deceased and to search for the killers. The Modoc has traded goods with the settlers at the time, their relationship peaceful. The Pit River Tribe then attacked a military camp during the night in Modoc country. Early the next morning, the soldiers packed up and left their camp. Their travels led them to a Modoc camp. The soldiers fired their guns at the camp, killing all but three Modoc Indians. The message to other Modoc Camps about the attack spread quickly so the Modoc has vacated their camps. Many more attacks on the Modoc's endured. (Riddle, 1914)

The soldiers collected scalps of the Modoc's to demonstrate their successful attack. They did not tell their friends and Captains that the scalps were from the old, innocent squaws and little children. The soldiers did not tell that they had fired upon peaceable Indian families and secured their scalps. It was such men as Captain Crosby in the early days that caused the deaths of many good, innocent white people in the West. (Riddle, 1914)

In 1861, Captain Jack's father, the Chief at the time declared war and called for soldiers from all other Modoc camps. The US soldiers ambushed Captain Jack's father and his warriors after making friends and peace. The soldiers ambushed the Modoc camp at daylight, shooting Captain Jack's father while he walked into the soldier camp. Captain Jack then became the Chief of the Modoc's. He then declared peace, but resisted the treaty and the move to the reservation. (Riddle, 1914)

There were many peace talks between Captain Jack and the US military officers. Captain Jack only wanted to stay at the lava beds, his natural home. The military refused, wanting the Modoc's to move to the Klamath Agency in southern Oregon. Captain Jack eventually did turn himself in to move to the Klamath

Agency, his people settled in to their new home. Eventually, problems with the Klamath Tribe arose, creating problems for Captain Jack and his people. Captain Jack requested protection and relocation. The Indian agency denied his request. He packed his people and left for the lava beds. Another time, Captain Jack packed up his people to hunt for food. He stated that the Indian Agency was not feeding them, they were starving and he wanted to save them. (Riddle, 1914)

The military soon followed the Modoc's to the lava beds, in effort to convince him to move back to the Klamath Agency. US Soldiers arrived daily; Captain Jack interpreted the arrival of soldiers as a call to war. Captain Jack calls for a council of his top and best warriors. The warriors want to kill the military officers. Captain Jack wants peace talks. The warriors taunt Captain Jack by placing a woman hat on his head, wrapping a shawl around him, chanting coward and calling him a woman for not wanting to kill the officers. (Riddle, 1914)

On April 11, 1873, Captain Jack and his warriors met with the officers, peace talks continued until Captain Jack grew frustrated with the discussion, stood up and shot four of the officers, killing three of them, injuring one. One of the Modoc warriors attempted to attack Captain Jack's cousin Winema who provided interpretation services between the two parties. Captain Jack immediately put a stop to her abuse. (Riddle, 1914)

The Modoc's divided into a few bands and went their separate ways. They engaged in several battles with the soldiers, neither losing many soldiers. Four of Captain Jack's best warriors turned themselves into the soldiers. The Army hired them as military scouts, to hunt Captain Jack and the other groups that were able to escape. (Riddle, 1914)

The four were able to locate many small camps and peacefully bring them to the soldiers. Throughout the hunt for the Modoc people, the US soldiers continued killing women, children and elders they met along the way. They laughed about their captures as they scalped the weak, claiming victory over the Modoc's. Yet never disclosing to their Officers that their kills were not Modoc warriors. (Riddle, 1914)

The four scouts captured Captain Jack and four of his head warriors on June 1, 1873. The five commenced trial on July 5, 1873. No attorney represented the five Modoc's. The court assigned Winema as the court interpreter. The charges were:

Murder in violation of the laws of war

Assault with intent to kill in violation of the laws of war specification.

Assault on the Commissioners (Officers).

Attempt to kill two Officers and Interpreter

All five Modoc's plead not guilty and they proceeded to trial. The four Modoc scouts, Winema and her husband and many others testified against Captain Jack and his four warriors. Captain Jack now speaking on his behalf:

“I feel that I am defeated rightly. The very men that drove me to kill Canby, gave themselves up and then run me down. If I had only known what they were doing, you men would not have had me here today with chains on my legs and with satisfied smiles on your faces, for I would have died fighting, but my people lied to me, so I would not shoot them.

The men that I speak of are here now free. They fought for their liberty with my life. The all did just as bad deeds as I did when I killed that noble man Canby. I see it is too late to repent now. It is my duty to give some explanation, so that the White Father may know something of what caused me to fall. So I will say again, hoping that at least of my words may become known to the white people. I see no crime in my heart although I killed Canby. But why did I do it? Do you understand? I was forced to do it. I did it save my life for a while. I thought I would die on the battlefield fighting you white soldiers. You white people have driven me from mountain to mountain, from valley to valley, like we do wounded deer. At last you got me here.

I see but a few days more ahead of me. If I had of got a lawyer when my trial commenced, I do not think I and these other men would be the only

ones that would have been condemned to die. The very men that are free today would have surely been with us right now.

What talk I put up is no good? Why, I am a murderer! Everybody says that. That is so. Do I deny the charge? No, I do not. I did it, but I say again I had to do it. Now for the last time, I say again, I am ashamed of my coming death, but not afraid. What our White Father says is right. I must die, so this is all. I have no more to say.

I still feel for the welfare of my young boys and girls. I hope the white people will not ill-treat them on my account, for they cannot help what wrongs I did. That is the matter and the only matter that bothers me is my young people. I hope this White Father at Washington will give them a good home and start them in life. If the government will give them a chance, they will show or prove that the government's efforts will not be in vain.

The government ought to care for my young people. See the good land and size of my country that is taken away from me and my people. If I wanted to talk more, I could do so and tell you facts and prove by white people that would open the eyes of all of you that are here today and about the way my people have been murdered by whites. I will say, not one white man was ever punished for their deeds. If the white people that killed our women and children had been tried and punished, I would not have thought so much of myself and companions. Could I? Could I? Please answer no, you men answer me not. Do we Indians stand any show for justice with you white people, with your own laws? I say no. I know it. You people can shoot any of us Indians anytime you want to whether we are in war or in peace. Can any of you tell me where ever any man has been punished in the past for killing a Modoc in cold blood? No, you cannot tell me. I am on the edge of my grave; my life is in your people's hands. I charge the white people of wholesale murder. Not only once but many times. Ben Wright killed nearly fifty of my people. Among the killed was my father. He was holding a peace council with

them. He was not punished. His men gave him a big dinner. He was praised for his crime. Now here I am, Killed one man, after I had been by him many times and forced to the act by my own warriors. The law says hang him. He is nothing but an Indian, anyhow. We can kill them anytime for nothing, but this one has done something, so hang him. Why did not, the white man's law say that about Ben Wright? So, now I do quit talking. In a few days I will be no more. I now bid the world farewell." (Riddle, 1914)

Two were sentenced to prison at Alcatraz. Captain Jack and two others were sentenced to hang on October 3, 1873. On October 4 or 5 1873, Captain Jack's body was dug up and transported to Washington DC, where he was put on display for a cost to the public. (Riddle, 1914)

The military moved the rest of the Modoc's to the Quapaw agency in Oklahoma. Many died from the climate change. After a few years, they each received land from 40-70 acres each. Eventually, they could return to the Klamath agency. They could sell or lease their lands. The Modoc prisoners consisted of 39 men, 54 women and 60 children. (Riddle, 1914)

The Modoc war is over. (Riddle, 1914)

There is a bill (306—HR 16743) that the remnants of Captain Jack's band of Modocs, together with the descendants, should be restored to the rolls of the Klamath Agency in Oregon, that they should be allotted as all other Indians on said reservation, that they be accorded all the rights and privileges of all other Indians enrolled at the Klamath Agency, Oregon; approved March 3, 1909. Quite a number of Klamath Indians are protesting against this move the government did for the Modocs, but of course they are powerless to do or undo what Uncle Sam¹³ has already did, so this closes the chapters of the struggles of the Modoc Indians. (Riddle, 1914)

¹³ US Government

There is no petition to overturn the conviction for Captain Jack. (Riddle, 1914) When questioning his family about doing so, they refused to discuss the topic. Throughout the conversation, it is observed that the discussion about the topic is too difficult to digest through the lenses of a generational trauma standpoint...however, Chief Leschi's case has set precedence for all Tribe's to petition courts to right a wrong for our ancestors in our two worlds.

Chief Leschi and Captain Jack, convicted of the same crime, yet two extremely different outcomes in the US and Tribal justice systems. The Nisqually Tribal members petitioned the Washington state court in effort to obtain justice for their ancestor. They learned the court system to obtain a goal and met the goal with the outcome they expected. They wanted to right a wrong done to their ancestor, they wanted healing for their community and future generations.

Vine Deloria

Vine Deloria discusses several historical issues in his book *Custer Died for Your Sins*. Primarily, this focus is on the US Termination Policies. Terminating US Supervision of Tribes in effort to cut the federal spending budget. The DOI BIA¹⁴ division appeared to be the best source of funding cuts for the US Budget. The BIA responsible for the supervision of Tribes and Tribal Federal funding, was then reviewed for the best funding cuts and federal expenses. (Deloria, *Custer Died For Your Sins*, 1969) Although, US Termination policies are not a primary source of this research, Deloria's research provide the basis of the Federal Governments process of addressing Indians in the US.

In the old days' blankets infected with smallpox were given to the Tribes in an effort to decimate them. In the past, they were systematically hunted down and destroyed. Were an individual citizen to do this it would be classified as cold-blooded murder. When it was done by the US Army it was an "Indian War". Congressional policy of termination advanced in 1954 and pushed vigorously for

¹⁴ DOI BIA – Department of Interior Bureau of Indian Affairs

nearly a decade, was a combination of the old systematic hunt and the deprivation of services. (Deloria, *Custer Died For Your Sins*, 1969)

In 1947, the Senate Civil Service Committee held hearings on ways that government payrolls could be cut and expenditures reduced. The Republicans had captured Congress that autumn and they were looking for defenseless New Deal programs to trim. They found a natural in the Bureau of Indian Affairs. William Zimmerman, Acting Commissioner of Indian Affairs, was asked to give testimony on the possibility of reducing personnel in the bureau by releasing some of the Tribes from federal supervision. Zimmerman provided a report with four options based on Tribes independence, financial stability, assimilation practices and Indian consent. He prepared separate bills for the Klamath, Osage and Menominee Tribes. Yet, his proposal included oversight of these Tribes finances and economic development. (Deloria, *Custer Died For Your Sins*, 1969)

Another proposal was that California and North Dakota take over the affairs of the Tribes within their boundaries. The Federal Government would provide a subsidy to the states equal to what I had been spending on the Indians in the two states, to ensure that no programs be cut back. After a ten-year trial period the arrangement would be made permanent, unless Congress made other provisions. Part of the California proposal included the requirement that the state match a five-million-dollar development program for Indian families. (Deloria, *Custer Died For Your Sins*, 1969)

Each proposal Zimmerman offered to Congress included the tax immunity remain on Indian lands until the Tribal enterprises were financially secure in its new method of operation. Plans also included provisions for approval by a clear majority of the adult members of the Tribes before were to go into effect, and some proposals were not to be initiated by the bureau but had to come from the Tribal governing body at its own request. (Deloria, *Custer Died For Your Sins*, 1969)

There was no doubt that Zimmerman regarded Indian consent and understanding as among important factors to be considered in any alteration of the existing relationship. But there was also an emphasis on the willingness of the state to assume responsibility for the Tribes and its members. (Deloria, *Custer Died For Your Sins*, 1969)

These suggestions were basically sound. They incorporated plans that had been discussed in the past between the bureau and the Tribes. If carried out according to the original design, the program would have created a maximum of self-government and a minimum of risk until the Tribes had confidence and experience in the program. Unfortunately, the committee dropped Zimmerman's suggestions when it was discovered that termination of even 50,000 Indians would have had little effect of the Interior budget. (Deloria, *Custer Died For Your Sins*, 1969)

Three years later, the Committee continues to study of Indian Affairs. Tribes under consideration for termination of Federal supervision were the Klamath Tribe of Oregon, the Menominee of Wisconsin and the Osage of Oklahoma. These Tribes possessed profitable economic development in the forestry industry. However, February 1954, saw the systematic attack on every Tribe in the nation. Watkins (New Commissioner on Indian Affairs) idea was to get rid of as many Tribes as possible before the 1956 elections. Fearing that a new US President might stop the movement and pay attention to what was happening in the world around him. (Deloria, *Custer Died For Your Sins*, 1969)

The Klamath's had received a judgement against the US for \$2.6 million dollars. But they needed enabling legislation to spend it. Watkins withheld the approval of the Joint Subcommittee until the Klamath's agreed to his termination bill. The state of Oregon was hardly consulted at all. The Klamath Bill was so hastily written that it had to be amended to prevent a wholesale collapse of the lumber industry on the West Coast. Since it had originally called for immediate clear cutting of \$80 million dollars' worth of timber, the market appeared headed for total disaster because of the great quantity of wood that would suddenly depress the market. (Deloria, *Custer Died For Your Sins*, 1969)

Strangely, there was no conspiracy to cheat the Klamath's, the legislation was simply so sloppily written that no one in the Senate or House committee realized what clear-cutting a massive forest mean. The committee members only desire to get the termination of the Tribe over with as quickly as possible. If that meant cutting every tree. (Deloria, Custer Died For Your Sins, 1969)

Another example, the Kansas Potawatomi Tribe was considered to be in such low economic status that to assist it was felt to be too expensive. Better, the bureau said, to let the Potawatomi's expire as private citizens than to have anyone find out how badly the federal government had shirked its responsibilities. Somehow they escaped the blow, although bureau assistance to them since 1954 has been nil. (Deloria, Custer Died For Your Sins, 1969)

North Dakota was considered for termination. Watkin's plan was simply to relocate the Indians in a large city and forget about them. But the plan was blocked when North Dakota, in a fit of Christian charity, refused to provide any services whatsoever for the Chippewa's should be they be terminated. (Deloria, Custer Died For Your Sins, 1969)

The tragedy of the Menominee Tribe of Wisconsin illustrates the extent of the Termination policy failure. The Tribe was one of the few paying for all its own services. The Federal government, which was obligated to provide all services on a matching basis, failed to meet its obligation. The Menominee's had won a \$8.5 million-dollar judgment against the US in the court of claims and needed legislation to distribute it. In 1908, Federal legislation was passed which had given the Forest Service responsibility for administering the Menominee resources on a sustained yield basis. In violation of this law, local government foresters had decided to clear cut the forest, and the income which should have come to the Menominee's through the sustained yield basis was deprived them. Finally, in 1951 they had won their judgement against the US, and the money was deposited to the Tribes account in the US Treasury. (Deloria, Custer Died For Your Sins, 1969)

The Joint Subcommittee, particularly in the person of Watkins, was outraged that the Tribe had been vindicated. They were determined to silence the Menominee's once and for all. When a bill passed the House Interior Committee, which authorized the distribution of the judgment money, Watkins attached a provision to the bill in the Senate, requiring the Tribe to submit to termination in order to get the money. The Menominee's objected to the provision and Watkins held the money until the end of the year. (Deloria, *Custer Died For Your Sins*, 1969)

At the end of the year, the Menominee's went to Congress seeking an extension on the date set for final termination of federal supervision. A new Chairman of the Indian Subcommittee questioned how the termination of the Menominee's came about. The first War on Poverty by the Democrats was conducted in 1960 against a defenseless Indian Tribe that asked only for justice. With termination came the closing of the Menominee hospital. The Tribe was unable, with the additional burden of taxation, to keep up its health program. Deprived of medical services with poor housing, the infant death rate continued to rise. (Deloria, *Custer Died For Your Sins*, 1969)

By July 1964, 14 percent of the county which was the former reservation area was receiving welfare payments. The Department of Public Welfare estimated that Menominee County needed a transfusion of ten to twenty million dollars to bring it up to par with other Wisconsin counties. The Subcommittee learned that the Menominee termination costs totaled over \$2 million dollars and another \$1.5 million dollars over a five-year period in 1961 to cover expenses caused by the termination. Termination was not a success for the US and the Menominee's. (Deloria, *Custer Died For Your Sins*, 1969)

Echohawk

Echohawk's book "In the Courts of the Conqueror" (Echo-hawk, 2010) lists the top ten worst Supreme Court Cases that have impacted Tribes over centuries. He provides an Indigenous interpretation of these cases and the impact to Indian

country. He provides an analysis of the Marshall Trilogies¹⁵ that Tribes continue to use today in the Supreme Court and lower US courts to maintain sovereignty. Echohawk challenges both the doctrines of discovery and conquest for US supremacy over Tribes, indicating that the two doctrines conflict, he states that you can't have both. Echohawk pursues resolution to this conflict in effort to effectively maintain their trust relationship with Tribes. Echohawk's interpretations of these court cases brings solutions to an ongoing legal pluralism relationship between Tribes and the federal government. His words bring new perspective for this researcher. (Echo-hawk, 2010)

Echohawk explains that in America and Australia, the Indigenous peoples were hunted, shot, poisoned, and attacked by settlers and soldiers as part of the colonization process, and a one-hundred-year period of constant warfare took place between Indian nations, bands, and confederacies and the United States. Some of the violence may have been lawful acts of war and others pure murder. No comprehensive factual and legal analysis of the legality of that violence has been performed. (Echo-hawk, 2010) Although, the Leschi decision maybe the beginning of that legal analysis.

Echohawk states that our goal was to learn the law and then use the white man's own rules to achieve justice in his courts, the law has more often been employed as a sword to harm Native peoples by stripping away their human rights, appropriating their property, stamping out their cultures, and finally, to provide legal justification for federal policies that have at times, resorted to genocide and ethnocide. (Echo-hawk, 2010)

This approach is similar to the Maori Prophetic leader Te Kooti Rikirangi who established the Ringatu faith as part of resisting the New Zealand Governments early attempts of usurping Maori rights in the late 1800's (Binney, 1995). Waiho ma te ture ano ture e patu...leave the law (non-Maori law) to deal with the law (Doherty, 2018).

¹⁵ Three US Supreme Court Cases that address Tribal Sovereignty. Johnson v. M'Intosh (1823); Cherokee Nation v. Georgia (1831); Worcester v. Georgia (1832)

However, the underlying legal premise was that the Indians were infidels without legal rights in Pilgrim courts, and it was perfectly legal under the law of England for the colonists to wage war to accomplish their goals. The paramount human rights question facing each nation that contains Indigenous peoples, including the US, is: To what extent should Indigenous peoples be secure in their land, cultural integrity, human rights, and political rights as Native people? (Echo-hawk, 2010)

As Supreme Court Justice, Oliver Wendell Homes Jr. put it, “This is a court of law, young man, not a court of justice” (Echo-hawk, 2010). It is troubling that courts often eschew any interest in, or duty to inquire into questions of morality or justice; instead, the avowed task is simply to apply existing law, regardless of any harsh or unjust outcomes. The legal system cannot always be relied upon to dispense justice nor can it always be equated with that ideal. (Echo-hawk, 2010)

Georgia State Court convicted George Corn Tassels for killing another Indian on the Cherokee Nation in Georgia¹⁶. The order to hang him given by the Georgia Governor. Corn Tassels appealed his conviction to the US Supreme Court and granted by the high court. His execution should have been stayed. However, the defiant and fearful Georgia could never allow the high court to review the state’s spurious race laws. Corn Tassels had to die posthaste so Georgia could safely evade the federal judicial review and continue repugnant policies without outside interference from Washington do-gooders. (Echo-hawk, 2010)

Corn Tassels was hung before a large crowd, including many Cherokee—he was lynched, really, because Georgia lacked any jurisdiction over Indian activity within the Cherokee Nation, as was belatedly determined by the federal courts. Sadly, the US Supreme Court stood by and allowed this injustice to occur in *Cherokee Nation v. Georgia*. *Cherokee Nation* marks the first time that an Indian Tribe went to federal court in a major lawsuit to protect the political, human, and property rights of an American Indian Tribe and its members from destruction

¹⁶ Pre- Trail of Tears

by a state. The case involves an especially egregious set of facts: ethnic cleansing in the antebellum South via the machinery of the state. The Supreme Court dismissed the action, holding that it raised “political questions” that courts are not empowered to decide and, in addition, Indian Tribes cannot bring suits in the courts of the United States. (Echo-hawk, 2010)

The court turned its back on the Cherokee Nation during its time of need, in a decision that simultaneously denied full nationhood status to Indian Tribes, prevented their access to the courts, and relegated them to a second-class wardship status under American law, all of which proved highly injurious to Indian Tribes over the next 175 years. This decision spurred the removal movement of Indians in the South and contributed to the removal of more than 80 thousand Indians from the Eastern United States between 1828 and 1838. Increasing the Removal Era that started in 1815 through 1846. (Echo-hawk, 2010)

Georgia founded in 1732 as a penal colony in a bazaar penological experiment to permanently rid England of its unwanted criminals and poor. By sending convicts to America, England’s swelling jails and harsh debtor prisons could be relieved and the inmates could provide labor and other needed services in the colonies. Unfortunately for the Cherokees, who lacked stringent immigration laws, north Georgia became the new home for the deportees. They were persons who were, by definition, undesirables that could not pass muster under today’s immigration standards. That laudable rehabilitation goal, like most penology experiments failed. The criminals became a part of the Georgia racist society, wanting the Cherokee’s gone from their lands. (Echo-hawk, 2010)

The US Supreme Court decision in Cherokee Nation v. Georgia (1831) let Georgia to believe the state could promulgate laws against the Cherokee’s, remove the Cherokee constitution, Treaty and court systems. Georgia promulgated laws for marshal law systems to protect them from the Cherokee people. In the 1820’s, government plans to remove the Cherokee and other Indian Tribes was presented to Congress by the administration. Congress finally agreed to the act. With the election of President Andrew Jackson in 1828, it

passed the Indian Removal Act of 1830, despite strong opposition by the Cherokee Nation and its supporters, authorizing the president to make the necessary arrangements. Georgia is now poised to confiscate Cherokee land, water and gold. Georgia divided Cherokee lands into 96 districts. (Echo-hawk, 2010)

A lottery was conducted to allow white males to draw lots for the land. White men moved into Cherokee lands before the Cherokee's left. Some Cherokees stayed in their homes to challenge the state of Georgia. Federal troops were dispatched to the tumultuous region but withdrew as soon as the state complained about their presence, leaving the Cherokee Nation vulnerable to trespassers and the Georgia guard. (Echo-hawk, 2010)

While Georgia is having its temper tantrums over the removal of Cherokees and other Tribes from their state, the Corn Tassell case is pending in the US Supreme Court. The high court accepted Corn Tassell's appeal. That is when the state of Georgia executed Corn Tassell, out of spite to the US Supreme Court. Georgia refused to submit to the authority of the US Supreme Court and ordered Corn Tassell's execution. His death ended the appeal to the high court. (Echo-hawk, 2010)

Child's Boarding School Letters

Brenda Childs is an Ojibwe Tribal Member. She decided to research the boarding schools that her ancestors attended. She describes how her research led her to letters from Ojibwe parents to the boarding schools that were stored in US government archives. The letters from the Indian parents requesting that their child be allowed to go home to visit ailing family members or to work. Most letters went unanswered or when answered, were simply told that it was not in the best interest of the child to leave the school. (Child, 1998)

Child's stories about these letters provide documentation about the treatment of the boarding school children. She does not discuss any form of sexual abuse but does tell of serious contagious health issues that went unaddressed or minimally

handled by unqualified staff. Child's stories provide insight through these letters describing how these children died of such diseases and parents rarely notified of their illnesses until they had already passed. She describes how sanitation efforts were minimal and allowed the diseases to return repetitively. Schools eventually became overcrowded, exacerbating the health issues facing the children. Children were sleeping on the floors, in the basements, and on the porches. The children were still required to do their chores and attend classes despite the illnesses they incurred. Indian children died at the hands of boarding school faculty. (Child, 1998)

Child's addressed research relative to the boarding school era of historical Indian law and policies. The boarding school administration routinely sent notices to the schools to address the health of the children along with visits to their families. The individual schools failed to adhere to the direction given to them by their supervisors. The stories provide insight to the impact of these Boarding/Residential School laws on Indian children and families. (Child, 1998)

Harriet Shelton Dover

Harriet Shelton Dover, a Tulalip Tribal Member, born on the Tulalip reservation at Mission Beach in Tulalip Bay on November 19, 1904. She attended the Tulalip Boarding school, then Everett High School after graduating the boarding school. At the age of 72, she decided to attend college and earned an Associate's degree at Everett Community College. During her life, she served on the Tulalip Tribes Board of Directors intermittently from 1938-1951. Harriet served as a Tribal Judge in 1951, while also serving on the Marysville School District Board and lecturing on Tribal history/culture. (Dover, 2013)

Harriet discusses federal Indian policy that prohibited the Tribe from building cedar plank dwellings that served as the Tribes winter residences; and in time prohibited community or potlatch houses. She discusses the inability to practice native religion and ceremonies. Yet she also discusses her experiences learning three religions and two languages. (Dover, 2013)

Harriet not only discusses her experience at the Tulalip boarding school, but also what she observed with other boarding school students. Her book does not describe the abuse that oral stories have told, but she does describe how sad other children were from missing their parents. She remembers seeing children punished for speaking their language, how their hair was cut, the clothes they were made to wear, in addition to the long hours of work and school they were required to endure every day. She remembers that many ran away from the school only to be brought back to the school and punished for their actions. (Dover, 2013)

Harriet recalls her dad working at the boarding school, she saw him every day. Seeing her dad daily is an experience that most boarding school children missed. As Child's describes most boarding schools refused to let Indian parents visit their children. The letters she found for her research described a much different boarding school environment than what Harriet describes. Harriet describes a much different boarding school than other Tulalip stories. An environment that caused those children to refrain from discussing with family members. (Dover, 2013)

Harriet experienced walking in two worlds from her boarding school experiences, remembering her time with her aunty's and grandparents before boarding school and growing up to become a Tribal leader on Tribal council. Harriet is a legend in Tulalip for her efforts to restore culture, language and Tribal leadership.

Billy Frank

Billy Frank, a Nisqually Tribal member, grew up on the reservation during the fish wars. Billy witnessed state Fish and Wildlife agents shooting Indian men, women and children for fishing on the Nisqually River. Such a tragic memory for a child. However, Billy grew up defending treaty rights and the right for fish to have clean water and habitat. Billy is nationally known for his compassion to protect fish and treaty rights. As an adult, Billy became the Chairman of the Northwest Indian Fish Commission (NWFC). He lobbied state and federal

politicians for natural resources management through open discussion rather than lawsuits, his ultimate goal.

Billy Frank's book "To Tell the Truth" discusses the Boldt Decision ordering that Tribes have a right to 50% of the eligible catch of salmon and shellfish and orders that Tribes and the state have equal responsibility in the management and protection of Natural Resources that protect the fish. However, Billy also expands on fishing as more than a treaty right. He defines the protection of salmon as the ability of all stakeholders to co-manage natural resources to protect the environment for our own livelihoods. We need clean water and so do the fish. We need forest vegetation and so do the fish. By protecting the fish all cultures are survivors. To protect the environment, we all need to work harder at doing so. Billy expressed the Boldt Decision beyond fishing and protecting the fish. He demonstrated our ability to use this federal court case to sustain the needs of all people. (Frank, 2015).

Today, Tribes have many lawsuits against the state, including a case at the US Supreme Court. Tribes want the state to fix thousands of culverts throughout the state that are blocked with debris and prohibit fish from returning to rivers to spawn. The state argues that it is not their responsibility to repair the culverts and argue that the cost is prohibitive for the state. Lower courts have already determined that the state is liable to repair the culverts, the state appealed to the US Supreme Court with their arguments. Billy has gone on his final journey and is not physically present to follow the case through, although we can believe he is watching and present at the hearings.

c. Indian Law

The US Congress created Boarding Schools via resolution on March 3, 1819. The purpose of the resolution states that boarding schools are to further decline and "final extinction" of the Indian Tribes, to teach them civilization for farming, reading, writing and arithmetic. This resolution also states, "The means of instruction can be introduced with their own consent".

March 2, 1889, US Code (USC) 25, Chapter 7 provided legislative guidelines for Educating Indians (Congress, US Code, 1889). The US Code outlined the creation of boarding schools, sanctions for failure of Indian parents to send their children to school and withholding annuities to Tribes for failure to send Indian children to school. The Act, amended many times over decades and has a section that prohibits the military from forcefully taking children from Indian parents and tribes to take them to these schools. (Congress, US Code, 1889) Oral stories state that the military indeed removed Indian children from their homes, as well as Slaves and convicts. The stories also include the rape of the children by the slaves and convicts as they were gathering the children.

Child's discusses the skills children learned in the boarding schools were usually obsolete by the time they graduated. Skills such as blacksmithing, some children learned this trade and graduated during the depression era. During this time there was no money to pay for such a skill. Those that learned this trade did not get to practice their skills long enough to earn a living. Initially, Indian children did not attend boarding schools with the consent of their parents nor did they attend voluntarily once they were older. As Child's explains, children who completed their time at the schools were still required to stay against the wishes of the parents. (Child, 1998)

The initial resolution and the US Code (USC) 25, Chapter 7 is the US effort to set the standards for Indian boarding schools. Many children were taken by force and eventually Indian parents voluntarily sent their children to the schools to provide food and shelter to their children during a time when they could not. Indian boarding schools mandated by US law across the country, including Tulalip, the stories are similar if spoken at all. Yet, interviews of descendants of boarding school ancestors indicate survival, strength and resistance influences on future generations.

d. Court Cases and Indian Laws

ExParte Crow Dog is a US Supreme Court case and not Indian law, but as a result of Crow Dog's victory, the US promulgated a new law that would impact Indian

country for future cases. The Major Crimes Act is also not an Indian law but does impact Tribes jurisdiction over specific crimes. The Act identifies those specific crimes for federal jurisdiction and sets the standards of US jurisdiction for both Tribes and states.

In 1885, the Major Crimes act passed in reaction to the Supreme Court Decision of Crow Dog. As a result, the federal government obtained exclusive jurisdiction for Indian against Indian crimes on Tribal lands specifically listed in the act to ensure that Indians are charged and prosecuted for such crimes in accordance to federal standards. The Major Crimes Act granted the United States exclusive criminal jurisdiction over specific crimes such as felony sexual assault, kidnapping, maiming, manslaughter and murder involving Indians and then delegated such authority to monitor crimes in Indian country to the U.S. Department of the Interior (DOI). (The Major Crimes Act 18-U.S.C. 1153, 1885)

The combination of Crow Dog's US Supreme Court decision and the Major Crimes Act are used still today to support the lack of state or local municipality jurisdiction for Indian crimes on Indian land. The Crow Dog decision on its own merit is sufficient to address jurisdiction in Indian Country to prevent state interference, while the Major Crimes Act protects sovereignty for those crimes listed in the act. The combination of these two issues provide positive impacts and results in the world of legal pluralism for Tribes and prevent state interference.

The Major Crimes Act is the result of the US Supreme Court decision for ExParte Crow Dog; the Act gives the US jurisdiction for specific crimes in both Indian Country and states. A remedy to US laws for new and rising crimes throughout the US. Although, the Act gave US jurisdiction, other US Supreme Court decisions gave jurisdictions to states for Non-Indian crimes committed on Tribal lands or within the boundaries of Tribal lands such as Suquamish v. Oliphant.

Although, at the time of promulgating the Major Crimes Act, it appears as if the US is removing jurisdiction of specific crimes from Tribes, in the years to come,

this law actually protects Tribal sovereignty from state interference. The Act, used today in US Supreme Court cases when states attempt to assert jurisdiction for federal crimes committed on Tribal lands.

On another level, States continue to argue against Tribal treaty rights for individual Tribal members. The State of Wyoming charged a member of the Crow Tribe for illegal hunting on federal lands. The case is to be heard by the US Supreme Court, however the questions for the court is if the 1868 Treaty protects Native Americans right to hunt on federal lands. The second question for the US Supreme Court is if statehood invalidated the Treaty with the Crow Tribe. (Dwyer, 2019)

During a 2014 hunting expedition, Clayvin Herrera and three other tribal members pursued a small herd of elk as it moved from the Crow Reservation in Montana to the Bighorn National Forest in Wyoming. There the hunting party "shot, quartered and packed" three elk, and carried the meat back to the reservation, dividing it among their families, according to court documents. The Treaty, which established the tribe's present-day reservation, states that members "shall have the right to hunt on the unoccupied lands of the U.S. so long as game may be found thereon, and as long as peace subsists among the whites and Indians on the borders of the hunting districts.". (Dwyer, 2019)

Wyoming contends that the treaty only meant to afford "temporary" rights to hunt off the reservation and that when the State was created in 1890 those rights were terminated. The State also argues that President Grover Cleveland's designation of the land as a national forest in 1897 effectively rendered it "occupied." (Dwyer, 2019)

This hunting case, where Tribal members hunt to feed their families has now become a treaty issue to determine if the statehood of Wyoming invalidated the treaty. Another State challenge to the treaty, to jurisdiction, to sovereignty and hungry Tribal families.

e. Public Law 280 (PL280) 1953

In 1953, federal Public Law 280 (PL 280) allowed states to acquire and assert criminal and civil jurisdiction over Indian Country without Tribes consent (Anderson, 2011). In 1968, Congress repealed the section of PL 280 that allowed states to acquire jurisdiction without Tribes consent and amended the law to include the United States Congress authority to allow retrocession of issues dealing with Tribes (Anderson, 2011).

In 1953, the promulgation of this law to give states jurisdiction on Tribal lands is a paternalistic action at its best. The US gave away its authority ordered by the US Supreme Court in *ExParte Crow Dog*. The US promulgated a third party to the existing legal pluralism between Tribes and the US with this delegation. In 1968, the US amended PL280 to allow Tribes to seek retrocession...to take back their jurisdiction. (Leonhard B. M., 2012)

Chief Jay Goss advises that PL280 created staffing and budget issues for state law enforcement agencies to respond to calls on Tribal lands. He states that staffing issues prevented them from responding to incidents on Tribal lands, leaving the Tribes and their members without protection from criminal activity. Before Indian gaming, Tribes did not have the funding to pay outside law enforcement agencies to patrol Tribal lands. Between PL280 and the US Supreme Court decision in *Suquamish v. Oliphant*, Tribal lands became a lawless society, open to criminals finding homes on Tribal lands. (Goss, 2012)

In remote reservations such as those in Alaska and Navajo, Tribes rely on outside law enforcement agencies for crime control and protection. Navajo land is 3000 square miles and crosses multiple states. Alaska Tribes live in remote villages sometimes hundreds of miles from services. PL280 provided no help to those Tribal members. Tribes then did not have their own law enforcement or funding to do so. At times when law enforcement would arrive, they were too late, and someone died. (International, *Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence*, 2007)

PL280 negatively impacted Tribes and Tribal members until it was amended to allow Tribes to retrocede from state jurisdiction. Celeste Hughes speaks of the lack of cooperation from outside law enforcement agencies for California Tribes who are still PL280 Tribes. Although California Tribes have a central Tribal Court System, and the Executive Orders establish them as Tribes, recognized as sovereign, PL280 gives the state an obligation and authority to address crime on Indian lands. Celeste speaks of much needed improvement in this area to protect Tribes from crime in California Indian country. (Hughes, 2017)

Indian Gaming Regulatory Act (IGRA) 1988

In 1988, the US promulgated the Indian Gaming Regulatory Act (IGRA). Congress found that Tribes were engaged in the game of Bingo. Congress also found that the Tribal Bingo operations were unregulated and subject to threats from organized crime. The Act divided Indian Gaming into three categories:

1. Class I Gaming: Traditional gaming
2. Class II Gaming: Games such as Bingo
3. Class III Gaming: Gaming other than traditional or bingo.

The Act established Tribes as the primary regulators for all categories and required Tribal/State Compacts for Class III Gaming. The Act provides federal regulations enforced by the National Indian Gaming Commission (NIGC), adds requirements for state regulation and they developed minimum standards for Tribal Gaming Agencies to enforce. (National Indian Gaming Commission, 2015). Like PL280, the US promulgated a law that entered a third-party government to regulate Tribal Gaming. This Act brings more than legal pluralism to Indian Gaming and Tribal sovereignty.

Code of Federal Regulations Title 25 (CFR Title 25)

Code of Federal Regulations Title 25 (CFR Title 25) is a storage unit for Indian laws. CFR Title 25 begins with the authority of the BIA in handling Indian affairs, moves on to a multitude of federal laws from boarding schools/education, grazing, gaming, child welfare, and law and order, and numerous others.

(govinfo.gov, 2018) The Major Crimes Act is not listed in this CFR, as it pertains to both Tribal and non-Tribal crimes while granting the US jurisdiction over both for those specific crimes.

To review the list of Indian laws in CFR 25, is to review hundreds of years of Indian history with the US. Centuries of paternalism, trauma, the beginning of legal pluralism and devastation of one culture to assimilate into another. Tribes have survived, endured and assimilated to these laws and in some cases, used the laws to their benefit.

f. Laws to Protect

Statistics indicate that Native women are more likely than any other racial or gender group to be the victims of violent attacks. Some studies indicate that at least one in three women will be raped during their lifetimes (AltaMira Press, 2007). The Violence Against Women Act of 2010 (VAWA) will address improved relationships between the federal government and Tribes when the government gave Tribal Court Systems additional authority to prosecute non-Indian perpetrators that abuse Native women. (AltaMira Press, 2007). Native women too often suffer in silence. This silence resonates throughout Indian Country, from the lack of appropriate responses from law enforcement and judicial systems to the deafening silence faced by some women— from their own families even. (AltaMira Press, 2007). While systems are in place to protect women through law enforcement, federal and Tribal laws, and court systems, the resources not necessarily granted to Tribal Agencies that could protect or protect communities. These missing resources turn victims and families into collateral damage through the same systems that were built to protect.

Tribal Law and Order Act of 2010 (TLOA)

The Tribal Law and Order Act of 2010 (TLOA) instructs the Indian Law and Order Commission (Commission) to study jurisdiction over crimes committed in Indian country, including the impact of jurisdictional arrangements on the investigation and prosecution of Indian country crimes and on residents of Indian

land. Additionally, TLOA calls for studying the Indian Civil Rights Act of 1968 and its impact on the authority of Indian Tribes, the rights of defendants subject to Tribal government authority, and the fairness and effectiveness of Tribal criminal systems. Finally, TLOA directs the Commission to issue recommendations that would simplify jurisdiction in Indian country. (Department of Justice, 2017)

The Commission's primary response is to request that the President and Congress act immediately to undo the prescriptive commands of Federal criminal law and procedure in Indian country and, with the assurance that the Federal civil rights of all U.S. citizens will be protected, recognize Tribal governments' inherent authority to provide justice in Indian country. (Department of Justice, 2017)

For more than 200 years, the Federal government has undertaken to impose Federal laws, procedures, and values concerning criminal justice on American Indian nations (Table 1.1). An oft-used justification for these jurisdictional modifications is that the overlay of Federal and State law will make Indian country safer. But, in practice, the opposite has occurred. Indian people today continue to experience disproportionate rates of violent crime in their own communities. An exceedingly complicated web of jurisdictional rules, asserted by Federal and State governmental departments and agencies whose policy priorities usually pre-date the modern era of Tribal sovereignty and self-determination, contributes to what has become an institutionalized public safety crisis. The symptoms of this systemic dysfunction are painfully apparent across Indian country. (Department of Justice, 2017)

Institutional illegitimacy: because the systems that dispense justice originate in Federal and State law rather than in Native nation choice and consent, Tribal citizens tend to view them as illegitimate; these systems do not align with Tribal citizens' perceptions of the appropriate way to organize and exercise authority. The Commission heard this observation at virtually every one of its field hearings from the Eastern United States to Alaska. Generally, members do not willingly

comply with decisions that have not won their consent. (Department of Justice, 2017)

Because Tribal nations and local groups are not participants in the federal decision-making, the resulting Federal and State decisions, laws, rules, and regulations about criminal justice often are considered as lacking legitimacy. As widely reported in testimony to the Commission, non-tribally administered criminal justice programs are less likely to garner Tribal citizen confidence and trust, resulting in diminished crime-fighting capacities. The consequences are many: victims are dissuaded from reporting and witnesses are reluctant to come forward to testify. In short, victims and witnesses frequently do not trust or agree with State or Federal justice procedures. Potential violators are undeterred. (Department of Justice, 2017)

Under Federal law, the crime “assault with a dangerous weapon” comes with the penalty of up to 10 years imprisonment. Even if a Tribe (in a non-P.L. 83-280 setting) were to adopt a statute that exactly matched the Federal crime, its prosecutor could only seek a sentence of up to 1 year in jail, or under TLOA enhanced sentencing, 3 years for a single offense. To access a longer sentence, the Tribal prosecutor must refer the case for Federal prosecution. If, however, the United States Attorney does not prosecute the crime, the only option left is for the Tribe to take the case back and prosecute with the lesser, The Indian Civil Rights Act (ICRA) restricted sentence. After that short time, the perpetrator would again be at large in the community, free to commit more violence. (Department of Justice, 2017)

This is intolerable and fuels the public safety crisis in Indian country. Such disparities lead to widespread public disenchantment with the delivery of justice in Indian country, comparatively fewer Federal prosecutions, too many restrictions and constraints on the Tribal criminal justice system, and lack of confidence by victims and the Tribal community that crime will be vigorously pursued and deterred. (Department of Justice, 2017)

The Tribal Law & Order Act of 2010 (TLOA) was signed into law on July 29, 2010 by President Obama. The TLOA amends the Indian Civil Rights Act by allowing felony sentencing for certain crimes through the provision of enhanced sentencing authority, establishes new minimum standards for protecting defendants' rights in the tribal court system, and encourages federally-recognized Indian tribes to consider the use of alternatives to incarceration or correctional options as a justice system response to crime in their communities. Further, the Act authorizes the Attorney General to permit tribes access to National Crime Information Center (NCIC) data, and to grant concurrent jurisdiction/retrocession to the federal government by tribes in Public Law 83-280 as amended, often referred to as PL 280 states. (Folsom-Smith, 2015)

The Tribes exercising enhanced sentencing and incarcerating inmates under the TLOA include: (Folsom-Smith, 2015)

- Hopi Tribe
- Tulalip Tribes
- Cherokee Nation of Oklahoma
- Confederated Tribes of the Umatilla Reservation
- Eastern Band of Cherokee Nation
- Fort Peck Assiniboine & Sioux Tribes
- Muscogee (Creek) Nation of Oklahoma
- Salt River Pima Maricopa Indian Community
- Pascua Yaqui

The Tribal Law & Order Act provides federal laws giving specific jurisdiction to Tribal Law Enforcement Agencies and Tribal Justice Systems. The law has been amended a few times to adjust for changing times. One amendment includes giving Tribal Law Enforcement Agencies access to National Criminal Databases to enter and view criminal incidents, protection orders and convictions. The Act granted these resources to Tribal Law Enforcement agencies, however federal agencies did not grant those Tribal Law Enforcement Agencies access to enter and view the databases. (Goss, 2012)

Tribes not having access to enter criminal charges, protection orders and convictions into the criminal databases left Tribes to find alternatives to reporting these incidents. Tribes submitted hard copies of cases and protection orders to the BIA to enter into the National Crime database (Goss, 2012) or for example, Tulalip faxed protection orders to Snohomish County Sheriff Department. Snohomish County Sheriff did not always enter the documents into the state crime database. If Protection Orders were not entered into the state or national crime databases, background investigations for employment, foster care or gun purchases did not disclose disqualifying information to the agency seeking the information. Allowing persons not otherwise qualified to purchase weapons, or foster parents who would not qualify to take Indian children into their homes or employers to hire persons into positions that would prevent them from qualifying...collateral damage. (1, 2017)

g. Court Cases to Protect

ExParte Crow Dog

ExParte Crow Dog begins our stories as the first US Supreme Court decision about jurisdiction in Indian Country. The US Supreme Court ruled that the Dakota Territory did not have jurisdiction to arrest Crow Dog and reversed the sentence to hang him. Crow Dog returned to his reservation to serve out the sentence his Tribe issued. That sentence is controversial to most non-Indians, as they do not understand that taking care of the victim's family is a life sentence in Indian country and shamed by his Tribe. This case still impacts Tribes and the US today to argue against local and state interference in Tribal jurisdictions and sovereignty.

Suquamish v. Oliphant 1978

In Suquamish v. Oliphant, the US Supreme Court ruled that Tribes do not have jurisdiction for non-Indian crimes committed on Tribal lands. The impact of this decision left Tribal lands lawless for non-Indian offenders as states did not have jurisdiction on Tribal lands pursuant to ExParte Crow Dog. Domestic Violence

incidents grew dramatically, leaving victims without justice or protection from their violators. (Goss, 2012)

The impact of lawless societies is violent for Native American women, with such jurisdictional issues; the result is death in many cases. The Violence Against Women Act, provided additional jurisdiction for Tribal Police and Tribal Court systems to hold violators accountable. Yet until 2010, Native American women were not included in the Act. This left Indian women unprotected until 2010.

Washington v. US 1974

Washington v US, or otherwise known as the Boldt Decision is the result of Washington State Fish and Wildlife Officers harassing Indian fisherman and at times shooting women, men and children for fishing on their Tribal lands or treaty authorized areas. Washington Tribes filed suit against the state of Washington and the US joined the suit with the Tribes. Judge Boldt ordered that the state and Tribes have joint obligations to the health, regulation and management of Washington's natural resources that protect fish and wildlife. The Judge also ordered that Tribes have the right to 50% of the harvestable catch.

The right to 50% of the harvestable catch required increased monitoring of fish and shellfish counts by Tribes and the state. Both have hatcheries that release millions of fish per year, each have licensed fisherman that are obligated by law to report the number of their catch. Fish openings depend on the amount of fish ready to harvest and the amount of fish caught. In 2018, the Northwest Treaty Tribes website reports that 19 Tribal hatcheries released 41 million salmon into the Puget Sound. The Boldt decision gives Tribal fisherman the right to 50% of the 41 million fish. The other half is obligated to non-Indian sports or commercial fisherman (NWTT, 2019)

Billy Frank defends the Boldt decision as a cooperative relationship between the state and Tribes. Billy believes that all are stakeholders that require natural resources for survival, so all stakeholders are responsible for managing natural

resources. Billy believes that a courtroom is not the place to settle disputes; all disputes should be settled with face-to-face conversations since we have the same goals – survival.

Scholarly Research

Scholarly research written by Native Americans provide the scope of research in the words of the Indian, to tell the story on behalf of Tribes and Tribal members in the words of Indigenous people of the US. Rather than use academic research observed and researched by non-Indians, using research written and researched by Indians provide a more accurate version of our history in our own words to document our history with reflection of our ancestors.

Authors, Journals and Media Articles

Journals and media Articles provide interpretations and media concerns about Tribal social justice issues and impacts across the county. Research will continue and added literature brought forward in effort to ensure the nature of this of research will result with factual and effective goals.

Justice produces equilibrium. In order for equilibrium to exist, there is a pathway—Ko Te Ara Tika (the right road) that Maori seeking justice for themselves and others must follow. It is paved with traditional principles—indicators and measures of true and proper behavior—crafted by our ancestors as they journeyed through the cosmos and into Te Ao Marama (the physical world). (Native Law Center, 2005)

The above statements from the book *Justice As Healing* (Native Law Center, 2005) provides insight into the healing justice that Tulalip strives for through Tribal Court, Police Department and recovery programs. While establishing that collaborative relationships are necessary for a true and effective system of healing. These readings provide guidance in the research process in effort to view various geographical changes and similarities throughout the world and specifically Tulalip Tribes.

The notion of law being used to alienate Indigenous people is not isolated to the US as we see within New Zealand context Maori have experienced similar behavior. Linda Smith states that “It angers us when practices linked to the last century, and the centuries before that, are still employed to deny the validity of Indigenous peoples’ claim to existence, to land and territories, to the right of self-determination, to the survival of our languages and forms of cultural knowledge, to our natural resources and systems for living within our environments”. This literature will be used as a methodology to more accurately reflect the oral history and traditions of Tribes and Indigenous peoples in support of this research. (Smith, 2012)

Justice wears many different faces, and yet in essence it is constant and, just like the flax bush, essential to our existence. When our actions are in accordance with Pono (truth) and Tika (moral rightness), then justice is done. Justice is the means by which we, as humans, keep our world balanced. Its measure is the sense of harmony and well-being felt by the individual and reflected in his or her actions within the community. Justice, then, is a communal asset of great value to the spiritual and physical well-being of any community.

Such differences between the Supreme Court theology of applying law first and people second, conflicts with Indigenous ways of healing people. While Tribal justice systems attempt to repair the persons with the law simultaneously to promote healing without collateral damage.

2.2 Walking in Two Worlds – History of Legal Pluralism

a. Introduction

Chapter 4 addresses the United States Constitution and the powers, duties and responsibilities of the federal government to its citizens and Tribes. The Constitution mentions Treaties throughout the document, their power and Tribes powers under the document that governs the US. The US Constitution and its amendments are relevant to the relationship between Tribes, the federal

government and the justice systems of each. Eventually, the federal government required Tribes to form similar governments under the Termination Era of Federal Indian policy¹⁷. These two justice systems create legal pluralism that intermingles jurisdictions and at times create legal mazes for all stakeholders.

The US Constitution, Treaties and Tribal Constitutions bring together many historical events and court cases that form and organize Tribal Governments and define several aspects of sovereignty. Sovereignty is key to self-determination and self-governance for Tribes. Tribal governance is important to Tribal memberships for the services, care and protection of future generations as guided by past generations. Past generations that struggled to ensure future generations are protected from federal government attempts at genocide through assimilation efforts.

b. United States Constitution

The United States Constitution governs the institution of the US, this Constitution was signed on September 17, 1787 by several newly formed states in effort to declare independence from foreign governments and create a newly formed Country separate from all others. This Constitution is relevant to this research to establish the history of the relationships between Tribes and the US Government. The Constitution outlines the powers and duties of the US to Tribes and the power of the Treaties between them.

The Constitution establishes the Presidency (leader), Congress (legislative) and the US Supreme Court (Judicial). The Constitution also provides the rules for the US leaders to adhere to and guidelines to follow in decision-making. The Constitution mentions Tribes (or Indians) in the document that also provides rules and guidelines for the US to follow when addressing Indian issues.

Article 1, Section 8 of the US Constitution states: (The United States Constitution)

¹⁷ 1950's-1960's, US Policy to adopt a Constitution Government or lose federal recognition as a Tribal government, which included losing all treaty promises.

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence, (sic), and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To constitute Tribunals inferior to the Supreme Court;

To make Rules for the Government and Regulation of the land and naval Forces;

Article 1, Section 8 provides Congress the authority to regulate commerce with Indian Tribes and develop court systems inferior to the Supreme Court. The US has several levels of court systems to include municipal, districts and superior courts that address local, state and federal systems. Section 8 also gives Congress the power to make rules for the government and regulation of land and naval forces.

These sections are important to Tribes when dealing with state and federal jurisdictions and commerce for Tribal economic development. Explorers landing in the US from Columbus on have claimed Indian land from the day they landed on this great continent. Research will show that land was so valued by the Indians and the explorers that wars and slaughter of Indian people ensued in effort to claim land and build this country. US courts eventually became the venue to settle land claims and other disputes between Indians and settlers.

Article 2, Section 2

He¹⁸ shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose

¹⁸ The President of the United States

appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

Article 2, Section 2 of the Constitution provides the President with the power to make (negotiate) treaties with Tribes. Presidents then delegated this authority to state governors to negotiate with Tribes the provisions of the Treaties.

Article 3 Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the Supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Article 3 Section 2 set the standard for judicial power between states, the US and Tribes to the US Supreme Court. This section applies to Ex Parte Crow Dog for setting the venue when The Dakota Territories arrested and convicted him. This section of the Constitution gave judicial jurisdiction to the US because of the Treaty between Crow Dog's Tribe and the US. This section is the basis for the Supreme Court Overturning Crow Dogs conviction in the Dakota Territories.

This section is also practiced today. Many cases involve Tribes and states when states attempt to exceed its own powers against Tribes. This section is also discussed in various aspects of this research. Tulalip currently has a case pending with the US Supreme Court, against Washington State for exceeding their authority over Tulalip Tribes jurisdiction. Article 3 of the US Constitution provides the due process between States and Tribes disputes.

Article 4

All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Article 4 establishes that treaties made with Indians are the “*supreme law of the land*”. Many court cases in lower courts are overturned by the US Supreme Court from this language. Many US Supreme Court cases have also interpreted this language differently and has overturned previous US Supreme Court decisions. The Marshall Trilogies are prime example of this Constitutional reference in the Supreme Court. Supreme Court Justice Marshall ruled against Cherokee Nation twice and then ruled in their favor in Worcester v. Georgia (Echo-hawk, 2010). This section will be the primary focus of this research through interviews of Indians and US Supreme Court cases that have impacted Tribes ability to live, hunt, fish, and basically survive in accordance to their respective Treaties. US v. Washington State, also known as the Boldt decision

is about the fish wars in Washington State and discussed in depth later, when the US joined Washington Tribes in a lawsuit against Washington Fish and Wildlife to prohibit the states involvement in enforcing Tribes fishing laws that were granted to Tribes under their respective treaties.

Constitutional Amendments:

Article the third... Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Although Indian religion is not a topic in this research, it is important to reference this section of the Constitution as an example to demonstrate the US focus on assimilating the Indians into Christianity. In 1978, President Clinton promulgated the Indian Freedom of Religion Act in effort to allow Tribes the ability to practice their traditional and historical religious practices. As late as 1978, states continued to prohibit Tribes from practicing their cultural traditions in defiance against their own US Constitution. In some instances, Tribes use their religious cultural practices as their societal expectations and laws. Interviews will demonstrate how this is done. The American Indian Freedom of Religion Act states (Act, 1996):

It is the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites. Aug. 11, 1978 (Act, 1996)

The fact that the federal government had to promulgate a law to allow Tribes to practice their spirituality/religion using their traditional sites, use and possession of sacred objects. Despite the US Constitution amendment to allow freedom of religion is another example of the US government's attempts at assimilation and

Tribe's driving force to protect their rights to have equal rights under the law as other US citizens.

c. Treaties

Treaties are legally binding contracts between sovereign nations that establish those nations political and property relations. Article Six of the United States Constitution holds that treaties "are the supreme law of the land". (govinfo.gov, 2018) Treaties between Indian Tribes and the United States confirm each Indian nation's rights, responsibilities and privileges. In most of these treaties, the Tribes ceded title to vast amounts of land to the United States in exchange for protection, services, and in some cases cash payments, but reserved certain lands (reservations) and rights for themselves and their future generations. Treaties do not expire with time. (Columbia River Inter-Tribal Fish Commission, 2017)

Treaties begin with the Treaty of Six Tribes in October 1768 with the British and then negotiated again on October 22, 1784 (US, 2017). The six Tribes consists of the Seneca's, Mohawks, Onondagas and Cayuga's. Later Oneida's and Tuscarora's were given the option to join. The second treaty was basically for the exchange of hostages held by the US military and captives held by the Tribes. The Treaty of 1768 identified boundaries on the east coast, in modern day Pennsylvania, Kentucky, West Virginia and New York, for the reservation land of the six Tribes and then renegotiated to concede more land to settlers.

These six Tribes are known as the Iroquois Confederacy (Powless, 2017). Powless explained that there are 21 Chiefs from seven Tribes in the Iroquois Confederacy. The Anandanga, Seneca, Cayuga, Oneida, Mohawk and Tuscarora make up the confederacy. They sit in a circle, the Chiefs in front and the clan mothers behind them, the Clan Mothers give the Chief's directions and guidance in their decision-making. They still meet today in council meetings and participate in the old ways. All 21 must reach a consensus in their decision making before they leave the meeting. Wampum belts are used by the Iroquois to record their stories and history. The wampum belts tell about the arrival of

the Europeans and how they cared for the Confederacy. Fed them, cared for them, they showed hospitality beyond words. European's told the Iroquois that they were their father. The Iroquois told them that they are not their fathers but their brothers. (Powless, 2017)

On the other side of the country, the Tulalip Reservation was reserved for the use and benefit of Indian tribes and bands signatory to the Treaty of Point Elliott of January 22, 1855, 67 years after the first treaty was signed between the Iroquois Confederacy and the US. Its boundaries, established by the 1855 Treaty and by Executive Order of President U.S. Grant dated December 23, 1873. It was created to provide a permanent home for the Snohomish, Snoqualmie, Skagit, Suiattle, Samish and Stillaguamish Tribes and allied bands living in the region. (Tulalip Tribes, 2017)

The Point Elliot Treaty cedes millions of acres of land to the US in exchange for \$150,000 to be paid in annuities; health care; education; and the right to hunt, fish and gather berries/plants. The Treaty also provides direction for criminal jurisdiction to the US as stated (NWIFC, 2004):

ARTICLE 9. The said tribes and bands acknowledge their dependence on the Government of the United States, and promise to be friendly with all citizens thereof, and they pledge themselves to commit no depredations¹⁹ on the property of such citizens. Should any one or more of them violate this pledge, and the fact be satisfactorily proven before the agent, the property taken shall be returned, or in default thereof, of if injured or destroyed, compensation may be made by the Government out of their annuities. Nor will they make war on any other tribe except in self-defence (sic) but will submit all matters of difference between them and the other Indians to the Government of the United States or its agent for decision and abide thereby. And if any of the said Indians commit depredations on other Indians within the Territory the same rule shall

¹⁹ An act of attacking or plundering, looting, pillaging, robbery, devastation, destruction, damages, rages, raids. *google*

prevail as that prescribed in this article in cases of depredations against citizens. And the said tribes agree not to shelter or conceal offenders against the laws of the United States, but to deliver them up to the authorities for trial. (NWIFC.org, 1855)

This section of the Treaty outlines the Tribes agreement to submit to the federal government's paternalistic jurisdiction for acts of crime. Nowhere in this language does the jurisdiction deflect to the state governments. However, Tribes acknowledged a dependence on the US, we can question how far the dependence extends...is it just for this section or for the Treaty as a whole? History, US Supreme Court decisions and Presidential Executive Orders have answered this question. This the beginning of legal pluralism for Tulalip Tribes.

US Supreme Court decision in *Suquamish v. Oliphant* denied Tribes criminal jurisdiction over non-Indians who commit crimes on Tribal lands (*Oliphant v. Suquamish Indian Tribe*, 1978). This decision left sovereign Tribes across the nation subject to non-Indian criminal activity without jurisdiction to address all crime committed in Indian country. Forcing Tribes to rely on alternative federal resources to protect their Indian people. While the Major Crimes Act removes specific crime jurisdiction such as murder and rape from States and Tribes and delegates jurisdiction to the US government. The Major Crimes Act and the *Oliphant* Supreme Court decision force Tribes to use Federal laws for non-Indian criminal activity on Tribal lands.

Recent Court orders address Treaty Rights and Treaty violations by states. In *US v. WA* 2015, several sections discuss Treaty rights and Treaty obligations by states, such as:

- Language used in treaties with Indians should never be construed to their prejudice.
- In interpreting Treaty with Indian Tribe, if words be made use of that are susceptible of more extended meaning than their plain import, as connected with tenor of treaty, they should be considered as used only the latter sense.

- Indian treaty must construed, not according to technical meaning of its words to learned lawyers, but in sense in which they would naturally be understood by Indians.
- Court will construe treaty with Indians as they understood it, and as justice and reason demand. In all cases where power is exerted by strong over those to whom they owe care and protection and counterpoise inequality by superior justice that looks only to substance of right, without regard to technical rules.
- When interpreting Indian Treaty, court must look beyond written words to larger context that frames treaty, including treaty's history, negotiations, and practical construction adopted by parties.
- United States, as a trustee for Indian Tribes, may bring suit on their behalf to enforce Tribes rights under Treaties, but treaty rights belong to Tribes.
- United States cannot, based on laches or estoppel, diminish or render unenforceable otherwise valid Indian Treaty rights.
- Because rights under Indian treaties belong to Indian Tribes rather United States, it is not United States prerogative to waive them.
- Indian treaty rights are intended to be continuing against the United States as well against state.

This case, specifically mentions Treaty rights throughout the decision/order. The US 9th District Court realizes the importance of Treaties to Tribes. The US by joining Tribes in suit and filing on behalf of Tribes also recognized the legal concept of Indian Treaties as well as the right of Tribes under the Treaties. With cases *Herrera v. Wyoming* and *Carpenter v. Murphy* pending at the US Supreme Court, and both cases addressing Treaty rights, consistency is hopeful in both cases. Anything less would be devastating to all Tribes across the nation.

d. Tulalip Tribes Constitution (Tulalip Tribes, 1935)

Pursuant to The Indian Reorganization Act, Section 16, on October 29, 1935 the Tulalip Tribes submitted Constitution and Bylaws to the US Department of

Interior for approval. The Indian Reorganization Act required Tribes to submit Tribal Constitutions or face termination by the US government. Termination meant the federal government, once again, no longer recognized Tribes as sovereign nations and Tribes would lose all rights established in treaties. The Department of Interior (DOI) approved the Tulalip Constitution on January 24, 1935.

The Tulalip Constitution modeled after the US Constitution, includes a Preamble to identify organization and formation of the Tulalip Tribes. The Preamble states:

We, the Indians of the Tulalip Tribes, in order to establish a more perfect tribal organization, promote the general welfare, encourage educational progress, conserve and develop our lands and resources, and secure to ourselves and our posterity the power to exercise certain rights of home rule not inconsistent with the Federal, State, and local laws, do ordain and establish this Constitution for the Tulalip Indians.

The Constitution also establishes the Board of Directors or Tribal Council as the governing body of the Tulalip Tribes. However, the governing body is also governed by the membership also known as Tribal Council. The membership can veto, approve or reverse decisions made by Tribal Council.²⁰ The next section of the Tulalip Constitution outlines and establishes procedures for the election and nomination of Council members. The following section provides for the Vacancies and removal of Council members from office.

A section outlines the powers and duties of the Tribal Council that includes authority to promulgate Tribal Ordinances, regulations and governing the Tulalip Tribes. Although these powers and duties are granted to the Tribal Council and Tulalip Tribes, the Constitution also requires submission and approval of specific elements to the Bureau of Indian Affairs (BIA). In essence, federal approval is

²⁰ For the purpose of this research, Board of Directors shall be referenced as Tribal Council and Tribal Council for the membership shall be referenced as membership.

required for the Tribe to make certain decisions, amend the Constitution and amendments to Codes or the Constitution. Federal approval of Tribal laws is more paternalistic than legal pluralism.

Other sections of the Tulalip Constitution provides for Bill of Rights similar to the US Constitution with limited rights that includes:

Suffrage: the right to vote in Tulalip Elections. This section also requires residence qualifications as an eligibility requirement.

Economic Rights: the right to equal opportunities to participate in economic resources and activities of the reservation.

Civil Liberties: to enjoy without hindrance freedom of worship, conscience, speech, press, assembly and association.

Rights of the accused: essentially due process. Any member of the Tulalip Tribes accused of any offense shall have the right to a prompt, open, and public hearing, with due notice of the offense charged, and shall be permitted to summon witnesses on his own behalf. Trial by jury may be demanded by any prisoner accused of any offense punishable by more than thirty (30) days' imprisonment. Excessive bail shall not be required and cruel punishment shall not be imposed.

Another section is to provide guidelines and codes for land, land use, sale, assignment and jurisdiction between land held by the Tribe in Trust with the US government and lands owned by Non-Indians. Another section requiring the BIA, a US government agency, to approve specific items relating to Tribal land.

The last section of the Constitution is to provide guidelines for amending the Constitution through a process with the BIA.

e. Sovereignty

Merriam-Webster Dictionary defines sovereignty as:

Supreme excellence or an example of it; supreme power especially over a body politic; freedom from external control; AUTONOMY;

controlling influence; one that is sovereign; *especially* an autonomous state (Merriam-Webster Dictionary, 2017).

The National Congress of American (NCAI) Indians defines sovereignty as “Sovereignty is a legal word for an ordinary concept— the authority to self-govern.” (NCAI.org, 2017)

Centuries of Treaties with Indian Tribes, the US Supreme Court, Presidents and Congress have confirmed Tribes inherent powers to govern themselves. The essence of tribal sovereignty is the ability to govern, to protect and enhance the health, safety, and the welfare of tribal citizens within tribal territory. Tribal governments maintain the power to determine their own governance structures and enforce laws through police departments and tribal courts. Tribal governments exercise these inherent rights through the development of their distinct forms of government, determining citizenship; establishing civil and criminal laws for their nations; taxing, licensing, regulating, and maintaining and exercising the power to exclude wrongdoers from tribal lands.

In addition, tribal governments are responsible for a broad range of governmental activities on tribal lands, including education, law enforcement, judicial systems, health care, environmental protection, natural resource management, and the development and maintenance of basic infrastructure such as housing, roads, bridges, sewers, public buildings, telecommunications, broadband and electrical services, and solid waste treatment and disposal. (NCAI.org, 2017). Tribes strive to protect Tribal Sovereignty at all levels of government and business. When interviewing members of various Tribes, each person has a different definition of sovereignty and each has their own opinion of what sovereignty means to them.

John McCoy, Tulalip Tribal Member and Washington state Senator defines sovereignty as Self-determination/Governance over Tribal citizens, “we’ve wanted sovereignty since the treaties were signed in the 1800’s. (McCoy, Senator, 2017)

Rico Fernandez, Tulalip Tribal Member states that “sovereignty gives us power to do what we want to do, but yet we are still under the federal government control. What do we need to do to be free? Stand up for each other. Be one not separate (all Tribes)” (Fernandez, 2017)

Jamie Hummingbird, Cherokee Nation Tribal Member and Chairman of the National Tribal Gaming Commissioners/Regulators says “When you’re a kid, you’re learning, learning how to be...to be yourself. At some point you determine your destiny. Sovereignty determines destiny, a family, how we behave, and it’s our choice to a basic state of being. Where we are in control of our own thoughts and actions. Without sovereignty we become nothing. The US relationship with Tribes he says, they always tell us we have a dependent domestic relationship, but it is like a sword hanging from a thread and the thread is sovereignty being whittled away.” (Hummingbird, 2017)

Celeste Hughes, Cahuilla says “An elder says “it’s a word no one understands, and no one can spell”. Individuals have to embody their roles as members of the Tribe. We have to be who we were prior to contact, use vision and resources to continue that. If we all think that way, collectively we are sovereign. (Hughes, 2017)

Misty Napeahi, Tulalip Tribes General Manager, “Loss of identity through identifying with the dominant culture. Kids growing up with rap are growing up with that culture instead of pow wow music. Tulalip is almost assimilated which is the cause for social issues such as addiction. Indians are invisible collectively, there are no positive public Indian images for our children to relate to.” (Napeahi, 2018)

Debra Posey, Tulalip Tribal Elder and former Tribal Council, “Sovereignty is everything about what a tribe is. It is a Sovereign government ability to govern ourselves. It is all about money now. Our first leaders remind us it is everything to fight for, equal to federal government, not governed by states.” (Posey, 2018)

Theresa Sheldon, Tulalip Tribal Member and Tribal Council, “Self-rule...pillars of sovereignty to include citizens, police, laws and taxes. How sovereignty looks is different for each tribe. Issues with states and taxes forces us to rely on gaming for revenue.” (Sheldon, 2018)

Anonymous 1, Ability to pass laws and enforce them. Means providing necessary dedication of assets to do so. (1, 2017)

Gabe Galanda, Round Valley Tribal Member, Attorney, says sovereignty does not mean a right or prerogative of Tribal politicians to violate human rights or dignities. He continues by stating that sovereignty is jaded, it is used as weapons against members in the same manner as the US did us. Bob Keely was adopted into the Nooksak Tribe and then disenrolled other Tribal members once he was on Tribal Council. Natives take care of each other, not abuse each other. We are not sovereign. We must have respect for human rights and dignities, we are not particularly good at it. When sovereignty becomes capitalist, tribalism decreases. We need to get back to being Tribal, as a whole and not as individuals. (Galanda, 2018)

Marci Fryberg, Tulalip Tribal Member and Vice President of Gaming Operations states that tribal sovereignty is a word created by European/Americans during colonization. Inherent sovereignty belongs to Indigenous peoples since creation. Inherent sovereignty is the freedom to govern ourselves in accordance to our cultural teachings, to live on our ancestral homelands, to speak our traditional languages, to practice the way our way of life our ancestors held sacred. (Fryberg, 2018)

None of these descriptions meet the definitions provided by NCAI or Miriam Webster’s Dictionary, but each description holds a special place in each of their hearts. Each described sovereignty with compassion and certainty on behalf of their communities and people. Sovereignty, described differently not only by each Tribe but differently by individual Tribal members. Tulalip Tribes describes sovereignty as:

“Sovereignty is a most valued asset to the people of the Tulalip Tribes of Washington State. Though the concept of sovereignty is complex and undoubtedly open to interpretation, the principles of tribal sovereignty are very fundamentally solid. A sovereign nation exists either by means of divine allocation or federal government recognition. We believe these factors are mutually exclusive. Sovereignty entities are free from state-imposed laws and are only regulated by the federally imposed statutes.” (TTT, 2018)

2.3 History of Indian Law

a. Introduction

The history of Indian law, and how each law relates to governments issues with Indians is needed to describe the impact of legal pluralism since the US formed its judicial system. History of Indian law is developed from relationships with the U.S. government over centuries; since the historical “discovery” by Columbus. Prior to that, as Indian people had their own forms of jurisprudence. Mark Powless describes the roles of the Iroquois Confederacy for behavioral consequences pre-contact and continued today.

Tribes survived centuries of slaughter and abuse under the doctrine of discovery. Yet Supreme Court decisions are based on a “conquered people”. (Echo-hawk, 2010) Discovery or conquered, Indian laws are built on these perceptions. Centuries of treaties between the U.S. and Tribes have created wide-ranging laws governing Tribes.

The US Constitution grants the US President to enter into treaties. As states enter into statehood, the governors negotiated the treaties with Tribes and then sent them to Congress and the President for approval. The Tribes now have the US Constitution and Treaties to support their futures. As ExParte Crow Dog leads to the Major Crimes Act, the beginning of walking in two worlds is implement for and by Tribes. Court cases filed by Tribes and/or states are based on the constitution and treaties. Federal laws promulgated by the US have been based off these court cases such as the Major Crimes Act.

The US Code of Federal Regulations (CFR) Title 25 is Federal legislation about Indians. CFR 25 begins with the authority of Bureau of Indian Affairs (former Indian Agency) and grants the US Secretary of Interior the power to regulate the CFR, to waive or make exceptions to the regulations.

§ 1.2 Applicability of regulations and reserved authority of the Secretary of the Interior. The regulations in chapter I of title 25 of the Code of Federal Regulations are of general application. Notwithstanding any limitations contained in the regulations of this chapter, the Secretary retains the power to waive or make exceptions to his regulations as found in chapter I of title 25 CFR in all cases where permitted by law and the Secretary finds that such waiver or exception is in the best interest of the Indians. [25 FR 3124, Apr. 12, 1960] (Government, BIA.gov, 1960)

CFR 25, Section 4.11 provides PL 280 Tribes with a Court of Indian Offenses for both criminal and civil actions. Section 4 has a list of generic crimes, lists them by severity of the crime, provides minimum/maximum sentencing/fines guidelines, along with court magistrate requirements and filing procedures. This court provides the Tribes with Federal assistance versus relying on local municipalities to address their criminals.

The Federal code continues to list all aspects of regulations relating to Tribes in the US. Boarding schools, housing, health care, land use, fishing, use of resources, gaming and more are all listed in this CFR. More specifically, relative to this research is the Tribal Law & Order Code. Other legislation not included in this CFR is the Violence Against Women Act and the Major Crimes Act. These Acts are examples of legislation that is applicable to all US citizens and specifically lists Tribes authority under the acts.

This chapter begins with Indian Boarding Schools and ends with more current US Supreme Court decisions and historical and recent promulgated laws that have impacted us. The CFR will be referenced many times throughout while discussing the social justice impacts of legal pluralism.

b. **Boarding Schools**

March 3, 1819, during the 15th Congress, Government promulgated what appears to be a resolution making a provision for the civilization of the Indian Tribes adjoining the frontier settlements. This document granted the President of the US the authority for the following:

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, that for the purpose of providing against the further decline and final extinction of the Indian Tribes adjoining the frontier settlements of the United States, and for further introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall Judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, to employ capable persons of good moral character, to instruct them in the mode of agriculture suited to their situation and for teach their children in reading, writing and arithmetic, and performing such other duties as may be enjoined, according to such..... (Congress, US Code, 1819)

Eventually, boarding schools provided opportunity for Indian parents to give their children warm beds, food and education. Indian parents faced the fact that assimilation was in full force and western education was a commodity much needed for the children's future. Once a child was enrolled in a boarding school that was not always close to home, the parents struggled to see their children. The boarding school superintendents would refuse to let the parent's visit, send the children home for a visit or fail to respond to the parents. (Child, 1998)

US Boarding Schools are a significant portion of the history between the US Government and Tribes. Traumatizing to some individuals who attended the schools and refused to talk about their adventure to family or friends. While others may perceive the experience as a positive life changing event. In the

nation, though the Boarding Schools have left a significant impact on Indian people throughout generations. Interviews will disclose the various impacts left on Indian people throughout generations.

c. **ExParte Crow Dog 1883**

After the arrival of Columbus and since the formation of colonies, the United States authorized specific people, usually state governors to negotiate and enter into Treaties with Indian Tribes across the nation. The Treaties held that the United States possessed jurisdiction for crimes committed by non-Indians on Indian Lands and that the Indian Nations possessed jurisdiction for crimes between Indians on Indian Lands. In the 1880's, the Sioux Tribal Chief, Crow Dog, killed another Indian – Spotted Tail (Pimentel, 2010). The Sioux Tribe sentenced Crow Dog to a lifetime of caring for Spotted Tails family because he took the life of their caregiver and family provider.

The District Courts of the Dakota Territory determined the Tribes sentence for Crow Dog was insufficient and arrested Crow Dog for murder. Crow Dog was tried by the Dakota Territory, found guilty and sentenced to hang. Crow Dog appealed to the Supreme Court who ruled in 1883 that the Dakota Territory lacked jurisdiction in this case and that the United States had specific jurisdiction in the case (*Ex Parte Crow Dog*, 109 U.S. 556, 3 S.Ct. 396, 27 L.Ed. 1030 (1883)). The Supreme Court found the Treaties with Indian Tribes to be obsolete, yet enforceable by the United States only in a crime of loss of life (The Major Crimes Act 18-U.S.C. 1153, 1885). Crow Dog was released to his Tribe to serve out the sentence ordered by the Tribe.

In 1885, the Major Crimes act was passed in reaction to the Supreme Court Decision of Crow Dog. As a result, the federal government obtained exclusive jurisdiction for Indian against Indian crimes that were specifically listed in the act to ensure that Indians were tried and prosecuted for such crimes (The Major Crimes Act 18-U.S.C. 1153, 1885) in accordance to federal standards. The Major Crimes Act granted the United States exclusive criminal jurisdiction over

specific crimes such as felony sexual assault, kidnapping, maiming, manslaughter and murder involving Indians and then delegated such authority to monitor crimes in Indian country to the U.S. Department of the Interior (DOI).

Ex Parte Crow Dog is the first US Supreme Court case addressing Indian crime on Indian lands. The benefits of Crow Dog's release to his Tribe is interpreted differently among Tribes. Initially, the fact that he won his case serves Tribes interests as a result of the US Supreme Court decision that states/territories do not have jurisdiction over crime in Indian country when the crime committed is between Indians. However, the highest court decision warranted the Federal government to promulgate the Major Crimes Act taking away Tribes jurisdiction for the seven crimes listed in the act.

d. Major Crimes Act 1885

In 1885, the Major Crimes act, promulgated in reaction to the Supreme Court Decision of Crow Dog. As a result, the federal government obtained exclusive jurisdiction for Indian against Indian crimes specifically listed in the act to ensure that Indians were tried and prosecuted for such crimes (The Major Crimes Act 18-U.S.C. 1153, 1885).

The Major Crimes Act granted the United States exclusive criminal jurisdiction over crimes such as felony sexual assault, kidnapping, maiming, manslaughter and murder involving Indians and then delegated such authority to monitor crimes in Indian country to the U.S. Department of the Interior (DOI). The Federal Bureau of Investigations (FBI) and Tribal Police investigate Major Crime cases. Then, if accepted by the US Attorney's office, the case is held in Federal Courts. These types of cases are entered into the Federal Crime Reporting System by the FBI, but the victim Tribe will not be identified nor will the crime be reported as an Indian crime. (Goss, 2012)

A current case pending the US Supreme Court decision challenges state jurisdiction to arrest a tribal member on tribal lands. The case is an individual Tribal member as the criminal and the Creek Nation joining the case against

Oklahoma State. In *Carpenter v. Murphy*, an Oklahoma Court ruled that the state did not possess jurisdiction over Murphy, a Creek Nation Tribal Member. Oklahoma appealed the decision to the US Supreme Court. (*Carpenter v. Murphy*, 2019)

Oklahoma argues that when statehood was established, all treaties in Oklahoma were invalidated. At a minimum, Oklahoma argues that Tribal jurisdiction is only applicable on Tribal lands within the boundaries of the reservation. Non-Indian owned land is subject to state jurisdiction. Oklahoma argues that all reservation status was abolished by Congress including the Creek Nation. (*Carpenter v. Murphy*, 2019)

Murphy and the Creek Nation argue that Oklahoma has no jurisdiction over Tribal members within the boundaries of the Creek Nation reservation. They argue that the Major Crimes Act gives the federal government jurisdiction to arrest, try and convict Tribal members. Oklahoma argues that the Major Crimes Act was also abolished with Oklahoma statehood and no longer a valid argument for Indians. (*Carpenter v. Murphy*, 2019)

The decision of the US Supreme Court is pending. Yet, the decision, if against Murphy and the Creek Nation, of the court could be devastating to all Tribes across the nation. The US Supreme Court can rule that all treaties are abolished after statehood was obtained by each state and could rule that the Major Crimes Act is no longer an argument for tribes to give federal jurisdiction for specific Indian crimes. Ruling against the Treaties would devastate Tribal Sovereignty and self-governance. Although, the questions by the state would only address the legality of the Treaties and the status of the Major Crimes Act, there are many other laws in CFR 25 that would need to be addressed by the US Supreme Court before Tribal jurisdiction would be completely abolished.

e. Public Law 280 (PL280) 1953

In 1953, federal Public Law 280 (PL 280) allowed states to acquire and assert criminal and civil jurisdiction over Indian Country without Tribes consent (Anderson, 2011). In 1968, Congress repealed the section of PL 280 that allowed states to acquire jurisdiction without Tribes consent and amended the law to include the United States Congress authority to allow retrocession of issues dealing with Tribes (Anderson, 2011). Therefore, states jurisdiction over Tribal lands ceased in 1968, returning criminal and civil jurisdiction over Indians on Indian lands back to Tribes and to the Federal Government unless a Tribe and the state agree to continued state services. In such agreements between Tribes and States, crimes by Indians are reported to the State and to the National Crime Reporting System by the state, but not as a crime by an Indian or as a violation of Tribal law.

Tulalip retroceded from PL 280 in 1999, hired Chief Jay Goss to create a Law Enforcement Agency, hire qualified police officers, implement training programs, develop budgets, etc. Chief Goss is a firm believer in Sovereignty, the Tribe makes decisions concerning its governance and its people. (Goss, 2012)

f. **Oliphant v. Suquamish 1978**

In 1978, in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (*Oliphant v. Suquamish Indian Tribe*, 1978), the United States (US) Supreme Court ruled that Tribes do not possess criminal jurisdiction over non-Indians who commit crimes or who are living on Indian Lands. This decision left Tribes without State and Tribal enforcement of criminal activity committed by non-Indians on Indian Lands. States do not possess criminal jurisdiction on Indian lands and from this case, neither do Tribes. With no law enforcement agencies possessing criminal jurisdiction on Indian Reservations, Tribes were left to become a lawless society, unprotected from criminal activity by non-Indians (Goss, 2012).

An actual case involving a tragic highway accident in Colorado illustrates how overly complicated jurisdictional rules can undermine criminal investigations

and hinder effective prosecutions. In *United States v. Wood*, the U.S. Attorney's Office for the District of Colorado prosecuted a case on the Southern Ute Indian Reservation where a non-Indian drunk driver smashed into a car driven by a Tribal member. Both victims (an elderly woman—the Tribal member—and her 8-year-old granddaughter) burned to death. The child was not an enrolled member of the Tribe but had a sufficient degree of Indian blood to be considered "Indian" for purposes of Federal criminal jurisdiction according to the legal requirements articulated over the years by the U.S. Court of Appeals for the Tenth Circuit, which hears appeals of Federal cases arising on the Southern Ute Indian Reservation. What was unclear based on the evidence available at the crime scene, however, was whether the little girl was also considered to be an "Indian" on the Southern Ute Indian Reservation— another Tenth Circuit legal requirement. (Department of Justice, 2017)

As the Federal case against the non-Indian defendant proceeded under the Major Crimes Act, defense counsel objected that the little girl, despite having Native blood, was still not considered to be an Indian by the Southern Ute Indian Tribe given her alleged lack of ties to that community. The factual record, which was unavailable to investigators in the field at the time of accident, was mixed on this issue. The girl had received Indian Health Service benefits on the Southern Ute Reservation and was visiting her grandparents on the reservation at the time of the accident. However, the girl and her mother lived off-reservation. After literally dozens of people had weighed in, eventually the question of whether the Tribe considered the child victim to be a Tribal member was resolved by the Southern Ute Tribal Council. (Department of Justice, 2017)

After several months of jurisdictional wrangling, the Tribal Council concluded that the child victim was not a Tribal member—unlike her grandmother, who also had perished in the accident. This meant two separate prosecutions for the same crime: One by the U.S. Attorney's Office for the death of the grandmother, the other by the LaPlata County, Colorado District Attorney's Office for the child. And because of *Oliphant v. Suquamish Tribe*, the Tribe was deprived of any concurrent criminal jurisdiction because the defendant was a non-Indian. (Department of Justice, 2017)

In 2008, Washington state legislature passed Revised Code of Washington (RCW) 10.92.010 that granted general authority as a Washington Peace Officer to tribal police on federally recognized Indian Land. Per the RCW, Tribal Police Officers must meet specific requirements of training, insurance, citation rules and jurisdiction. Jurisdictional or inter-local agreements with other law enforcement agencies such as city police or county sheriff departments for correctional facilities must be arranged between the Tribe and those agencies. Another legislation act proposed by Senator John McCoy, in effort to protect all citizens living and entering Tribal lands. (McCoy, Senator, 2017)

Under these new conditions, Tulalip Tribal police may now arrest a non-Indian and incarcerate the person. However, the non-Indian person's due process is heard in state courts and not in tribal courts. Indian criminals can now be incarcerated in state correctional facilities, but their due process is in Tribal Courts. If any person is arrested and incarcerated by a Tribal police officer into a state system, their criminal activity is reported to the State Crime Reporting System which is also submitted to The National Crime Reporting System but not under any Tribal law, as an Indian offense or Tribal arrest. Unfortunately, accurate crime statistics regarding the effects of P.L. 280 on Indian Country do not exist (Leonhard B. M., 2012).

Therefore, Chief Goss states the demographics of the Indian criminal are lost in the state and national crime reporting systems as the Indian criminal is not identified as an Indian person. However, not all Indian arrestees are incarcerated but arrested and then released (field booked). They are then required to report to Tribal Courts for due process. These types of arrests are not reported to any form of Crime Reporting System, as the criminal incidents are reported to the BIA by hard copy reports. Chief Goss stated that over 500 Tribes sending hard copy paper police reports to the BIA places the reports in a myriad of paperwork to never be seen again. (Goss, 2012)

Per Tulalip Tribal Police Chief, these cases are filed by the Tribal Police Departments with the BIA monthly. Therefore, in one quarter, 145 total Tulalip

cases were filed with the BIA via handwritten reports and are not located in a crime reporting system. These 145 cases, filed only by this specific Tribe and only with the BIA. Therefore, statistics for crime trends and crime data rates are only available to this specific Tribe. Although, individual Tribes might maintain their own similar records, there is no access to Tribal crime records between Tribes, state or federal agencies. (Goss, 2012)

g. Washington v. US 1974

Otherwise known as the infamous Boldt decision that is the result of the Fish Wars in Washington State. The Washington Fish and Wildlife agents were shooting Indian men, women and children for fishing on their own lands in the 1960-1970's (Jr., 2015). In a federal lawsuit against Washington State filed by the Lummi Tribe and other Tribes joining the suit, Judge Boldt determined that Tribes had a right to 50% of the harvestable catch and co-management of the resource. The commercialization of the fishing industry created violent and tragic relationships between non-Indian fisherman, state Fish and Wildlife Agents and Indian Fishermen. The Boldt decision is one example of government Indian law resulting from government issues with Tribes.

Billy Frank, Jr. was a child during the fish war era. After witnessing this tragic and cruel state policy, Billy spent his lifetime fighting against state politicians for Tribes treaty rights. This case and many others will address how Tribes respond to Federal Indian policy, while providing the oral historical record and outlining how Tribes addressed the issues and the laws. (NWIFC, 2004) Billy Frank fought not just for fishing treaty rights but also for natural resource management through cooperative relationships with environmental stewards. He promoted collaboration over finger pointing and courts. He believed that by pointing a finger that three were pointing back and that did not resolve the issues of protecting resources. Billy Frank states:

Ultimately, people will hopefully realize that quality of life, like human rights, should know no social barriers. If any of us are to truly enjoy the beautiful environment provided to us, we must learn to enjoy it together.

The answer to our differences lies not in the courtroom, nor in the denial of one people's rights over another. It lies in how well we can work together. (Jr., 2015)

After the Boldt decision, the Northwest Indian Fish Commission (NWIFC) was formed. Billy became the Chairman and diligently maintained efforts for cooperative working relationships with governments without giving up the right to filing for court decisions when Washington state would not compromise with Tribes. While successful with many State Governor's, countries such as Australia contacted NWIFC and Washington state for research on these cooperative working relationships between Indigenous people and state governments. (Jr., 2015)

Billy Frank gives credit to those who worked collectively with NWIFC to ensure collaboration continued. He voices appreciation to those state governors and legislators who listened to Tribes when they expressed needs and concerns. He gives credit to Judge Boldt for listening through weeks of trial and provided the fairest legal opinion he could in such a tumultuous issue.

h. **Indian Gaming Regulatory Act of 1988** (National Indian Gaming Commission, 2015)

In 1983, Tulalip Tribes opened a Bingo Hall as a means of generating additional revenue for the Tribe. The Bingo Hall also provided jobs for the membership, which in turn also provided them with health insurance. The Tribe successfully operated this growing gaming operation to the point of hiring a management team to assist with the growth. The team embezzled from the operation and the Tribe successfully addressed their crime.

In 1988, Congress finds that with Tribes engaged in the game of Bingo, within federal jurisdiction there is no law to regulate the conduct of gaming on Indian Lands, and that Tribes need a shield to protect them from organized crime.

The Indian Gaming Regulatory states:

§2701. Findings

The Congress finds that—

- (1) numerous Indian tribes have become engaged in or have licensed gaming activities on Indian lands as a means of generating tribal governmental revenue;
- (2) Federal courts have held that section 81 of this title requires Secretarial review of management contracts dealing with Indian gaming, but does not provide standards for approval of such contracts;
- (3) existing Federal law does not provide clear standards or regulations for the conduct of gaming on Indian lands;
- (4) a principal goal of Federal Indian policy is to promote tribal economic development, tribal self-sufficiency, and strong tribal government; and
- (5) Indian tribes have the exclusive right to regulate gaming activity on Indian lands if the gaming activity is not specifically prohibited by Federal law and is conducted within a State which does not, as a matter of criminal law and public policy, prohibit such gaming activity.

(Pub. L. 100–497, §2, Oct. 17, 1988, 102 Stat. 2467.)

§2702. Declaration of policy

The purpose of this chapter is—

- (1) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;
- (2) to provide a statutory basis for the regulation of gaming by an Indian tribe adequate to shield it from organized crime and other corrupting influences, to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players; and

(3) to declare that the establishment of independent Federal regulatory authority for gaming on Indian lands, the establishment of Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and to protect such gaming as a means of generating tribal revenue.

The Indian Gaming Regulatory Act (IGRA) can be viewed as a paternalistic policy since Tribes operated gaming venues for at least five years before the Federal government promulgated the Act. The Act also established a federal agency to regulate Indian gaming, known as the National Indian Gaming Commission (NIGC). Tribal Leaders worked with the Federal Government to draft the Act, which also includes a requirement to negotiate Tribal/State Compacts²¹ before specific types of gaming is allowed. This requirement can also be considered a violation of sovereignty that gives states jurisdiction within Tribal Gaming. However, since Tribes participated in drafting the Act, a balance was needed to make sure Tribes were treated fairly in the requirements of the Act. Therefore, the regulation of Indian Gaming is enforced by Tribal, State and Federal Gaming Commissions. Legal Pluralism?

i. Tribal Law & Order Act 2010

SEC. 202. FINDINGS; PURPOSES.

(a) FINDINGS.—

Congress finds that— (1) the United States has distinct legal, treaty, and trust obligations to provide for the public safety of Indian country; (2)

Congress and the President have acknowledged that—

(A) tribal law enforcement officers are often the first responders to crimes on Indian reservations; and

(B) tribal justice systems are often the most appropriate institutions for maintaining law and order in Indian country;

(3) less than 3,000 tribal and Federal law enforcement officers patrol more than 56,000,000 acres of Indian country, which reflects less than

²¹ Legal agreements that establishes the rights and responsibilities of each agency.

1/2 of the law enforcement presence in comparable rural communities nationwide;

(4) the complicated jurisdictional scheme that exists in Indian country—

(A) has a significant negative impact on the ability to provide public safety to Indian communities;

(B) has been increasingly exploited by criminals; and

(C) requires a high degree of commitment and cooperation among tribal, Federal, and State law enforcement officials;

(5) (A) domestic and sexual violence against American Indian and Alaska Native women has reached epidemic proportions;

(B) 34 percent of American Indian and Alaska Native women will be raped in their lifetimes; and

(C) 39 percent of American Indian and Alaska Native women will be subject to domestic violence;

(6) 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; and H. R. 725—6

(7) crime data is a fundamental tool of law enforcement, but for decades the Bureau of Indian Affairs and the Department of Justice have not been able to coordinate or consistently report crime and prosecution rates in tribal communities.

(b) PURPOSES.—The purposes of this title are—

(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.

Tribal Nations have historically faced significant challenges in public safety issues. Recognition of this problem led to the passage of the Tribal Law and Order Act (TLOA) of 2010, signed into law by President Obama on July 29, 2010 (Corrections, 2011). The Tribal Law & Order Act was enacted to give Tribes additional jurisdiction over their people, which expanded the number of court cases heard and sentencing guidelines in Tribal Courts.

Of the 565 federally recognized Indian tribes, only 80 have jails or detention facilities in their communities. In midyear 2009 these tribal facilities held 2,176 Indian people representing seven percent of 29,400 Indian people confined in a correctional facility, both pre-trial and post-conviction. Approximately 72 percent were adult males, 16 percent were adult females, eight percent were juvenile males, and three percent juvenile females. (Corrections, 2011) This data was not compiled from a formal database but from a survey conducted by the Bureau of Justice Services (Corrections, 2011). The DOI reports that there are 1.9 million Indians that they are responsible for, yet their own survey suggests that only 29,000 are incarcerated. A very small percentage of incarcerated Indians, would that number increase if the data was available through a National Crime Data Base included Indian status and Tribal input?

The Tribal Law Enforcement Act directs the US Department of Justice and the BIA to provide services to Tribes to enhance their justice systems in effort to reduce crime, decrease recidivism and strengthen Tribal tradition of restorative justice. A workgroup consisting of DOJ, DOI, Tribal Police Chiefs, Tribal Judges and Tribal leaders to evaluate goals for implementing the act (Corrections, 2011). The plan identifies cooperation between agencies as a short and long-term goal in all aspects of the Act (police, courts and incarceration).

The DOJ, DOI and BIA websites all indicate a goal of cooperation and support for Tribes in the endeavors of sovereignty, self-sufficiency and culture. The Tribal Law and Order Act is a beginning to implementing the cooperative government-to-government relationship with Tribes. However, the work group's long-term plan does not mention any form of Crime Reporting Systems technology for the Tribal Justice systems even though the Act requires cooperation to ensure accurate data is available to Tribes..

j. Violence Against Women Act of 1994 (VAWA)

“The original Violence Against Women Act, VAWA, created a national strategy for dealing with domestic violence. And that strategy has been very successful. VAWA brought together victims' advocates, social service providers, and law enforcement professionals to meet the immediate challenges of domestic violence. This bill reauthorizes and strengthens those core programs. This bill also creates new programs that represent important steps forward in areas such as health care, housing and officer-involved abuse. The first new step concerns health care. For the first time, VAWA includes a national health care response to domestic violence, dating violence, sexual assault and stalking. It authorizes new grants to train health care providers to recognize and respond to domestic or sexual violence.” (govinfo.gov, 2018)

42 U.S.C. United States Code, 2011 Edition Title 42-THE PUBLIC HEALTH AND WELFARE CHAPTER 136 - VIOLENT CRIME CONTROL AND LAW ENFORCEMENT SUBCHAPTER III - VIOLENCE AGAINST WOMEN Part P-Miscellaneous Authorities Sec.14045d- Consultation From the U.S. Government Printing Office, www.gpo.gov

§14045d. Consultation

(a) In general

The Attorney General shall conduct annual consultations with Indian tribal governments concerning the Federal administration of tribal funds and programs established under this Act, the Violence Against Women Act of 1994 (title IV of Public Law 103–322; 108 Stat. 1902) and the Violence Against Women Act of 2000 (division B of Public Law 106–386; 114 Stat. 1491).

(b) Recommendations

During consultations under subsection (a) of this section, the Secretary of the Department of Health and Human Services and the Attorney General shall solicit recommendations from Indian tribes concerning—

- (1) administering tribal funds and programs;
- (2) enhancing the safety of Indian women from domestic violence, dating violence, sexual assault, and stalking; and
- (3) strengthening the Federal response to such violent crimes.

(Pub. L. 109–162, title IX, §903, Jan. 5, 2006, 119 Stat. 3078.)

CODIFICATION Section was enacted as part of the Violence Against Women and Department of Justice Reauthorization Act of 2005, and not as part of the Violent Crime Control and Law Enforcement Act of 1994 which enacted this chapter.

Domestic Violence and Sexual assaults occur across the nation, Indian Country is not exempt from abuse to women. Violence against women is considered one of the highest violations of human rights conducted by family members; intimate relationships, and strangers, violence affects women of all culturesⁱ (International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence, 2007). Yet many of these incidents are unreported, or if they are reported nothing can or will be done. Remote reservations such as Alaska or Navajo sometimes require days of travel to reach the victim and at times by the time law enforcement reaches the victim, she is dead. Rape isn't enough damage to a woman's body; severe beatings leaves the woman for dead or she dies in the hospital or the mental anguish out of fear of the perpetrators freedom either drives the women to depression or suicide. (International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence, 2007)

Sometimes jurisdiction hinder the arrest and prosecution of suspects based on race. Tribes do not have criminal jurisdiction over non-Indians on the reservation and city, county and state law enforcement agencies do not have jurisdiction on reservations (International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence, 2007). This problem can leave victims in a life of fear when the suspect is free because he is non-Indian and can return to commit the crime again. Law Enforcement officials have stereotyped Native American Women as "drunken Indians" when they arrive to a crime scene to find a hysterical, beaten, Indigenous woman, only to have her die later rather than applying due diligence to protect her. (International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence, 2007)

Due process is also denied to the woman when law enforcement does not provide them with updates or progress reports on their cases; the victimized woman does not get her day in court to face her assailant. The fact that these are the circumstances nationwide also implies that violence against women is tolerated and encouraged, as the suspects are not punished for their actions and few investigated. (AltaMira Press, 2007)

On April 25, 2012, Tulalip Tribes Vice Chairwoman Deborah Parker testified before Congress in support of VAWA with Washington State Senator Patti Murray by her side. Asking Congress to enforce the Constitutional Treaty sections for the US to provide Tribes with Health, Education and Safety by passing the amendments to the 1994 Act that would include Tribal jurisdiction over non-Indians who commit acts of sexual, family and domestic violence against Indigenous women. <https://www.youtube.com/watch?v=yIV7-XASQy8>. President Obama signed the Acts amendments on March 7, 2013.

2.4 Conclusion

Sovereignty is implied through treaties and the US Constitution. The definition of sovereignty varies between Tribal members, Tribes, the Miriam Dictionary and NWIFC. Yet sovereignty is key to tribal self-governance and decision making on behalf of the US Indigenous people. Sovereignty does not prohibit Tribes and the US government from commingling jurisdictions or submitting to other jurisdictions for various legal issues and/or economic development such as Gaming for example. US Supreme Court cases such as Ex Parte Crow Dog, establish court precedence in identifying the definition of sovereignty and continued use today of these cases provide Tribes and the US with argument to defend and protect sovereignty.

Gaming is an economic powerhouse for Tribes that brings revenue to provide Tribal communities with health care, higher education, youth services (ie. Athletics, private schools, tutoring), Recovery programs, judicial and police services, etc. Yet, the Congress found that Indian Gaming was unregulated and unprotected from organized crime and needed federal interference to provide regulation and protection by Tribal, State and Federal regulatory agencies. (National Indian Gaming Commission, 2015) Three levels of regulatory protection of gaming revenue that is dispersed to Tribal Governments for much needed services.

Requiring three levels of regulation to protect Indian Gaming exceeds legal pluralism by requiring state interference, granting states jurisdiction in the Tribal

gaming industry. Sovereignty is impeded when states can participate in any Tribal arena per Federal legislation.

The US Constitution, Treaties with Tribes and Tribal Constitutions all work toward building centuries of Indian Law to protect sovereignty. The US Supreme Court must use these as a basis for their decision making when cases are brought forward to them for review and decision-making in the same manner the court uses for deciding non-Indian cases. In that same manner, few decisions made against Tribes by the court have the same impact to Tribes as their Non-Indian cases. Case law sets a precedence for all parties to use in future court cases and provides all parties with a basis to promulgate new laws or to lobby in effort to make changes to current laws.

Tulalip's constitution, approved by the BIA, sets the governmental authority to govern Tulalip people. Tulalip's constitution is similar to the US Constitution in concept and authority. Because of both constitutions, Tulalip has developed and promulgated Tribal laws to protect the community; build on sovereignty and self-governance. The result of the Point Elliott Treaty, US Constitution and sovereignty.

Each of these laws passed by the federal government have specific impact on the sovereignty and self-governance of Tribes in the US. Laws that would and should protect Indigenous people across the nation in the same manner as any other US citizen. However, jurisdictional battles between Tribes, States and Federal government require these laws to enable Tribes to practice their treaty rights and the US Constitutional sections relating to Treaties. Interpretation differences sometimes require court decisions to settle disputes between Tribes and Individuals and/or governments.

The Boldt decision and *Oliphant v. Suquamish* are clear court cases that helped define levels of Tribal Sovereignty. The Boldt decision, although not clearly in favour of Tribes or Washington State, but rather walked the fence provided a clear definition of Tribal Treaty Rights for fishing. The Suquamish case provided clear direction that Tribes do not have jurisdiction over non-Indians

who commit crimes in Indian country. The Suquamish case and PL 280 left Tribes a lawless society, open to non-Indian crimes and violence and without retribution. Tribes responded with retrocession and the beginning of lobbying the legislature to protect our people.

At times, tragedy occurs before the governments promulgate laws or regulations and/or the resources that are provided in those laws/regulations to clarify jurisdiction to prevent future collateral damage. VAWA is a prime example of this, women die, and male legislators take months or years to approve laws that protect women or provide justice for their abuse. Collateral damage causing trauma and death to any person caught up in the legal pluralism of Tribes, state and federal governments.

CHAPTER THREE

Methodology

3.1 Introduction

In this chapter, discussion about using Indigenous Methodologies with an Oral history and traditions framework that will provide in depth research to gain perspective from the stories and teachings of Tulalip and Coast Salish Elders, leaders and members as to how federal Indian law has impacted native lives. Tribal members from other Tribes across the nation will provide additional stories about tradition and oral history in their perspective locations.

Examples of non-Indians writing about Indians will demonstrate how the non-Indian observes Tribal ceremonies in their research. Their stories reflect opposing observations to what actually happens at ceremonies. Their stories held as research of Indians, used by students across the nation in their own academic research and multiply with each student who accesses through the academic world. Great examples of why Tribal members should use Indigenous Methodologies for their research. To tell our story, document our history, to tell the truth.

This methodology will allow Tribal members to tell their stories in their own words about their tribal belief systems for addressing behavior through expectations and standards established by communities. They will provide their thoughts on how federal Indian law impacted their families and communities and how they as individuals or Tribal communities adjust or work through these laws imposed by the Federal government.

The research will include books, journals and/or articles about or written by Tribal members across the nation that discusses the successes and concerns about federal Indian laws. Keeping in line with Indigenous Methodology to maintain the stories written by us about us. A few Tribal authors are now ancestors, yet were able to seek assistance through translators to tell their stories. Yet, other

Tribal authors write their opinions on federal Indian law, analyzing court cases, discussing their own research or writing an autobiography about their life experiences in Boarding School, family history, etc. These stories provide the impact of federal Indian law to individual Tribal members and/or Tribes as a whole.

Other research includes court cases between Tribes, States and the federal government; legal opinions by Tribal attorneys and/or Tribal leaders/members; and Indian law journals. The court cases, court decisions legal documents and written stories continue the journey with Tribal sovereignty and demonstrate how Tribes respond to federal Indian law. This methodology can be considered qualitative, quantitative in some areas, yet the entire point of the research is to provide the issues (Indian law) and Tribes thoughts and responses to those issues throughout centuries. To promote the Tribal stories, actions and beliefs of a government system we (Tribes) have used to grow and protect sovereignty. Court cases and federal laws are the evidence to the stories and how Tribes respond.

3.2 Methodology

Tribal history travels through stories told by Tribal elders to their children and grandchildren. This is how generations learn about who we are and how we are; our stories are our understanding of the world. Our history is alive, to teach our children how to behave, to remember. Although, there is extensive research about Indigenous people by non-Indians, that research seen through a colonizing gaze. Interpretations of what is seen is inaccurate interpretations of Indigenous activities and stories through a non-Indian observer eyes and mind, is written as fact, and then used by other researchers to substantiate their claim about Indians across a whole range of issues and matters. The results of non-Indian research is used worldwide as academic knowledge, cited in academic journals and research papers.

Harriet Shelton Dover, a Tulalip Tribal member, discusses oral history in her book *Tulalip from the Heart*. She states that Tulalip was named in a legend by the Snohomish Tribal ancestors in a time so long ago, her grandparents referred to it as a “time of rememberence, covered by drifting, deep fog or mist”. Much has been written about Tulalip and its Indians by white people, but she believes this is the first history by a Tulalip Indian. (Dover, 2013)

Her grandparents and parents used to reminisce about the days when they were growing up, and they would remember what their grandparents said about their childhoods. This is how our people kept an account of their history from one generation to the next. They always spoke about the long, long time ago – a time so far, so gone that we are looking at it through a mist or a fog and cannot really see. (Dover, 2013)

Harriet was extremely specific how her book should be written and organized. She decided that it is natural for her to speak in long, discursive sentences. As a result, the editors learned that the Snohomish oratorical style is to begin speaking about a topic, develop that topic wherever it carries us, and then return to the topic. The editor states that the editors of American Indian autobiographical texts have almost always been asked to remove repetition and to order the material chronologically. Her book is not chronological, but topical.

Harriet’s book uses the past to comment on the present events and they use repetition to help their audience remember what they are saying. It is necessary to refer back to a previous time-period in order make a special point. The past is a touchstone, a point of reference, or a place of embarkation. Time forms a spiral as a narrator refers to the past and proceeds on, again refers to the past and proceeds on, as the topics under discussion are developed or elaborated upon. (Dover, 2013)

Harriet’s book is oral history written, as she has become an ancestor, she has provided her stories to the next generations to remember. Harriet’s thoughts on

how her book was to be written brings oral history much closer to this methodology. To interpret how Indian's, speak and how her stories will be remembered? In the Indian way.

Joyce Cheeka, a Squaxin Island Tribal member tells her stories in her book *The Rememberer*. Joyce inherited the duties of remembering her Tribal history and culture. She was to tell those stories to younger generations, so that the stories of their culture and traditions will continue. She asks the reader to think about your parents and grandparents and great grandparents. Think about how they lived, many years ago, when they were young. You may have known about them because of movies you have seen. You may know about them because of photographs you have seen. (Dietz, 2013)

Joyce continues on pointing out that your parents may have shown you pictures and said “that is your great-uncle, that is your great-great-grandmother”. You looked at them and tried to imagine their lives. Now, imagine you have no photographs, so instead you read about them. In addition, now imagine your language has never been written down. That means you have no books. Without movies, without pictures, without books – how will your history be remembered? How will you learn the story of your family, your Tribe, your people? (Dietz, 2013)

As Joyce begins her journey to learn her teachings from her elders, she was forcible taken from her family and sent to government boarding school in Tulalip. Joyce struggles with her Tribal role as the Rememberer and the boarding school goal to remove the Indian from the children. Joyce describes her mental, spiritual and physical journey while attending school. She constantly reminds herself that she is the Rememberer. (Dietz, 2013)

Her stories outline her role as the Rememberer. How important it is for us to hear, listen and tell the stories of Tribal culture and traditions. Oral history defined by this Squaxin Island Tribal member.

Vine Deloria discusses a study conducted by Michael Harrington, *The Other America* that concurs with Linda Smith's Colonizing Methodologies concerning research that is true to Indigenous peoples to reflect oral histories and traditions of Indigenous peoples. Deloria states that Indians are probably invisible in research because of the tremendous amount of misinformation about them. Most books about Indians cover some abstract and esoteric topic of the last century. Contemporary books are predominantly by whites trying to solve the "Indian problem".

The future does not look bright for the attainment of freedom because the white does not understand the Indian and the Indian does not wish to understand the white. Deloria's book (Deloria, *Custer Died For Your Sins*, 1969) supports legal pluralism theories of historical context. Deloria is known nationwide in Indian Country for documenting his studies of government politics, government/tribal relations and various methods of healing Indian country through politics.

This chapter outlines the methodology used to support the research starting with Community Based Participatory Research using interviews of Tribal Elders, Leaders and Tribal Members from Tulalip and Tribes across the nation. Indigenous Methodologies allows the researcher to use oral history/traditions as the method of research. Using oral stories from Tribal members to support their thoughts on what happened, what they remember, and how history has impacted their families throughout various Indian law eras.

Interviewing only Tribal members from various Tribes and using only Indian authors provides the Indian story of legal pluralism and the impact(s) to the Indian, families and communities.

3.3 Research Method

Community-Based Participatory Research (CBPR) has been hailed as an alternative approach to one-sided research endeavor that have traditionally been

conducted on communities as opposed to with them. Although CBPR engenders numerous relationship strengths, through its emphasis on co-sharing, mutual benefit, and community capacity building, it is often challenging as well. CBPR requires relationship building with members of the community. Some members grew up punished for speaking their language or practicing their beliefs and their fears continue into their golden years. (Policy Research Center, 2017)

Building these types of relationships will require extended amounts of time and multiple meetings before those community members are comfortable enough to speak about their childhoods. These elder community members are integral in this research to determine traditional forms of social justice of our ancestors and their expectations for justice today. (Policy Research Center, 2017)

Working with tribes in a research capacity and forming trusting relationships cannot be accomplished by following a simple checklist or navigating a 'how to' roadmap. Tribal nations are diverse. Each tribal nation and each research project and team is unique. Additionally, developing effective relationships cannot be accomplished from behind a desk or without active, in-person participation in the community. Partnerships between tribes and researchers require an orientation to research that is both culturally-based and community-centered. (Policy Research Center, 2017)

Indigenous stories evolve into community based social justice theory for Tulalip Tribes and community. Tribal Elders and other Tribal members as well as leaders were interviewed to establish generations of teachings and experiences about behavioral expectations, environmental stewardship for sustenance, Tribal sovereignty, guidance and direction. Tribal Elders and leaders (past and current) have faced and experienced generations of trauma through boarding schools, diseases, suicides, alcoholism and today drug abuse, all in the name of colonization and assimilation to European lifestyles. Their experiences will demonstrate oral history and oral traditions through Indigenous voices and not through western research and interpretation.

3.4 Oral Traditions and Oral History

Sometimes people confuse oral traditions with oral history. An oral tradition is one in which stories are passed down through the generations (Leavy, 1975). For example, some Native American traditions include the handing down of stories. Stories are told to teach young ones and sometimes older adults lessons in life, how to behave, expectations of elders, etc.

Tulalip From My Heart, Harriet Shelton-Dover explains how her grandmothers and aunty's made her sit and watch them sew, cook, clean and then one day tell her to do something. She was expected to know how to do what she was told since she watched their examples multiple times. If she did not understand what she was to accomplish, she could not ask for guidance, she was to make an effort and figure it out.

Harriet's story tells us today how to teach our children, show them what you are doing, pay attention to what you are doing and then do it. Technology advances through generations might change these teachings for our children of today, yet Tribal communities expect us to teach tradition through oral stories. Harriet provides her oral history of her teachings in and out of boarding schools.

3.5 Oral Tradition

Leavy explains that oral history draws on the tenets of an oral tradition; however, the terms are not interchangeable or changeable. The views of elders telling stories when children are misbehaving in effort to guide them into appropriate behavior becomes a tradition. Or when an elder tells us stories to teach us their expectations becomes an oral tradition through generations versus someone telling us a story about an incident that was undocumented that has no guidance or repeating value for future generations. An exception does exist when oral history of Indigenous people told by Indigenous people to express unwritten or to correct historical events from an Indigenous perspective or as a witness if one was present at an event. Yet, an Indigenous oral tradition can be the result of

oral history to prevent something happening or to learn (teaching) from the event. (Leavy, 1975)

Maori culture refer to this as *Paki – waitara*. *Paki* – story, *waitara* – wall of the house. This is referring to the carvings and weaving patterns that adorn their ancestral meeting houses, these houses are similar to the Long House. Where reference to the story from the wall refers to the knowledge that is presented through the carvings and weavings, that depict critical events and occurrences important to the history of the people who belong to the house (Doherty, 2018).

For Maori the purpose of these oral accounts will connect the people to the landscape they occupy. For Maori the term *whakapapa* is important, the Ngata English to Maori Dictionary (Ngata, 1996) will give the translation as genealogy, which it is, but much more, it describes the ‘sequential order of events from conception to the present of whatever you are focusing on. Knowledge has a sequential order of events from when practice or idea began to its current use or thinking, our oral histories refer to this (Doherty, Maturanga Tuhoe: The Centrality of Maturanga-a-iwi-to Maori Education, 2009)

3.6 Oral History

Oral history is a method of collecting narratives from individuals for the purpose of research. In general, qualitative methods of interview all seek to gather data directly from individuals. The kind of information sought varies, but usually covers the following dimensions: • Personal experiences • Memories of events • Attitudes, values, beliefs • Opinions and perspectives. Oral history is a unique, qualitative method of interview. Oral history follows an inductive and open-ended interview model. Oral history is based in an oral tradition of transmitting

knowledge. In essence, this method presupposes that individual actors have valuable knowledge to share based on their life experiences, including their behaviors, rituals, attitudes, values and beliefs. Historians often use oral history as a means of documenting and preserving-filling in the historical record. (Leavy, 1975)

3.7 Interviews

Elders and Tribal members will assist in “filling in the historical record” of this research. Providing their version of oral history in accordance to their roles of oral tradition will build the information needed in the specific areas of this research. These stories will collaborate the increased social justice impacts of Tulalip through economic development, increased drug and crime problems and their wishes for constant improvement of our systems. Many of these elders and Tribal members fought years and generations of political battles to preserve and improve sovereignty on behalf of Tribal governments nationwide.

Linda Smith states that “priorities often demand an understanding of the ways in which we can ask and seek answers to our own concerns within a context in which resistance to new formations of colonization still has to be mounted and articulated” (Smith, 2012). In other words, research is not an innocent or distant academic exercise but an activity that has something at stake and that occurs in a set of political and social conditions. “If I have one consistent message for the students I teach and the researchers I train it is that Indigenous research is a humble and humbling activity. Sharing knowledge is also a long-term commitment” (Smith, 2012).

Decolonization, however, does not mean and has not meant a total rejection of all theory or research of Western knowledge. Rather, it is about centering our concerns and worldviews and then coming to know and understand theory and research from our own perspectives and for our own purposes. Research ‘through imperial eyes’ describes an approach which assumes that Western ideas about the most fundamental things are the only ideas possible to hold, certainly

the only rational ideas, and the only ideas which can make sense of the world, of reality, of social life and of human beings.

Tulalip is rich with oral tradition and history as told by elders passing down stories. Tulalip stands strong in representing sovereignty and self-determination as a Tribal Government. The ability to share knowledge shared by Tribal Elders, Leaders and membership provides opportunity to help heal a community from recent and generational trauma. Telling our own story from our own research enables us to evaluate our Tribal systems more effectively for our current and future needs.

Examples of stories/research about Indians by Non-Indians that fail to substantially support Indigenous oral histories/tradition and are basically written about Indigenous people rather than for Indigenous people. Which is why non-Indians should either provide a reference about their research, a disclaimer that their stories/research is of their own opinion and disclose that terminology is not exact to that used by the Indigenous.

3.8 Non-Indians Writing about Indians

Pamela Amoss writes about her perspective of the First Salmon Ceremony Revived, she is visiting the ceremony in Tulalip and uses references such as “dance house”, “butcher”, “astroturf”, “ferns” (rather than cedar bows), “Port Gamble Skokomish” (two different Tribes – Port Gamble Sklallum and Skokomish). (Amoss, 1987) None of these terms are used in our language or ceremonies. Our “Dance House” is called a Smoke/Long house; we do not butcher anything, we “prepare”; we do not use “astroturf” or “ferns” to carry our fish from canoe to longhouse, we use cedar bows.

Amoss continues to talk about the relationship between current and “ancient” salmon ceremonies and describes ancient ceremonies without references and without obvious knowledge of such ancient ceremonies since we do not know ourselves. So, how could this non-Indian know enough about our ancient ceremonies to perform such a comparison? Non-Indian writing about Indians...

Jay Miller discusses Shamanistic processes of Coast Salish people where he references objects and ceremonies that are nowhere close to our Smoke/long house ceremonies. He references the Shaman's as Doctors and participants as Patients. (Miller, 1988) Coast Salish people do not use Shaman's, we do not reference our home participants as doctors and/or patients but rather in familial terms – parents and babies. Each home has its own leaders who are the parents, workers who are brothers and sisters (even though they might be cousins or not related) and helpers.

Miller discusses witnessing these ceremonies through his descriptive writing. He is a non-Indian who grew up in Tulalip. He writes about what he sees in his own perspective not what is actually happening. The objects he describes in the ceremonies are not used in our ceremonies and we do not seek the land of the dead as he claims. Our ceremonies are for our spiritual journey, to help keep us balanced in heart, mind, and spirit in the same manner as any other non-Indian church practices their religion. Non-Indian writing about Indians...

Jeff Riddle, a Modoc Tribal Member and son of Winema, grew up during the Modoc War. His mother provided mediation and interpreter services between the Modoc Tribe and the military. Jeff wrote his story about the Modoc War. He states that he read many books and stories about the war. He wonders where these authors were during that time, as their stories do not reconcile with his stories. (Riddle, 1914)

Jeff states that he read a book by Captain William T. Drannan, "thirty Years on the Plains". Drannan claims he killed more Modoc warriors than Captain Jack really had. It is such men as Mr. Drannan who mislead the public in regard to the Indian wars. Mr. Drannan certainly was not anywhere near the lava beds at the time of the Modoc war of 1872 and 1873. (Riddle, 1914)

Jeff writes that in his work, he aims to give both sides of the troubles of the Modoc Indians and the whites. The Indian side has never been given to the public yet. He also states that his drawback in writing is that he has no education, and tries to write as plain as he could. His writing is very simple. (Riddle, 1914)

These stories provide fair examples why Indians should write about Indians and tell our story in our research about us. Our ability to gather information through stories and teachings from our elders provides intriguing and vibrant histories that guide us into the future with behavioral expectations, customs and traditions blended with assimilated federal justice system examples used by Tribes for their own...Walking in Two Worlds

3.9 Other Research

Interviewing Tribal elders and leaders using community based participatory methodology will provide oral history and traditions to support Indigenous expectations for behavior, actions or lack of action and true Indigenous history of our people. Other research will include academic journals by Tribal members to provide and promote statistical data and theories of Indigenous behaviors in our social justice programs. These academic journals will support the growth of Tulalip sovereignty while the impact of crime rates, mental health and addiction created a need and stability of a growing Tribal justice system.

Building a Tribal Court System required cooperation and collaboration with the federal government and many jurisdictional disagreements with State Court systems (state court systems have absolutely no jurisdiction on Tribal lands). Yet, state and federal politicians challenge those relationships that results in our leadership becoming political warriors to ensure our people are protected. Research and events will show that chaos and death is what pushes politicians to make legislative changes on our behalf. Using interviews, court cases and Indian law describes how Tribes moved forward to build their justice systems.

Books translated and written for ancestors will also provide historical oral stories told to translators for the purpose of documenting their memories, values, beliefs and teachings. This research will support the interviews of today's elders and leader's oral history and traditions that lead the way for a sovereign justice system.

3.10 Conclusion

Although, assimilation has also guided us through the last few centuries, we also work to balance European expectations with our own traditions and cultural practices. The opportunity to decolonize methodology in effort to tell our story is one to enhance our research, to commingle the two worlds by documenting our oral histories, traditions, culture, while working towards improving our present day and future systems.

Documenting the need for improved collaborative relationships with outside state and federal agencies, lawmakers and court systems should protect our people from collateral damage. The need for access to enter and review criminal activities on Tribal lands is imperative for the protection of our people. Promulgating laws that give Tribes authority to do so but failing to provide the access and resources is a failure of these relationships and results in trauma through death of our youth and members. How can we make it better, effective and efficient to protect our Indigenous people?

CHAPTER FOUR

Tribes Response to Indian Law

4.1 Introduction

This chapter discusses how Tribes respond to Federal Indian policy. Interviews of Tribal elders, leaders, members and others²² provide the other side of the story. Stories about centuries of Federal Indian law policies and legislation to assimilate the Indian into European culture. The Federal government took land, moved Tribes and its members sometimes thousands of miles from their homelands, placed with other Tribes, created residential boarding schools for Indian children, took criminal jurisdiction from the Tribes, all in effort to assimilate the Indian. How did the Tribes and Tribal Members respond to the acts of genocide? Tribal members from across the nation were interviewed to explain how these actions affected them, their families and communities. Their answers will be explained.

Federal laws, implemented as paternalism, a trust responsibility to Tribes per the Treaties. Treaties, the supreme law of the land per the US Constitution. Tribes have used the federal justice system to protect their treaty rights and sovereignty. Tribes have also modeled their own justice systems after the federal government system. Moving forward and ahead to protect a future of generations.

Court cases, some leading to the US Supreme Court, also define Tribes response to legal pluralism. The Boldt decision is one case that provides an example of state interference in Tribal treaty fishing rights. A US Supreme Court case filed by the Lummi Tribe, in which other Tribes and the US joined against the state of Washington to fight the treaty violations imposed by the state. Court, a system of legal pluralism yet a benefit for the Tribes to use to fight against the Federal and state government. Interviews also define how this works for Tribes.

²² National organizations leadership

Elders who Tulalip honor on their website provide the roles they played in the success Tulalip. Elders who are now ancestors such as Harriet Shelton Dover who transcribed a book to document her story about her grammas and aunty's, about her boarding school experience, going to college at 72. Or Stan Jones Sr., who led Tulalip on Tribal council for over 40 years. He participated in the Boldt decision working hours into the night to provide research for the attorneys arguing in court in front of Judge Boldt. Tulalip's response to Federal Indian law.

Tribes and Tribal members have joined forces to organize advocacy groups to lobby the US government for sovereignty and to educate politicians and the public on Indian issues. As with any political activity, there are politicians that support Tribes and others that denounce Tribes and sovereignty. History as demonstrated this throughout US Supreme Court decisions that uphold or denounce aspects of sovereignty. Historical resistance by Tribes against US invasion and assimilation has created Indian hero's for their struggles to protect their people.

Individual Tribal members, historical resistance, court cases, Tribal politicians, US Supreme Court cases, Regional and National organizations and Individual organizations, all demonstrate Tribes response to US Federal Indian Law. A history of struggle, survival, resistance and cooperation in a system of assimilation demonstrates Tribes responses to legal pluralism. Turning struggle into documented history and stories of generations of holding our own for the next seven generations.

4.2 Historical Resistance

Since the arrival of Columbus at Plymouth Rock, tribes have faced battles to maintain their land and the cultural practices. Indian Men and Women fought the US Military in hundreds of wars to protect their people and lands. Others that are considered prophets by westerners wanted peace but pleaded for Indians to not fall into the western ways. They warned Tribes to not get comfortable in

assimilation, keep our traditional ways and essentially stay humble. (Schilling, 2016)

Warriors such as Opechancanough, born in 1554, a Powhatan Chief was angered by the influx of European settlements. His attacks launched ten years of wars with confederacy armies and settlements. After signing the treaty in 1632 in effort to stop the hostility, in 1644 at 90 years old, he launched another attack that killed another 500 settlers. He died a few days later. (Schilling, 2016).

Kintpuash (Captain Jack), the Chief of the Modoc Tribe along the California-Oregon border was required to move his Tribe to the Klamath reservation in southern Oregon. Captain Jack moved his people back to their ancestral lands a few times after being moved repeatedly by the army to the Klamath reservation. Eventually, the Modoc's settled into caves and strongholds to hide from the military. When the army attacked, 33 US soldiers were killed, and no Modoc's injured or killed. Captain Jack was eventually caught and hanged on October 3, 1873, convicted as a war criminal. (Schilling, 2016)

Other Tribal Chiefs such as Red Cloud- Oglala Lakota, Cochise-Chiricahua Apache, Geronimo-Chiricahua Apache, Tecumseh-Shawnee, our own northwest Chief Leschi and many other Tribal Chiefs attempted to resist the US movement of Tribes to reservations. Their warriors fought many battles against the US military to protect their lands, their people and way of life. Many warriors entered battle at 10-15 years of age, earning their chief status at early ages. Many died in battle and others died of natural causes or age. (Schilling, 2016)

The efforts of these warrior chiefs in resisting US assimilation, sets the pace of struggle, survival and strength of Indigenous people. The US policy to push Tribes onto small pieces of land called reservations was not met with peace, but a political battle between governments that continues today.

4.3 Tulalip History Honoring Ancestors

During the Boarding School era, when Tribes were prohibited from speaking their language, their hair as cut, prohibited from practicing our religion, William Shelton (1869-1938) was credited with keeping the Tulalip culture flourishing in the 1920's and 1930's. He received permission from then Superintendent, Charles Buchanan to build the community longhouse on the Tulalip reservation. He organized numerous public exhibitions to spotlight tribal culture as a way of educating the community. He was an accomplished craftsman, carving canoes and the 1912 story pole that once stood outside Tulalip Elementary School. (Tulalip Visitors Guide, 2019)

Harriet Shelton Dover (1904-1991) was the second female to serve on the Tulalip Tribes Board of Directors from 1939 to 1950, and serving as the first Chairwoman in 1946. She was appointed Chief Judge during a period time when court was held in her home. She is credited with revitalizing the Salmon Ceremony. She donated land on which Tulalip Elementary School was built to keep the school local to the reservation. (Tulalip Visitors Guide, 2019)

Stanley G Jones Sr., (1926 to present) served on the Tulalip Board of Directors for approximately 41 years, with the first of service in 1966. At that time, Tulalip Tribes had three employees, all of whom worked in the Leasing Department. Bill Steve who was the Tulalip Tribes first Chairman served alongside him at that time. Stan was an active participant in the Boldt decision. (Tulalip Visitors Guide, 2019)

Clarence Hatch Sr., (1934-1992) was a self-educated man yet he believed in promoting a higher education for our youth and Tribal employees. His service to the Tulalip Tribes included work as a Board member, Executive Director and Services Manager. As Executive Director from 1979 to 1992, he promoted impeccable work ethics and a dedication to provide the highest quality of services to Tribal Members. He had an open door policy and strived to support all who entrusted him with their needs. Clarence possessed a deep love and

respect for the Tulalip community and was proud of Coast Salish Ancestry. (Tulalip Visitors Guide, 2019)

Although, Stan Jones Sr., is still alive today, he is given much credit for his term on the Board of Directors and his role in the Boldt decision. Tribes spent many hours lobbying and preparing for the Boldt decision trial. Time away from family and community in preparation for Treaty Rights.

William Shelton is given credit for the Tulalip longhouse being built during the boarding school era when the theme at the time was to assimilate the Indian. He was able to convince the Indian Agency to allow the building of the longhouse and to celebrate our people publicly.

Clarence Hatch Sr., led the Tribe through many positions with the Tribe. His compassion for his people and Tribe is still the driving force to provide our members with the utmost services the Tribe provides. He was kind, gentle and loved his people.

These ancestors both past and living have contributed their lives to protecting sovereignty, leading our Tribe to where we are today. As stories told in chapters 2 and 4, some Tulalip's did not have running water, indoor plumbing or electricity in 1964. These leaders survived the boarding school era and led the Tribe to success.

4.4 Boarding Schools



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In the winter of 1855, Territorial Governor Isaac I. Stevens traveled among the tribes and bands of western Washington to negotiate treaties that would facilitate white settlement. The ten Stevens treaties called for the Indians to relinquish all claims to traditional territories in exchange for reservations and the right to hunt and fish at usual and accustomed places. In addition, the Treaty of Point Elliott, signed by eighty-two representatives of Tribes living in the central and northern Puget Sound areas, promised a large agricultural and industrial school to accommodate students from throughout the western part of the Territory, to be established within a year. That pledge was not fulfilled because the government failed to provide money to support it. Instead missionaries assumed the major responsibilities for education on many reservations”. (Marr, 2018)

“In our efforts to humanize, Christianize and educate the Indian, we should endeavor to divorce him from his primitive habits and customs. He should be induced to emulate the white man in all things that conduce to his happiness and comfort”. (Dietz, 2013)

²³ Tulalip Boarding School 1912

The above statement is from the Superintendent of the US Indian Education Committee. This is the goal stated by her throughout Joyce's story.

The Tulalip Boarding school opened in 1857. With 25 boarding schools across the nation, the ultimate goal was to "bring the Indian to civilization and keep him there (Marr, 2018). There are many stories about boarding schools throughout history. Those from Indian people are oral history, while the US written version of the history rarely discloses abuse.

Tulalip Tribal member Harriet Shelton Dover writes about her days in the Tulalip Boarding school, she wrote journals about her experiences and later a book – *Tulalip From My Heart* (Dover, 2013). The book tells amazing story about her childhood at the Tulalip Boarding school. Most likely, the reason her experience was not so traumatizing was her father worked for the school and she could visit him daily. The boarding school children rarely saw their families if at all until they were grown. Some Elders have criticized her book for contradicting her own stories in her journals that spoke of physical, sexual and mental abuse of Indian children (Hammons, 2016). Harriet later grew to become a leader at Tulalip to teach customs and traditions that as a child were forbidden by the US government (Dover, 2013).

Letters to Indian School Superintendent's from Ojibwe Indian parents were found stored in US government archives (Child, 1998). Letters requesting the schools to let the children go home for visits. Usually the requests were due to a need for work to be done at home or near death of family members. The school superintendent was more likely to allow a child to go home as requested for work than for an ailing or dying family member (Child, 1998). The letters also requested sick children to be sent home until the child was well, as oral history is full of stories of Indian children dying from influenza or small pox. The schools refused to allow the children to go home until well, if at all.

Ojibwe children usually attended Flandreau or Haskell boarding schools. Haskell continues to operate today as an Indian University. Celeste Hughes, Cahuilla, talks about her Grandmother attending the Sherman Institute as a child. Her Great Grandmother attended Carlisle and Haskell Boarding schools, her mother died in child birth. Her father decided that boarding school was the only option to provide a stable environment for the children.

Celeste's Great Grandmother was an alcoholic and abusive, so the state removed her Grandmother and her siblings to place them in the Sherman Institute. Her Grandmother was conflicted about her time at the boarding school. Her choice was a violent home and hunger or the boarding school, understanding that the boarding school removed her culture and yet she was losing culture with an alcoholic mother. Celeste attended college at Haskell and graduated in effort to bring the boarding school history of her family full circle. (Hughes, 2017).

During the US Depression era, the boarding schools seemed the only option for Indian families to ensure their children were fed and warm. Indian families began to voluntarily place their children in the schools. Yet once the children were placed in a boarding school, the parents struggled to get a visit or have them returned home for any reason. (Child, 1998) Letters from Indian parents to boarding school superintendents requested that their children go home to help care for an ailing family member, death of a family member, or to work at home (Child, 1998). These letters usually went unanswered or responded with "it is not in the best interest of the child to leave the school" (Child, 1998). Indian children died in the boarding schools without their families and loved ones present to comfort them. Family members died, leaving the children without an opportunity to say good bye or tell their loved ones that they loved them.

And Our Mothers Cried, a documentary by the Chickasaw Nation, tells the story of how the Chickasaw Nation pleaded to operate their own boarding school while allowing the children to live at home. The Chickasaw boarding school complied with the requirements of the US law for school standards and yet allowed the children to continue with their own cultural activities to maintain Indian identity, language and traditions. The school continues to operate today (Nation, 2017).

Many interviews resulted in pride of our ancestors as stories of struggle and survival. Although not a prideful piece of Indian history resulting from US Indian laws, the survivors grew into adulthood and became Tribal leaders that fought to ensure the betterment of future generations. Les Parks, Tulalip Tribal Council and Debbie Posey, former Tulalip Tribal Council, both share Gramma Ebey. Gramma Ebey grew up in boarding school and believes she received a good education, she never talked about the trauma. Her father believed that the boarding schools were an educational opportunity. Although, Parks and Posey stated that Gramma Ebey did not talk about her boarding school days, they both stated that the school made her stronger and made her who she came to be. Gramma Ebey grew up to be the first woman on Tulalip Tribal Council. She became a leader (Parks, 2018).

Marci Fryberg, is an up and coming Tribal Leader, employed as the Tribes Vice President of Gaming Operations. She disclosed in her interview that her grandparents and parents attended boarding schools. Both of her parents are Tulalip Tribal members and met at a boarding school in Ft Sill, Oklahoma in the 1960's. She described stories from her grandfather about being in boarding schools, taken from his mom and missing her. She stated that her mom would tell her stories about boarding schools providing a place away from the growing alcoholism on reservations. She described how Boarding schools also provided an option for Indian parents to ensure their children were fed and had a warm place to sleep during the US depression era. (Fryberg, 2018)

Marci's stories confirm Child's references about the Boarding schools on the Ojibwe reservation thousands of miles away from Tulalip. Today, Marci is still the Vice President of Gaming Operations, she has graduated from Northwest Indian College with a Bachelor Degree and she is foster placement for her very young nephews. Marci's passion is protecting sovereignty, protecting children from abuse and protecting the future of the next seven generations. (Fryberg, 2018)

John McCoy discussed his Father John Richard McCoy experience in boarding schools. His dad attended the Chemawa Boarding School in Oregon. His dad wouldn't talk about his experiences at the boarding school. He was a fluent language speaker, but the boarding school beat it out of him. John remembers when the elders would get together, they would speak their language fluently. They were not taught the Indian way in the schools, so his Dad did not teach him the Indian way. John says he joined the military and moved away from Tulalip, so without the teachings handed down to him, he missed out on learning the culture and language. (McCoy, Senator, 2017)

Today, John pursued a career working for Tulalip working as the Tribes Governmental Affairs Director. He worked his way to become the Washington State 38th District Representative and currently a Washington State Senator. John was instrumental in developing the Time Immemorial Program that requires Washington schools to teach Coast Salish history. John was also instrumental in promulgating state law to recognize Tribal police officers with skills, education and experience equal to state qualified officers. This state law allows Tribal Police Officers to arrest non-Indians within the Tulalip boundaries, defeating *Oliphant v Suquamish* and PL 280. (McCoy, Senator, 2017)

Gabe Galanda's Gramma was born around 1916, she was taken by train from the Round Valley Reservation (California) to the Riverside Boarding School. She grew up to become a nurse, served in the military and kept her family away from the reservation for a couple decades. She would return for visits occasionally. There are no stories handed down to his mom or her grandkids, Gabe's gramma showed no signs of physical-sexual abuse. However, she did not ever discuss her boarding school days. All her siblings were successful as well. One Aunty does not want to be Indian, does not acknowledge her Indian heritage and would not allow him to visit her. She is very assimilated. (Galanda, 2018)

Today, Gabe is an upcoming attorney that fights for Tribal members wronged by their Tribes. His most recent case is Nooksak Tribal Members who were disenrolled by the Nooksak Tribe. Gabe states that Federal laws are tools of colonization and genocide. Gabe believes Federal laws are weapons but not what

we need to survive. He is using his skills and education that he learned in the western world to help Tribes and Indigenous people. (Galanda, 2018)

Jamie Hummingbird, Cherokee, Grandparents on his dad's side of the family attended boarding schools. His grandma went to Sequoia in Oklahoma and his grampa went to public school. His mom's parents went to public school. His grandma would never talk about her boarding school time. She was fluent in Cherokee language. His Dad's dad could understand the language but could not speak it. Dad's mom told his dad he did not need the language but needed to learn English. His great grandma did not speak English at all. (Hummingbird, 2017)

Both of his children currently attend the Cherokee Immersion school and are fluent in Cherokee language. The Immersion school is Kindergarten through Sixth grade. There is no language or cultural lessons in school for 7th/8th grade. High schoolers get an hour and half a day of conversational language sessions for Immersion School students. (Hummingbird, 2017)

Today, Jamie is the Tribal Gaming Director for the Cherokee Gaming Commission. He is also the Chairman of the National Tribal Gaming Commissioners/Regulators. Jamie fights for Indian Gaming on a national level to protect Tribal sovereignty and the future of the next seven generations. (Hummingbird, 2017)

Theresa Sheldon's Great Grandmother Theresa Young married a Sheldon. She was actually too young to attend boarding school, but she went with her sister. Her Great Grandfather Sisseton attended in South Dakota. Both passed away before she was born. The only conversations were that boarding school gave them skills. Today, Theresa has spent six years as a Tulalip Tribal Board of Director, elected by the membership. She spent her time lobbying for VAWA, education and sovereignty on behalf of Tulalip Tribes. Theresa was not re-elected this year and yet she continues to work on behalf of Indian women and children. (Sheldon, 2018)

4.5 Public Law 280 (PL380)

Celeste Hughes describes PL280 in California as a detriment to Tribes. There is no due process or recourse for Non-Indian criminal/civil matters and there is a lack of cooperative relationships with law enforcement. Reservation crime is not a priority for law enforcement in California and due process is also missing on the civil side in PL 280 states. A current issue for Cahuilla, as an example is land squatters. Anyone can go on another person's property and claim the land as their own. There is no legal process for the original land owner to remove the squatters from their properties. Cahuilla does not have their own Tribal court or Tribal police to contact in such incidents. The squatter²⁴ gets to stay on land that does not belong to them. (Hughes, 2017)

Cahuilla uses songs, songs are their law and the songs cannot be violated. Cahuilla practices ostracizing for violations of laws. For example, when a Cahuilla Tribal member violently violated the law, the Sheriff wanted to arrest him, but the Chief said he would take care of the situation and the Chief buried him alive. This person jeopardized the peace and welfare of the Tribe. The songs are also used to describe how women take care of themselves, to give them strength. (Hughes, 2017)

Cahuilla traditionally lived by the principle of respect. A dispute would be addressed through Tribal Council, and that decision would be final and binding to all parties. Behaviors of some, now push the limits and those involved sometimes do not adhere to the council orders. The Tribe is going to be forced to address these issues and take action to correct the inadequacies of their due process. California Tribes do have an intertribal court system located on the Sycuan reservation, Cahuilla wants to start working towards this system. (Hughes, 2017)

²⁴ a person who unlawfully occupies an uninhabited building or unused land.

The Tulalip Tribes has always provided a forum for Tribal members in which to resolve issues. Some of the first issues the Tribal Court heard were employment issues to protect the rights of employees and in child welfare cases to protect children. The Tribal Court has grown substantially since that time when the Tribe made the decision to take back jurisdiction (retrocession) over Reservation lands from the State of Washington in 2001. (Church W. , 2011)

Retrocession allowed the Tribes to create and establish its own Tribal Police Department in which to preserve, protect, and advance sovereignty and self-determination, but equally important to also ensure the protection of life and property. Having a growing Tribal Police Department meant that Tribal Court services had to increase to meet the demands of an ever-expanding population on the Reservation. The Court provides due process and equal protection under the law to all Tulalip Tribal members. The purpose of the Tulalip Tribes Law and Justice Brochure is to provide information to the Tribal members who receive services through the Tribal justice system. (Church W. , 2011)

In 2001, the Tribes created a Tulalip Tribal Law and Justice Committee, which meets once a month. The purpose of the Committee is to promote discussion, coordinate programs, and plan and implement strategies for a more efficient and effective justice system here on the Reservation. Committee members include: the judges, court clerk administrator, prosecutors, police chief, probation officer, corrections, NICS, TGA²⁵, the Tribal Attorney office, Defense Counsel, Parent Advocate attorney, beda? Chelh (child welfare), Child Support, and others. (Church W. , 2011)

The Northwest Intertribal Court System (NICS) was established in 1979 in response to the provisions of the federal court decision known as the Boldt Decision allowing tribes with fisheries law enforcement and judicial systems to conduct treaty fisheries without state control. In 1979, Tulalip and many other treaty fishing tribes lacked law and justice systems. The establishment of NICS,

²⁵ Tribal Gaming Agency. The regulatory body for ensuring compliance with Tribal, State and Federal gaming laws.

melding together the sovereignties of a dozen tribes, satisfied the Federal Court requirement of a tribal court system to handle cases arising from activities of treaty fishing enforcement agencies. (Church W. , 2011)

Today, NICS administers the judicial (including pro tems²⁶) functions of the Tulalip Tribes and provides Appellate Court services. Both the Chief Judge Theresa M. Pouley, and Associate Judge Gary Bass are licensed attorneys (both enrolled Tribal members of the Colville Tribes). The Tulalip Tribal Court hears cases involving dissolution of marriage, child custody, child support, criminal, guardianship, employment appeals, gaming license appeals, domestic violence, personal protection orders, traffic and youth-in need of care and many other types of cases. (Church W. , 2011)

Receding from Public Law 280 provided Tulalip Tribes with the ability to increase justice services to its members. Tulalip evolves with a growing population and other laws that provide jurisdiction to the Tribes. Laws such as the Tribal Law & Order Act and VAWA, give direction to the US Department of Justice (DOJ). Tulalip formed its police department in 1999 by hiring Chief Goss to build the department with policies, job descriptions, hiring practices, etc. Chief Goss was responsible for ensuring that the police department met the standards under federal law in coordination with the Tribal Court System.

Chief Goss, Judges Pouley and Bass have long since moved on to other opportunities, however Tulalip continues growing the justice system with up and coming judges, Police Chiefs and with strength in fair and just laws, all in response to receding from Public Law 280. Protecting sovereignty by governing ourselves.

4.6 Oliphant v. Suquamish 1978

In 1978, in *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 98 S.Ct. 1011, 55 L.Ed.2d 209 (1978), the United States (US) Supreme Court ruled that Tribes

²⁶ Temporary Judges – Usually to sit in for another Judge who is in conflict with a case

do not possess criminal jurisdiction over non-Indians residing or visiting on Indian Lands. This decision left Tribes without State and Tribal enforcement of criminal activity committed by non-Indians on Indian Lands.

Population growth on reservations of both Tribal and Non-Tribal member's required drastic changes to Tribal laws and structures and required a review of jurisdictional issues to protect the Tribal communities. The Tribal Law & Order Act 2010 and VAWA provided additional Tribal jurisdiction in specific cases of Domestic and Family violence. Additional Tribal jurisdiction included extended sentencing, extended sentencing allowed more cases to be heard in Tribal Court rather than seeking outside jurisdictions to address the non-Indian. (govinfo.gov, 2018)

In 2008, Washington state legislature passed Revised Code of Washington (RCW) 10.92.010 that granted general authority as a Washington Peace Officer to tribal police on federally recognized Indian Land. Per the RCW, Tribal Police Officers must meet specific requirements of training, insurance, citation rules and jurisdiction. Jurisdictional or inter-local agreements with other law enforcement agencies such as city police or county sheriff departments for correctional facilities must be arranged between the Tribe and those agencies. (McCoy, Washington State Senator, 2008). Tulalip Officers have various levels of education and training that bring Federal and state jurisdiction along with their Tribal enforcement and often provides more experience than most municipal/county or state enforcement officers. (McCoy, Senator, 2017)

Under this new state RCW, Tribes can now arrest non-Indians on reservation lands as a Washington State Peace Officer. The criminal charges will not be heard in Tribal Court, but in State courts unless the charges are domestic or family violence. This arrangement provides the Tribal Courts with jurisdiction for domestic and family violence cases even with the perpetrator is non-Indian. This arrangement also provides our community members with protection from violence and provides them with a sense of safety.

This RCW, drafted into legislation by Senator John McCoy, actually provides more than sovereignty to the Tribe, but also provides assurance to Tribal members that at any jurisdictional level, the membership is protected.

4.7 Washington v. US 1974

While the intent of this lawsuit filed and joined by Tribes was initially to prevent the state from interfering with Tribal Treaty Rights that allowed Tribal members to fish in their usual and accustomed fishing areas, state interference actually resulted in “fish wars” between Tribes and the state. State Game Wardens were shooting men, women and children they believed were illegally fishing. Tribes responded by filing a lawsuit against the state of Washington, allowing the federal courts to determine whether the Tribes or the state were right in their interpretation of the Treaties.

Judge Boldt determined that both parties were to be co-managers of the resource and entitled each to 50% of the harvestable catch. Tribes took this decision seriously. They formed the Northwest Indian Fish Commission. The Northwest Indian Fisheries Commission (NWIFC) is a natural resources management support service organization for 20 treaty Indian tribes in western Washington. Headquartered in Olympia, the NWIFC employs approximately 65 people with satellite offices in Burlington and Forks. NWIFC member tribes are: Lummi, Nooksack, Swinomish, Upper Skagit, Sauk-Suiattle, Stillaguamish, Tulalip, Muckleshoot, Puyallup, Nisqually, Squaxin Island, Skokomish, Suquamish, Port Gamble S’Klallam, Jamestown S’Klallam, Lower Elwha Klallam, Makah, Quileute, Quinault, and Hoh. (NWIFC, 2004)

The NWIFC was created following the 1974 U.S. v. Washington ruling (Boldt Decision) that re-affirmed the tribes’ treaty-reserved fishing rights. The ruling recognized the tribes as natural resources co-managers with the State of Washington with an equal share of the harvestable number of salmon returning annually. The commission is composed of representatives from each member tribe who elect a chair, vice chair and treasurer. Commissioners provide

direction to the NWIFC executive director, who in turn implements that direction. The role of the NWIFC is to assist member tribes in their role as natural resources co-managers. (NWIFC, 2004)

The commission provides direct services to tribes in areas such as biometrics, fish health and salmon management to achieve an economy of scale that makes more efficient use of limited federal funding. The NWIFC also provides a forum for tribes to address shared natural resources management issues and enables the tribes to speak with a unified voice in Washington, D.C. (NWIFC, 2004)

Billy Frank, a Nisqually Tribal member, grew up in the fish wars, witnessing tragedy as a young child. However, Billy later became the Chairman of the NWIFC and he promoted co-management of natural resources as a means to protect wildlife habitat in effort to save the salmon that feeds us all. The NWIFC brings together Coast Salish Tribes that work together to protect treaty-fishing rights, but they also work towards protecting the environment that supports fish habitat, thereby protecting us all.



²⁷²⁷ Billy Frank Jr., NWIFC Chairman, Memorial story

4.8 US v. Washington 2015

On October 16, 2015, Washington Tribes with the US joining them filed suit against Washington State. The case reached the United States Court of Appeals, Ninth Circuit and the US Supreme Court after Washington State loses the case and appeals the courts decisions.

UNITED STATES of America; Suquamish Indian Tribe; Sauk-Suiattle Tribe; Stillaguamish Tribe; Hoh Tribe; Jamestown S’Klallam Tribe; Lower Elwha Band of Klallams; Port Gamble Band Clallam; Nisqually Indian Tribe; Nooksack Indian Tribe; Skokomish Indian Tribe; Squaxin Island Tribe; Upper Skagit Indian Tribe; Tulalip Tribes; Lummi Indian Nation; Quinault Indian Nation; Puyallup Tribe; Confederated Tribes and Bands of the Yakama Indian Nation; Quileute Indian Tribe; Makah Indian Tribe; Swinomish Indian Tribal Community; Muckleshoot Indian Tribe, Plaintiffs-Appellees, v. State of WASHINGTON, Defendant-Appellant are the parties to the case. (US v WA, 2018)

The United States brought action on behalf of Indian tribes alleging that State of Washington violated fishing clause of Stevens Treaties by building and maintaining barrier culverts that prevented mature salmon from returning from sea to their spawning grounds, prevented smolt from moving downstream and out to sea, and prevented very young salmon from moving freely to seek food and escape predators. The United States District Court for the Western District of Washington, Ricardo S. Martinez, Chief Judge, issued injunction ordering state to correct offending culverts, and state appealed. (US v WA, 2018)

The Court of Appeals, W. Fletcher, Circuit Judge, held that: (US v WA, 2018)

[1] treaties required that state ensure that fish would, in fact, be available;

[2] state violated treaty as result of its construction of barrier culverts

under its roads;

- [3] United States did not waive tribes' rights under treaties;
- [4] sovereign immunity barred state's cross-request for injunction;
- [5] injunction requiring state to correct most of its high-priority barrier culverts within 17 years was not overly broad;
- [6] district court did not clearly err in determining that correction of human-caused barriers was highest priority for restoring salmon habitat; and
- [7] injunction did not impermissibly and significantly intrude into state government operations.

Washington state appealed this decision to the US Supreme Court. The highest court simply responded with "The judgment is affirmed by an equally divided Court." (WA v US, 2018) There were no legal citations, no concurrence or dissent from any of the US Supreme Court Judges. Simply affirmed.

Tribes win in this matter based on Treaties with multiple Tribes within Washington State. The US 9th District Court Judge ruled several findings relating to Tribal Treaty Rights for fishing. The Judge found that the state prohibited Tribes from having access to fish for sustenance by blocking the water trails fish use to spawn. The Judge specifically states:

"Fishing clause of Stevens Treaties guaranteed Indian tribes' right to engage in off-reservation fishing and to take up to fifty percent of fish available for harvest, and required that state ensure that any fish would, in fact, be available; Indians reasonably understood governor to promise not only that they would have access to their usual and accustomed fishing places, but also that there would be fish sufficient to provide moderate living to tribes, and tribes' right of access to their usual and accustomed fishing places would be worthless without harvestable fish."

4.9 Carpenter v. Murphy 2019

Patrick Dwayne Murphy, a member of the Creek Nation, was convicted in Oklahoma state court and sentenced to death for the 1999 murder of George Jacobs, who was a member of the same nation. Murphy's conviction and death sentence were affirmed on direct appeal. Murphy then sought post-conviction relief on jurisdictional grounds, arguing that the Major Crimes Act, 18 U.S.C. § 1153(a), gave the federal government exclusive jurisdiction to prosecute murders committed by Indians in Indian Country, a term defined under 18 U.S.C. § 1151 to include reservations, allotments, and dependent Indian communities. (Oyez, 2019)

The Oklahoma Court of Criminal Appeals (OCCA) ultimately rejected Murphy's jurisdictional argument, ruling that the state's jurisdiction was proper because the land where the crime occurred was not an allotment, and because Murphy had offered insufficient evidence that the land was part of a reservation or dependent Indian community. The OCCA acknowledged authority from the 10th Circuit Court of Appeals stating that the Creek Reservation still existed but reserving the matter of whether its 1866 boundaries remained intact, and declined to make a finding on the boundary question if the federal courts had not done so.

Murphy then sought habeas relief in federal district court, challenging Oklahoma's jurisdiction on the theory that the crime had occurred in Indian Country because the land at issue was part of the Creek Reservation under § 1151(a), and because the land was an Indian allotment under § 1151(c). The district court rejected his claims, and Murphy appealed to the 10th Circuit. (Oyez, 2019)

The federal appeals court reversed, ruling that the crime occurred on the Creek Reservation, and that the Oklahoma state courts lacked jurisdiction. As an initial matter, the court found that under 28 U.S.C. § 2254, the OCCA's decisions in Murphy's case were contrary to clearly established law, which was provided by *Solem v. Bartlett*, 465 U.S. 463 (1984). Next, applying *Solem's* three-part test,

the court concluded that Congress had not disestablished the Creek Reservation. The crime had therefore occurred in Indian country under § 1151(a), meaning that the federal government had exclusive jurisdiction and Oklahoma lacked jurisdiction under § 1153(a). The court remanded the case with instructions to grant Murphy’s application for habeas relief under § 2254. (Oyez, 2019)

The question for the US Supreme Court is does the 1866 territorial boundaries of the Creek Nation within the former Indian Territory of eastern Oklahoma constitute an “Indian reservation” today under 18 U.S.C. § 1151(a)? (Oyez, 2019)

Oklahoma argues that the Creek Nation and the Major Crimes Act was abolished upon Oklahoma obtaining statehood. Specifically, Oklahoma argues:

“Congress disestablished the Creek Nation’s historic territory through a series of statutes – enacted between 1890 and statehood in 1907 – that, inter-alia, broke up and allotted nearly all of the Creek Nation’s lands, abolished its courts, and greatly circumscribed its governmental authority. Through these statutes, Congress eliminated distinction between Indians and non-Indians in preparation for replacing the Tribal domains and governmental authority of the Five Tribes with those of a new State. In particular, Congress subjected Indians and non-Indians in Indian Territory to the same criminal (and civil) laws and prosecutions in the same courts.” (Carpenter v. Murphy, 2019)

Oklahoma continues to argue that upon statehood, the Indian Territory is obsolete and so is the Major Crimes Act, as the Enabling Act that made Oklahoma a state did not provide for federal jurisdiction for crimes in Oklahoma. Oklahoma recognizes that Creek Nation is federally recognized as a Tribe, receives federal grant funding for Tribal services, but believes that error is on the federal government and not on the state. Oklahoma challenges all treaties with Tribes within the US, claiming they are obsolete and conflict with centuries of US assimilation

policies practiced by the federal government and states. (Carpenter v. Murphy, 2019)

4.10 Herrera v. Wyoming

Clayvin Herrera is a member of the Crow Tribe of Indians and lives on the Crow Reservation in Montana. Herrera was subsistence hunting elk on the Crow reservation in Montana, following an elk herd into Wyoming. Herrera shot his elk and transported back to the Crow reservation in Montana. Wyoming cited Herrera for hunting violations and for taking the elk. Herrera petitioned to dismiss the charges based on the 1868 Treaty rights to hunt. His petition was denied, a trial was held and he was convicted of the charges. (Legal Information Institute, 2019)

Herrera appealed his case to the state appellate court. The state court upheld the lower courts ruling based off another case *Crow Tribe of Indians v. Repsis*. The Repsis case relied on Another Crow Tribal member also charged and convicted for hunting violations under the 1868 Crow Treaty. The Tenth Circuit Court ruled that the 1868 Treaty became obsolete when Wyoming obtained statehood. The Tenth Circuit court case relied on The Tenth Circuit Court ruled against Herrera based off of this decision. Herrera has appealed to the US Supreme Court and is pending their ruling. (Legal Information Institute, 2019)

Similar to Carpenter v. Murphy, Wyoming continues to argue that the Treaty is invalidated by Wyoming statehood (Legal Information Institute, 2019). Wyoming also argues that the intention of the Crow Treaty was to separate the reservation and the advancing non-Indian settlements to maintain peace between the two groups, not to preserve off-reservation hunting for the Crow Tribe (Legal Information Institute, 2019). Wyoming argues that the policy underlying the Crow Treaty was to ensure the Crow Tribe's successful transition to an agrarian lifestyle, in contrast with Herrera's claim that the Crow Treaty was meant to allow for hunting on lands established in states. Wyoming states that Herrera's interpretation of the Crow Treaty as protecting the right to hunt off-reservation

is contrary to the Treaty's intent to separate the Crow Tribe and the non-Indians. (Legal Information Institute, 2019)

Tim Brewer is the lead attorney in the Tulalip Tribes Office of Reservation Attorneys. He states that we hope the supreme court fixes this terrible decision- Wyoming State is an outlier- there is some old bad caselaw out of Wyoming that finds off-reservation tribal treaty rights were abrogated when Wyoming became a State- other federal courts have not followed this reasoning. The federal government and federal courts have long upheld the state's power to enforce state hunting and fishing laws on Federal lands—so state enforcement of hunting laws on federal lands really isn't an issue. (Brewer, 2019)

Tim states that the issue is that the Crow Tribe have a treaty right to hunt on “open and unclaimed” lands and therefore are not subject to state hunting laws on federal forest lands --and the Supreme court will decide if US Forest Service lands are “open and unclaimed” lands under the treaty; and whether the Crow Tribes treaty rights must still be honored – or if Wyoming's statehood or the designation of the National Forest abrogated or repealed the Crow Tribes treaty rights. (Brewer, 2019)

There is an old Supreme Court case out of Wyoming (Ward v Race Horse) that found tribal off-reservation treaty hunting rights were abrogated by Wyoming statehood. That concept has been soundly rejected by the Supreme Court in the Minnesota v Mille Lacs case in 1999—but apparently the Wyoming federal courts still cling to it. Time for the Supreme court to set things straight. (Brewer, 2019)

The Courts have found there is a very strict standard for abrogating tribal treaty rights- only congress has the power to abrogate treaty rights and congress must do so clearly and expressly—in this case, congress has not clearly abrogated the Crow Tribe's treaty rights so this should be a clear issue of upholding treaty hunting rights— but this is an example of how unprincipled the federal courts have been over the years in protecting tribal treaty rights. (Brewer, 2019)

Wyoming and Oklahoma's assertions that treaties are invalidated upon reaching statehood is in direct contrast to the US concept in *US v. Washington* 2018. The US implies federal jurisdiction for Tribes, treaty rights and claim Congress is the only authority that can invalidate treaties with Tribes. States are challenging the Treaties and US authority under the US Constitution to regulate the Treaties in the US Supreme Court. Although, many US Supreme Court cases have already ruled in favour of the US and Tribes, states continue to challenge sovereignty as in the Wyoming and Oklahoma cases.

4.11 Tulalip Tribes and the Consolidated Borough of Quil Ceda Village and the United States of America v. The State of Washington 2015

The Everett Herald reported the decision of a federal judge who ruled in favor of the state of Washington and Snohomish County in a lawsuit over the right to collect sales tax at the Tulalip Tribes' Quil Ceda Village shopping area. About \$40 million or more in annual taxes was at stake in the long-awaited ruling. (State and County Prevail in High Stakes Tulalip Tax Lawsuit, 2018)

Tulalip filed a lawsuit against the State of Washington and Snohomish County to stop both from collecting sales taxes in from businesses located in Quil Ceda village. The US joined the Tribe in the case. The US petition cited many federal laws in support of Tulalip Tribes in addition to the federal jurisdiction on Tribal lands, arguing against state and county authority on Tulalip lands.

The United States joins this action on its own behalf on as trustee for the Tulalip ("Tulalip" or "Tribe"). This complaint seeks prospective declaratory and injunctive relief to protect the Tribe's right under the United States Constitution and federal law to collect Tribal tax revenues within a Tribally Chartered municipality designed, financed, built, regulated, and managed by the Tribe and the United States on land within the Tulalip Reservation that the United States holds in trust for the Tribe, and to restrain Defendants from taxing the economic activities on these lands in a manner inconsistent with federal law. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

A portion of the decision by the Federal Judge states:

“The taxes at issue are not taxes on tribal businesses, on tribal goods, on tribal members, or on tribal government,” she wrote. “These taxes have interfered only, as the court has already observed, with the Tribes’ ability to collect the full measure of its own taxes at Quil Ceda Village. Not a single modern case has found an infringement of tribal sovereignty under similar circumstances.” (State and County Prevail in High Stakes Tulalip Tax Lawsuit, 2018)

As the Everett Herald reports, State and County governments collect over \$40 million dollars in taxes from Tulalip’s Quil Ceda Village. In its petition, the US argues against state authority to collect these taxes from Tulalip businesses in Quil Ceda Village. The US claims jurisdictional authority stating that the US Internal Revenue Service and the United States Department of Interior approved Quil Ceda to take advantage of tax-preferred treatment under federal law, including the authority to issue tax-exempt bonds to finance infrastructure development and government services. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

The US also argues in their petition that Federal Leasing Regulations under 25 CFR Part 162 that the Federal statutes and regulations governing leasing on Indian Lands...occupy and pre-empt the field of Indian leasing. The Federal statutory scheme for Indian leasing is comprehensive, and accordingly precludes state taxation. In addition, the Federal regulatory scheme is pervasive and leave no room for state law. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

The US also argues in its petition that Quil Ceda Village is required to use gaming revenues to pay for infrastructure maintenance and growing demands. Use of gaming funds IGRA is restricted to a limited amount of uses, while infrastructure is covered under IGRA, the US argues that funding infrastructure in Quil Ceda village limits funding for services to Tribal Members. Whereas, if Tulalip was able to claim the tax revenue from businesses in Quil Ceda Village, costs for infrastructure and additional funding for Tribal services would be

available. (Tulalip Tribes/Consolidated Borough of QuilCeda Village & US v WA, 2015)

Tulalip is appealing this decision to the US Supreme Court. Tulalip's response to state interference in our businesses, authority, jurisdiction and sovereignty. On another note, the US joined the Tulalip lawsuit as a party to the suit. The laws cited in the US petition to join the suit documents the role of the US and the role of the Tribe and demonstrates a cooperative relationship between the US and Tulalip.

4.12 Violence Against Women Act of 1994 (VAWA)

The historical missions (Boarding Schools) were largely supported by Indian Labor and government funding intended for educating the Indians. Giving the missionaries fresh food to eat while Indians were fed boiled barley, beans, peas and corn and maybe meat once in a while. The Indians were required to work all day and then they would pray for a designated amount of time in languages they did not understand. Punishment for missing or opposing mass was imprisonment or shackles. The women were raped by soldiers who were nothing more than mere felons who spread syphilis to their victims. (International, Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence, 2007) The missionaries use rape as punishment to Indian women for missing or opposing mass implies that violence against women is historical and encouraged government and religious organizations assigned to provide care for the Indian women.

VAWA, originally promulgated into US law in 1994, was meant to protect US women from domestic/family and sexual violence. However, Tribes were not included in the Act and left Indian women in a jurisdictional quagmire after *Oliphant v. Suquamish* and PL 280. The Act was amended again in 2000 and again in 2010. It was not until 2013 that Indian women and Tribes were added to the Act that also corresponded with the Tribal Law & Order Act to give Tribes

jurisdiction over non-Indian offenders. The Tribal Law & Order Act gave Tribal courts the sentencing authority from one year to three years.

Under the amended law, Tribes will be able to exercise their sovereign power to investigate, prosecute, convict, and sentence both Indians and non-Indians who assault Indian spouses or dating partners or violate a protection order in Indian country. VAWA 2013 also clarifies tribes' sovereign power to issue and enforce civil protection orders against Indians and non-Indians. (Department of Justice, 2017)

Although tribes can issue and enforce civil protection orders now, generally tribes cannot criminally prosecute non-Indian abusers until at least March 7, 2015. Tribes will be free to participate, or not. The authority of U.S. Attorneys (and state/local prosecutors, where they have jurisdiction) to prosecute crimes in Indian country remains unchanged. (Department of Justice, 2017)

Covered offenses will be determined by tribal law. But tribes' criminal jurisdiction over non-Indians will be limited to the following, as defined in VAWA 2013: (Department of Justice, 2017)

- Domestic violence;
- Dating violence; and
- Criminal violations of protection orders.

The following crimes will generally not be covered:

- Crimes committed outside of Indian country;
- Crimes between two non-Indians;
- Crimes between two strangers, including sexual assaults;
- Crimes committed by a person who lacks sufficient ties to the tribe, such as living or working on its reservation; and
- Child abuse or elder abuse that does not involve the violation of a protection order.

Under the Pilot Project a Tribe can start prosecuting non-Indian abusers sooner than March 7, 2015, if

- The tribe's criminal justice system fully protects defendants' rights under federal law;
- The tribe applies to participate in the new Pilot Project; and
- The Justice Department grants the tribe's request and sets a starting.

Under VAWA 2013 a tribe must: (Department of Justice, 2017)

- Protect the rights of defendants under the Indian Civil Rights Act of 1968, which largely tracks the U.S. Constitution's Bill of Rights, including the right to due process.
- Protect the rights of defendants described in the Tribal Law and Order Act of 2010, by providing:
 - Effective assistance of counsel for defendants;
 - Free, appointed, licensed attorneys for indigent defendants;
 - Law-trained tribal judges who are also licensed to practice law;
 - Publicly available tribal criminal laws and rules; and
 - Recorded criminal proceedings.
 - Include a fair cross-section of the community in jury pools and not systematically exclude non-Indians.
 - Inform defendants ordered detained by a tribal court of their right to file federal habeas corpus petitions.

In VAWA 2013, Congress authorized up to \$25 million total for tribal grants in fiscal years 2014 to 2018, but Congress has not yet appropriated any of those funds. However, tribes may continue to apply for funding through DOJ's Coordinated Tribal Assistance Solicitation (CTAS), which can support VAWA implementation. Additional federal funding sources may also be available. (Department of Justice, 2017)

The Tribal Law & Order Act also requires the DOJ to provide Tribes with the resources needed for Tribal Police to protect women under the Act. The DOJ National Crime Database allows law enforcement to enter crime data into the system and the courts to enter Protection Orders into the system. Tribes did not have access to the database and therefore could not enter Protection Orders until 2016. Outside agencies could not enforce a court order they knew nothing about. Offenders who are a party to a Protection Order cannot purchase firearms. A tremendous protective asset to the Protection Orders. (Goss, 2012)

In 2015, DOJ selected Tribes to participate in the initial User Feedback Phase. This partnership focused on testing DOJ's technology solution and training support; it also enabled Tribes to identify and share best practices regarding the use of national crime information databases to strengthen public safety. In 2016, participating tribes received a kiosk workstation that provided access to national systems as well as training to support whole-of-government needs. User Feedback Phase tribes have elected to implement a Tribal Access Program (TAP) in a variety of criminal and civil agencies. (US Department of Justice, 2016)

Those criminal agencies included police departments, prosecutors, criminal courts, jails, and probation departments. The civil agencies and programs that were eligible to use TAP included agencies whose staff have contact with or control over Indian children; public housing agencies; child support enforcement agencies; Head Start programs; civil agencies that investigate allegations of abuse, neglect, and exploitation of children; civil courts that issue orders of protection, injunctions, restraining orders, or other keep away orders; and sex offender registration programs. (US Department of Justice, 2016)

TAP adds value to tribal efforts to have orders of protection enforced off-reservation, protect children, keep guns out of the wrong hands, improve the safety of public housing, register sex offenders, and allow tribes to have tribal arrests and tribal convictions be associated with their tribe. Because of the success of the TAP User Feedback Phase, DOJ will continue to make TAP services available to additional tribes. (US Department of Justice, 2016)

After a Tulalip Tribal Court issued Protection Order for Domestic Violence was denied by outside law enforcement agencies, and a dad, a party to a Tribal Court Protection Order purchased a firearm from Cabela's Sporting Goods on the Tulalip reservation. The Tribal Protection Order was not entered into the National or State Crime Database (1, 2017); therefore, Cabela's required background check did not report the Protection Order and the firearms purchase was allowed.

In 2014, dad's son took the gun and shot five of his cousins and himself at the high school cafeteria. Dad was arrested on Federal Gun Charges for possession of a firearm while a party to a Protection Order. He was found guilty by a jury of Seattle citizens and sentenced to two years in prison. Dad is collateral damage to legal pluralism.

Cabela's issued the following statement:

"Cabela's strictly complies with federal, state and local laws regulating the sale of firearms. Cabela's records indicate the transaction was processed in compliance with applicable regulations, including background checks."
(Pittman, 2015)

Although, Cabela's public statement indicates that they comply with Federal, State and local laws for the sale of firearms, it is questionable if the retailer contacted the Tulalip Tribal Court, as the "local" jurisdiction during the background investigation for the sale of the firearms. Discussion during an anonymous interview indicates that it is possible that the person who made the public statement did not work at the Tulalip Cabela's and probably a corporate public affairs employee. The corporate office would not have knowledge of Tulalip laws before making such a comment. (1, 2017)

State Sen. John McCoy, a member of the Tulalip Tribe, said he didn't know Dad had been subject to a restraining order. "That's exceptionally troublesome to

me,” McCoy said. “It points me to the issue we’ve been arguing about in the state, that people are not going to tell the truth when they fill out the forms to buy a gun, so maybe we should have a registry of people who are subject to these orders. That’ll be more fodder for discussion.” (McCoy, Senator, 2017)

John addresses the “fodder” for discussion of this tragedy that created collateral damage as a result of a Protection Order not entered into the National Criminal Database. Ten Tribes across the nation were selected by the DOJ to beta test the TAP program. Tulalip was one of the ten Tribes selected to participate in the test. Tulalip criminal activities and court orders are now entered into the National Criminal Database, including Protection Orders. (McCoy, Senator, 2017)

It is sad that such a tragedy moved the US government to implement the TAP program and that Tulalip was selected as a test site. Yet, after all these decades of struggle with domestic/family/sexual violence, the rest of the law enforcement agencies will know when Tulalip has a Protection Order issued by Tribal Court. VAWA is now fully in force at Tulalip with the resources needed to enter Protection Orders into the National Criminal Database. Our women and families are better protected with such resources in place. Other law enforcement agencies will have access to Tulalip Tribal Court’s Protection Orders.

So, what have Native American women done to protect themselves and other Native American women? In Mobridge, South Dakota, a shelter serves the battered and assaulted women of the Standing Rock Reservation, another helps battered women find services off the reservation. In Barrow, Alaska, the Arctic Women in Crisis Center has eight beds, sleeps 20 women and girls at one time and has helped over 300 women and children even though they are the only shelter for 300 miles.

The Committee on the Elimination of Discrimination against Women recognizes violence against Indigenous women as a form of discrimination and such violence prohibits women from full equality and requires cooperative efforts from the legal, medical and education systems. (International, Maze of Injustice:

The failure to protect Indigenous Women from Sexual Violence in the USA, 2007)

Tribes have increased relationships with the Federal Government and individuals have created their own programs to help women engaged in domestic/family/sexual violence relationships. In 2016, the Federal government stepped up to develop a program to give Tribal Police Departments the resources needed to protect their communities. These resources also give notice to other law enforcement agencies when Tribal Protection Orders are in place and require enforcement. Tragedy turns into future blessings and the scales of justice balanced a little more now.

Tulalip has taken a strong stance against violence and yet offers treatment as part of the sentencing for domestic/family violence convictions. The Tulalip Domestic Violence code identifies the purpose as: (Tulalip Tribal Codes, 2019)

The purpose of this chapter is to recognize domestic violence and family violence as serious crimes against society, the Tribes, and the family, and to provide the victim of domestic violence or family violence the maximum protection from further violence that the law, and those who enforce the law, can provide. Furthermore, the purpose of this chapter is to recognize that the strength of the Tribes is founded on healthy families, and that the safety of victims of domestic and family violence, especially children, must be ensured by immediate intervention of law enforcement, prosecution, education, treatment, and other appropriate services.

It is the intent of the Tulalip Tribes that the official response of domestic violence and family violence shall stress the enforcement of the laws to protect the victim and to hold the perpetrator accountable, which will in turn communicate the Tribes' policy that violent behavior against intimate partners or family members is criminal behavior and will not be excused or tolerated. This in turn will promote healing of families and the Tribes where possible, and promote cultural teachings and traditional Tribal values so as to nurture nonviolence and respect

within families. This chapter shall be interpreted and applied to give it the broadest possible scope to carry out these purposes.

4.13 Tribal Law & Order Act 2010

Tribal Nations have historically faced significant challenges in addressing public safety issues. Recognition of this problem led to the passage of the Tribal Law and Order Act (TLOA) of 2010, signed into law by President Obama on July 29, 2010 (Corrections, 2011). The Tribal Law Enforcement Act was enacted to give Tribes additional jurisdiction over their people, which expanded the number of court cases heard in Tribal Courts.

Of the 565 federally recognized Indian tribes, only 80 have jails or detention facilities in their communities. In midyear 2009 these tribal facilities held 2,176 Indian people representing seven percent of 29,400 Indian people confined in a correctional facility, both pre-trial and post-conviction. Approximately 72 percent were adult males, 16 percent were adult females, eight percent were juvenile males, and three percent juvenile females. (Corrections, 2011) This data was not compiled from a formal database but from a survey conducted by the Bureau of Justice Services (Corrections, 2011). The Department of Interior (DOI) reports that there are 1.9 million Indians that they are responsible for, yet their own survey suggests that only 29,000 are incarcerated. A very small percentage of incarcerated Indians, would that number increase if the data was available through a state or national crime database?

The Tribal Law Enforcement Act directs the US Department of Justice (DOJ) and the BIA to provide services to Tribes to enhance their justice systems in effort to reduce crime, decrease recidivism and strengthen Tribal tradition of restorative justice. A workgroup was formed consisting of DOJ, DOI, Tribal Police Chiefs, Tribal Judges and Tribal leaders to evaluate goals for implementing the act (Corrections, 2011). The plan identifies cooperation between agencies as a short and long-term goal in all aspects of the Act (police, courts and corrections).

The DOJ, DOI and BIA websites all indicate a goal of cooperation and support for Tribes in the endeavors of sovereignty, self-sufficiency and culture. Increasing Tribes sentencing authority and the types of crimes Tribal Courts can accept is a positive step balance legal pluralism scale of justice. The Tribal Law and Order Act is a beginning to implementing the cooperative government-to-government relationship with Tribes.

4.14 Tulalip Tribes

Tulalip provides many services to its members. Yet Tulalip leads many challenges against states and the US government politically. John McCoy became a Washington State Senator and provides proposed and approved state legislation on behalf of Tribes. Former Council members Deborah Parker and Theresa Sheldon continue to lobby Congress for Indian protections in federal law. Tulalip has an Office of Reservation Attorneys to represent us in State and Federal courts.

4.15 Conclusion

Since the days of Ex Parte Crow Dog, Tribes have responded to the Federal Governments paternalism with resources to protect treaty and US Constitutional sovereignty. In some instances, as a result of collateral damage, such as the fish wars, Tribes have prevailed in most aspects of legal pluralism and in some instances have used legal pluralism as a protection factor for sovereignty. Such that, Boarding school mandates became a voluntary factor as a means of surviving the depression era of the US.

Even through the boarding school era, Indian parents saw the future of assimilation and determined their children needed education to survive. Today, children of boarding school ancestors are proud of their parents, grandparents and great grandparents for surviving the US form of education despite the sometimes-secretive treatment they experienced. Family members have chalked up the Boarding school experiences to building strong personalities and Tribal leadership that protected the future of our people. Their experiences have

provided generations after with influences to become strong Indian people, protect our people and lead our people into the future.

Tribes have used legal pluralism in defense of state invasion into treaty rights throughout history by using the US Justice System to make decisions that ultimately benefit the Tribes. Assimilation always the goal of the US throughout history and yet Tribes are fully capable of sustaining through generations of US laws that create more Tribal laws in effort to protect sovereignty. Today, Tribes have Tribal Members who lobby for Tribes rights when US laws are promulgated or amended. These Tribal members fight to ensure that Tribal rights are either protected or included to ensure the health, safety and welfare of Indians are always considered in the US rulemaking process.

California is a prime example of how legal pluralism does not work for Tribes. A PL 280 state, giving jurisdiction over Tribes to the state but law enforcement will not assist the Tribes. When law enforcement fails to make Tribal criminal issues a priority and the Tribes do not have their own justice system, the Tribes revert to tradition and culture to address their issues. However, when non-Indians such as squatters enter Indian land, Tribes can only continue to rely on California state law. In the meantime, Cahuilla Tribe is planning on joining a Tribal Judicial Forum to assist with such efforts to address criminal and civil issues. Plan, plan, plan. Plan for the next seven generations to protect our future. Tribes plan, implement and enforce the behavior of all who enter Tribal lands. Sometimes with the assistance of federal laws that also govern non-Indians on Indian lands.

While California claims jurisdiction over Tribes as a PL 280 state, other states use the US court system for attempts to eradicate Tribal jurisdiction within their states. Wyoming and Oklahoma currently have cases pending US Supreme Court decisions on state jurisdiction and the status of Tribal federal recognition based on states belief that recognition was eradicated upon statehood. Even though, only Congress has the authority to eradicate Tribes and the US has multiple US Supreme Court decisions stating such.

The NWIFC is another example of working towards the benefit of Tribal rights. Although a fish commission seems to be only about Fish, protecting the fish through effective environmental laws is another level of co-managing this treaty-protected resource. NWIFC expands beyond fishing rights, protecting the environment ensures another season of fish and yet provides clean environments for all persons to enjoy. By providing a healthy environment for fish, all persons are provided with clean air and water to sustain their bodies. By providing or court ordering co-management in fish management, Tribes are mandated to the table to discuss proposed rulemaking for sustaining natural resources. These are positive results from the Boldt decision.

More recent federal court rulings upholding treaty-reserved shellfish harvest rights have further expanded the role and responsibilities of the tribes as natural resource managers. Those rulings, combined with the interconnectedness of all-natural resources, mean that tribal participation is important in all aspects of natural resources management in the region. The tribal commitment to natural resources management is evident in the preamble to the NWIFC Constitution: (NWIFC, 2004)

“We, the Indians of the Pacific Northwest, recognize that our fisheries are a basic and important natural resource and of vital concern to the Indians of this state, and that the conservation of this natural resource is dependent upon effective and progressive management. We further believe that by unity of action, we can best accomplish these things, not only for the benefit of our own people but for all of the people of the Pacific Northwest.” (NWIFC, 2004)

In *Oliphant v. Suquamish, Washington Tribes* responded with retrocession from PL 280 by developing their own Tribal Police Departments and Court systems. Tribal Court systems developed NWIC to govern the Tribal Judges and Tribal Justice Systems. Another example of Tribes diligence to maintain sovereignty. Although, funding for these systems are provided through gaming revenues, not all Tribes have expansive gaming operations to fully fund such judicial systems,

the larger Tribes lead the battles to ensure Tribal responses to court decisions and US laws meet the needs of all Tribes.

Tulalip's own Debra Parker testified to US Congress to request that VAWA protect Indian women as well as all other women. She told her own story of abuse and asks them the question "Where were you?" She spoke in front of male and female US leaders who authorize such legislation, Debra fought hard and for many years for the VAWA legislation to include Indian women. Telling her own tragic story publicly to a country of strangers to get our point across to these legislators.

The Tribal Law & Order Act and VAWA are prime examples of Tribes reaching out to ensure their members are protected and protected by Tribal sovereignty. A great deal of work is still needed for remote Tribes with large land bases to ensure more women are protected from domestic and sexual violence, as having a law in place does not always protect them if they are hours or days away from help. The fact remains that Tribes respond to legal pluralism because of a lack of assistance from local law enforcement and US court systems. They respond with their own judicial systems.

Additionally, when states over step their boundaries, Tribes file lawsuits against them. Three cases listed in this research filed against Washington State by Tribes, the US joined the cases on behalf of Tribes. Although, in *US v. WA* 2015, the US Supreme Court ruled in favor of US and Tribes via an equally split decision, there was no concurrence or dissent opinions written by the US Supreme Court Justices. The Tribes journey was upheld by them.

Overall, Tribes have responded to legal pluralism with growing strength, resistance and resilience over the centuries.

CHAPTER FIVE

Thoughts on Effectiveness of Federal Indian Policy

5.1 Introduction

What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian policy? Interviews of Tribal elders, leaders, members and others will provide discussion about their thoughts on Federal Indian policy. Oral history is used to answer this question to develop the impact of federal laws that guide our governance, survival and strength over generations of Tribes.

Interviews asked the questions:

1. Did you grow up on the reservation?
2. What is your understanding of Indian law?
3. Do you believe these laws impacted you and your family?

The purpose for these questions is to research the impact of Federal Indian laws on Tribal members, Tribal elders and Tribal leaders living on and off reservations. These questions guide the effectiveness and efficiency of legal pluralism in Indian Country.

5.2 Their Stories

Marci Fryberg, A Tulalip Tribal member, grew up on the Tulalip Reservation. Her understanding of Federal Indian laws is that the U.S. Federal Government classifies Indian nations as dependent nations, recognizing tribal sovereignty. Federal Indian Law/Policy was enacted to legally define the government's relationship with Indian nations and to protect them from state interference. Many federal Indian laws have been detrimental to Indian nations such as the Indian Removal Act and Indian Child Welfare Act. (Fryberg, 2018)

Marci cannot name the many federal Indian laws that have negatively affected Indian people. What she does believe is that federal Indian policy was created to keep Indian nations in line and in a place of bondage to the paternalistic

relationship, the federal government designed from the beginning. (Fryberg, 2018)

Wendy Church, a Tulalip Tribal member and Court Director at the time of her statement, wrote her Master's capstone on Tulalip's justice system. While not all of the social changes in the Tulalip community can be attributed to the Tribes' developing tribal law and justice system, a substantial portion of these changes can be directly tied to it through retrocession and the establishment of the police force and development of the tribal court. Some of the changes are directly linked to Tulalip as a growing economic force, and being able to provide services through funds generated through its business enterprises. (Church W. A., 2006)

However, on the law and justice side, the subjective views of the Tribes' judges, chief of police and social services staff provide substantive insight into the changes that have occurred since retrocession. Chief Judge Gary Bass, a Colville Tribal member, has at least 40 years as a private attorney in Seattle, and was also a King County Court Commissioner, and held various positions in Indian affairs (i.e., Seattle Indian Center, Seattle Indian Health Board, Director of the Colville Tribal Enterprise Corporation). At Tulalip, he handles the majority of criminal cases. Judge Bass views law enforcement prior to retrocession as "ineffective and the county's lack of interest in enforcing the law on the [reservation], and also tribal people not trusting the county. This left the Tribes in a state of lawlessness." (Church W. A., 2006)

Theresa Sheldon, A Tulalip Tribal member, believes all the laws are fake fiction used against us all the time. Why we need to be fully engaged at all times to maintain and fight for sovereignty. Absolutely Federal Indian laws impacted her and her family. She states that when we (Tulalip Tribes) go to court we win. Then the government writes a new policy. (Sheldon, 2018)

John McCoy, a Tulalip Tribal member, did not grow up the reservation. His dad was in the Navy, so they travelled a lot. Mostly in San Diego. Dad always talked about Tulalip and he always wanted to return at retirement. John spoke of Federal Indian laws with Tribal Self-governance and Self Determination in the

forefront of Tribal sovereignty. He states it is the US Governments job to control chaos; governments are not for profit, but break even financially. The government promulgates rules for all to follow. Developed with culture in mind, Tribal laws will not work elsewhere, they are meant for us and our people and our way of life. (McCoy, Senator, 2017)

Federal Indian laws have been a huge part of John's life since January 1994 when he came home to Tulalip. Wayne Williams, a Tulalip Tribal elder was his mentor, he told him of history, vision and mission of Tulalip Tribes. John bought into Wayne's vision and he has not regretted it. It all made sense to him. John's career as a Washington state Senator has enabled him to introduce state legislation to recognize Tribal culture, history and sovereignty. John states that Tribes need more practitioners in US government and more students educated in US government. The practitioners need to teach the students and the students need to research more about the government in effort to bring a level playing field for Tribes. (McCoy, Senator, 2017)

Gabe Galanda, a Round Valley Tribal Member (California) did not grow up on his reservation. His grandma married a bus driver, he took a bus tour through the Pacific Northwest, fell in love with the country and moved here. They bought property in Port Angeles and had three daughters. (Galanda, 2018)

Gabe believes that Federal Indian laws are tools of colonization and genocide. They are weapons for us to use but not what we need to survive. He is using his skills and education that he learned in the western world to help Tribes and Indigenous people. Without a question Federal Indian laws have impacted him and his family. He would not have been raised in Washington State, his mom would not have been born in Santa Rosa California, and his family members would not have suffered drug addiction or domestic violence if grandma was not put on that train to boarding school. Gabe missed out on learning his own culture and teachings. (Galanda, 2018)

Debra Posey, a Tulalip Tribal member and elder, grew up on the Tulalip reservation. Her family moved to Lake Stevens for a house with electricity, water and septic-sewer. She broke the family cycle of abuse, drugs-alcohol and

family violence. She believes that Tribes have a unique relationship with the federal government that was passed by congress-senate. She says we have an equal government status; tribes have a sovereign status to govern ourselves within the federal government. (Posey, 2018)

Federal Indian law has impacted her whole life. Some made sense to her while others did not. She states someone's opinion on Tribal health care or housing relative to funding impacts reservations through the laws they promulgate. (Posey, 2018)

Jamie Hummingbird, a Cherokee Oklahoma Tribal member, his reservation is in Oklahoma, but he grew up on the Eastern band of Cherokee in North Carolina. His dad was promoted in an employment opportunity that took them to the Eastern Band. In 1965 his parents volunteered for the second Federal Relocation program and moved to Las Angeles for two years and then returned home to Oklahoma. He has family on the Eastern Band reservation and considers it his second home. (Hummingbird, 2017)

Jamie is familiar with a few Federal Indian laws. He was not sure how to answer. He knows there is a canon of Indian law that requires tribes to be referenced in the laws or tribes are considered exempt. He is familiar with the Indian Gaming Regulatory Act as part of his job and the Indian Civil Rights Act. He says he knows and understands that Federal Indian laws have definitely impacted him and his family. (Hummingbird, 2017)

The Indian Child Welfare Act (ICWA) worked for his family. The state of Georgia found his wife's nephews, Georgia contacted his wife and gave the children to Jamie and his wife. The children were returned to their reservation where they were taught their culture and education. Jamie believes this is how the law is supposed to work for Indian children. Child welfare is different on reservations than the outside world. We have a vested interest in our children. (Hummingbird, 2017)

Rico Madison, a Tulalip Tribal member, grew up on and off the reservation. He moved around a lot, he attended 5 different high schools. His dad took him away from his mom and then family took him away from his dad. He states that the federal government has their foot on our necks at all times. We are not big enough by ourselves to fight them politically. If all Tribes unite, we would be able to fight for our sovereignty. (Fernandez, 2017)

Rico states that Federal Indian Laws absolutely impact him and his family. We cannot move beyond what Washington does. Rico worked hard to promulgate a Tribal Law that prevents persons with warrants from arrest at suicide or drug overdose scenes. The Tulalip Tribes adopted his proposed law. Rico also conducts a needle exchange program for Tribal members addicted to heroin and methamphetamines in an effort to help them remain disease free.

Rico worked with Tulalip Tribes to start our own injection sites, the state fought them. Now the state has six injection sites. Rico also does needle clean up at user sites. He states that he cannot move forward fast enough to keep needles off the ground, to improve harm reduction, this all impacts the community, so it impacts him and his family. (Fernandez, 2017)

Celeste Hughes, a Cahuilla Tribal member grew up on the Cahuilla and Santa Rosa reservations in California. She states that families left the reservation to seek employment, there was no employment on the reservations. She says that they went home on the weekends though. (Hughes, 2017)

Celeste states that she has a pretty good overview of Federal Indian Laws. Her mom and Aunts were involved in the Self Determination Act and the PL 280 era. In her current position, she must understand the laws. She states that PL 280 in California is a detriment to Tribes. There is no due process or recourse for criminal/civil matters for Tribal victims or violators. There is a lack of cooperative relationships between Tribes and local/state law enforcement. Reservation crime is not a priority for California law enforcement agencies. (Hughes, 2017)

Due process is also missing on the civil side in PL 280 states. A current issue as an example is land squatters. Anyone can enter people's property and claim the property as theirs. There is no legal process for the original landowner. Cahuilla has no Tribal court or Tribal police to contact in such incidents. The squatter gets to stay. Cahuilla traditionally lived by respect. A dispute is addressed through Tribal Council, that decision would be final and binding to all parties. Behaviors now push the limits and the parties do not adhere to the Tribal council orders. The Tribe is going to be forced to address these issues and take action to correct the inadequacies of due process. California Tribes have an intertribal court system located on the Sycuan reservation, Cahuilla Tribe wants to start working towards this system. (Hughes, 2017)

Misty Napeahi, a Tulalip Tribal member, grew up on the Tulalip reservation. She does not have a formal understanding but knows that different laws passed by congress impact Indian Country. She thinks of the Relocation Act to move us into main country. She states that the Self-Governance Act of 2000 guides Tribes with US funding. (Napeahi, 2018)

Misty states that Federal Indian laws absolutely impacted her and her family. Her husband's mom was in Relocation Act era. She lived off the reservation for 30 plus years and returned home to the reservation. Misty remembers when Clarence Hatch returned home to the reservation, he was relocated as a result of the Act. His return was a happy time on the reservation. (Napeahi, 2018)

Les Parks, a Tulalip Tribal member and Tulalip Board of Director was born in Everett WA but lived in Tulalip. For 7 years they lived in a house with no electricity/water. A woodstove was used for cooking and heating. They did not know how poor they were. In 1964, a hand pump well was built to provide water. It was an exciting day for them; they no longer had to pack water from the creek. His mom carved their names in the cement base of the pump. The land is overgrown now, but the cement base is still in place with their names. In 1965, they moved to Everett WA for one year in effort to have a home with electricity. His dad and friends would cut shake by day. His Dad's first job when they

moved to Everett was on a tugboat. They moved back to Tulalip in 1966 and his mom was killed by a drunk driver. (Parks, 2018)

Les has a great deal of experience with Federal Indian laws. He has owned his own construction company until 2014. He was elected to the Tulalip Board of Directors in 1996. He spends a lot of his time promoting Tribal Economic Development while thinking about constant change and growth of our membership. Les gives his grandma Ebey tremendous and compassionate credit for her survival of the Boarding school and becoming a Tribal Board of Director and a Tribal Leader that led Tulalip where we are today. His grandma is the positive role model and influence for moving forward with Tribal issues. (Parks, 2018)

Anonymous 1, Anonymous did not grow up on her reservation, but close to another reservation in Oregon. Her parent and grandparents did not attend boarding schools, but were raised to be ashamed and illegal to be Indian. Therefore there are no documented birth records of Indian ancestry for enrollment purposes. As a result, she has no stories to tell of her ancestry. (1, 2017)

Anonymous believes that the relationship between Tribes and the US is deteriorating after the Termination Era from 1953-1973. The federal government terminated Tribes, reorganized Tribes and the civil rights movement led the public to believe that Tribes led people to believe that being Indian was cool and states that is the reason for the term “noble savage” derived from. Anonymous states that recent US Supreme Court decisions under President Trump’s administration embolden the public to believe that Tribes are merely special interest groups. (1, 2017)

Anonymous defines assimilation as doing what you need to, to get by. Not a good or bad thing. Assimilation policy is/was wrong. It hurt us. Goes back to Boarding Schools – they prohibited our language, culture and traditions. A big reason for sickness in communities, they took away our ways of taking care of

things. Current jurisprudence prohibits Tribes from writing codes to help with social issues. (1, 2017)

Anonymous also believes we are only sovereign to a point. If our laws conflict with federal law, the US can always come in and shut down our justice systems. An example would be the Nooksak Tribe, the US pulled court funding until they held an election process approved by the US government. The US does try to stay out of Tribal governance as much as possible but will step during conflicts. She states that Tribes will be sovereign when they stop taking state and federal funding sources to support their programs. (1, 2017)

Joseph Allen from the Klamath Tribe states the he is am hopeful someday that his own tribe will better organize their government body to create land boundaries, a fully functional court system and police force. He believes the example of Indian law creation on other reservations inspires them as a people to take care of their own people and aspire to do better.

Joseph personally does not have stories about how his Tribe addressed behavior, but states that he knows of a belief to leave troubled ones to be handled by their families or Tribe. He believes this is something that should still be alive. However, he has heard of stories of back in the day where certain people would get taken out into the woods and get “fixed up” or they would not come back because of something they did. (Allen, 2017)

Joseph does not believe that a healthy relationship or a working relationship exists between Tribes and the US. So many Tribes have remained amongst the highest poverty level in the country because they were either wronged in their treaties by receiving nothing but their lives or they had no idea how to properly manage the opportunity they did have because lack of education. Today so many Tribes are suing the government to return land, rights, or protection for lands, rights, environmental causes. It is unreal that they continue to fight the First Nations people for what is right. (Allen, 2017)

Joseph states that most definitely Indian laws have impacted him and his family - for generations. If the government would either have done right originally, leaving my tribe separate from the others, leaving them alone on their homeland, without massacre. We would be a drastically different people's. Without social issues, a culture of trauma and probably a better ability to be successful in the world. The other option would be honesty - if the US government would have given all Tribes an even amount of compensation for what was taken from them and the Tribes not taken advantage of they would have had a better chance to survive in the world to come and cope with the losses experienced. (Allen, 2017)

Joseph does not believe Tribal Justice Systems are truly sovereign. He states that because the Tribal Justice System exists in non-tribal world, the systems must be interlinked in one way or another. It would only make sense for the two to communicate and cooperate on one level or another. I do believe a sovereign nation would have to get approval for enforcement policies and would want the ability to send non-tribal members outside of the reservation for whatever reason. All of this cooperation will come at a cost which one can only assume sometimes following the direction of outside influences. Joseph states that the goal would be to build a strong sovereign nation that is self-sufficient and fully functional without funding from the US government. If they are doing nothing for you, they can have nothing to say about what you are doing. (Allen, 2017)

This researcher also learned that Indian laws impacted her and her family. As stated in "My Story", the state removed six Indian children from their home with the intent to place in separate foster homes. Non-Indian grandparents stepped up to become foster parent placement for all six children. Although, we were removed from our reservation, we found life with our grandparents fulfilling and carefree. We were poor, but we never realized how poor we were until we were much older. We also discovered how rich we were with love, homegrown food (out of necessity) and we were not separated as many other children were at the time. We grew up together and eventually all came home to our reservation. (Hammons, Personal Story, 2019)

The impact of these laws to me and my siblings vary in degree of comprehension between us. Some simply do not care why we were removed, as our childhood with our grandparents are amazing memories and we all love our Indian mom unconditionally. Others understand the struggle but play catch up on our history, traditions and culture to better understand our teachings and traumas. This researcher has spent over fifteen years studying Indian law without truly comprehending the ending impact of strength endured by our ancestors. (Hammons, Personal Story, 2019)

The result for this researcher is a stronger compassion for sovereignty, not just for Tulalip but also for all work done at the Tribal, state and national levels with other Tribes. Protecting sovereignty and Tribal assets is a priority and most non-Tribal people require education about Tribes and sovereignty. Providing a positive influence to young Indians has become a goal to protecting our future. (Hammons, Personal Story, 2019)

5.3 Tulalip Tribal Court

The purpose of the Tribal Court is to effectively administer justice to the Tulalip community. the judicial arm of the Tribal government has provisions under the Constitution which provides for law and justice on the reservation under Article VI, Sec. 1.k., in which to: "... promulgate and enforce ordinances, which are subject to review by the Secretary of the Interior, governing the conduct of members of the Tribes, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers. The Tribes' Law and Order Code, the first ordinance enacted by the Tribes, was first approved by the U.S. Department of Interior, August 6, 1938, to provide "adequate legal machinery for the enforcement of law and order for the Tulalip Indian community and civil redress for which no adequate Federal or State provision is otherwise made. The code would be amended several more times before and after retrocession. Currently the Criminal Law and Order code exists under Tulalip Tribal Ordinance TTO 49. (Church W. A., 2006)

From 1958 to 2001, the state of law enforcement on the Tulalip Reservation seemed lacking and ineffective prior to retrocession. Although the Sheriff was legally obligated to police the Reservation, policing on the Reservation was sparse – for two reasons. First, the County claimed that resources were lacking because no tax revenues were derived from lands within the Reservation. It is difficult to accept this lack of resource justification because during this period much of the Reservation had been acquired by non-Indians. Even if this claim were accurate, the County was legally obligated to provide law enforcement under federal and state law. (Church W. A., 2006)

The second reason for the lack of County effort may be the real reason for the failure of the County to provide any substantial law enforcement effort at Tulalip. Through the period from 1958 until the year 2000, the Tribal community refused to accept county / state law enforcement on the Reservation. After almost forty years of State authority under PL 83-280, R.C.W. 37.12 et. seq., the Indian community still believed and acted as if the County and State authorities lacked jurisdiction. (Church W. A., 2006)

The White law enforcement force was treated as an occupier and not a protector of the community. The Indian people at Tulalip continued to believe that the State officers lacked authority and refused to cooperate with them. The Tribal government itself lacked any confidence in a State and County government which was almost always in the position of acting as the enemy of Indian rights, resources, causes and people. Thus, the Tribal government seldom turned to County or State authorities to assist in resolving internal Tribal issues or in providing protection for Tribal people and assets. (Church W. A., 2006)

While not all of the social changes in the Tulalip community can be attributed to the Tribes' developing tribal law and justice system, a substantial portion of these changes can be directly tied to it through retrocession and the establishment of the police force and development of the tribal court. Some of the changes are directly linked to Tulalip as a growing economic force, and being able to provide services through funds generated through its business enterprises. However, on the law and justice side, the subjective views of the Tribes' judges, chief of police

and social services staff provide substantive insight into the changes that have occurred since retrocession. (Church W. A., 2006)

5.4 Tribal Lobbying

Lisa Koop Gunn is a senior attorney for Tulalip Tribes. Lisa is an enrolled member of Moravian of the Thames Delaware Nation and graduated from Seattle University School of Law in 2005. She has served as the lead in-house attorney for the Tulalip Tribes in the Tribes' challenge to the imposition by the State of Washington and Snohomish County of certain taxes within Quil Ceda Village, a case that garnered the support of the United States as a co-plaintiff. Over the past 14 years while at Tulalip, Lisa has advised the Tulalip Tribes on all aspects of its economic development activities. She's played a key role in the on-going development of Quil Ceda Village, being a part of a team to successfully negotiate development projects with major retailers such as Cabela's, Panera Bread, and the Simon Premium Outlet expansion project.

While Lisa has advised on all aspects of federal Indian law, other areas of particular emphasis include gaming and casino operations, and federal and state matters of interest. Lisa is now residing primarily in Washington DC as the Tulalip Tribes federal lobbyist but returns to Tulalip monthly. She continues to do gaming and casino operations for the Tulalip Tribes. Lisa is a prime example of Tribal members stepping up to protect Tribes for and against legal pluralism in Indian country, protecting sovereignty on our behalf.

As a Federal Lobbyist, Lisa gives on-going updates to the Tulalip Tribes board of directors. Below is a recent excerpt she drafted for the Tulalip Board of Directors to provide to the Tulalip tribal membership.

The Tulalip Tribes is active in Washington DC because issues at the federal level have a direct impact on tribal sovereignty and the lives of tribal membership. The 116th Congress is two years and convened January 3, 2019. We expect to see substantially more Indian related legislation passed and activity this 116th Congress with the democrats in

control of the House of Representatives. Also important is that the House of Representatives created the Subcommittee on Indigenous Peoples of the United States to deal exclusively with Indian people and issues. On the Senate side, the Senate Committee – Indian Affairs continues to exclusively handle Indian issues and legislation. Both the House of Representatives and the Senate must pass identical legislation which then goes to the President for signature before legislation becomes law.

Tulalip is actively working with its congressional delegation and other members of Congress on the following legislation (below) which the Tulalip Board of Directors feels will directly benefit the Tulalip community. While some of these bills will see great difficulty in passing this Congress, others are more likely. The first four bills listed focus on increasing the safety and security of our membership.

- **The Native Youth and Tribal Officer Protection Act (S.290/H.R. 958)**

This bill would extend criminal jurisdiction to Tribes for assault against children and police officers associated with Domestic Violence crimes committed by non-Indians.

- **The Justice for Native Survivors of Sexual Violence Act (S.288)**

This bill would extend criminal jurisdiction to tribes for sexual assault, sex trafficking, and stalking committed by non-Indians.

- **The SURVIVE Act (S. 211)**

This bill increases resources for tribal victim assistance by requiring a 5 percent allocation from the Crime Victims Fund be provided directly to Indian tribes through a grant program. Right now, these monies are passed through state programs and Tribes must request these funds from the State under state standards

- **Savanah's Act (S.227)**

This bill directs the Attorney General to review, revise, and develop law enforcement and justice protocols appropriate to address missing and murdered Indians.

- **Indian Programs Advance Appropriations Act (S.229)**

This bill ensures that agency funding for Indian tribes is fully funded regardless of federal government shutdown.

- **Ester Martinez Languages Preservation Act (S.256)**

This bill amends the Native American Programs Act to revise a grant program to ensure the survival and continuing vitality of Native Americans languages.

Lisa provides lobbying services on behalf of Tulalip in Washington DC to ensure our voices are heard in federal legislation. She provides Tulalip with updates in effort for Tulalip to make decisions on these important issues. Issues of violence against women, missing and murdered Indigenous women, federal funding, criminal jurisdiction. Lisa is one of Tulalip's response to federal Indian law.

5.5 Conclusion

To determine the efficiency of Federal Indian laws, the livelihood of those impacted must be reviewed in effort to measure. Oral history is the undocumented history of our people, a history of our people telling their own stories about their livelihoods and how the laws impacted them. Each have similar stories of the history, yet each have their own memories of their childhood and the impacts to their lives. History books share and teach stories of the US attempts to assimilate Indian people, while Federal Indian laws stem to protect Indian people. The US version of our history is quite different from the stories told by the Indian people.

While Les Parks and Debra Posey have nothing but positive words about their grandma Ebey and her boarding school days, others missed cultural opportunities from the lack of stories from the boarding schools. Some were removed from

their reservations either by force or voluntarily to find employment, while some left to find simple necessities of the times such as electricity and water in the house as late as 1964.

Celeste Hughes discusses the lack of cooperation with the state of California to provide protection from criminal and illegal civil activities. A result of PL 280 giving Federal jurisdiction to the State. However, her goal was to come full circle with the boarding school era by graduating college from those same schools her mom and grandma attended. She persevered to right a wrong in her heart and uses her education to better Tribal lives by protecting sovereignty in Indian Gaming and environmental protection.

CHAPTER SIX

Improving efficiency and effectiveness

6.1 Introduction

How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population? Research of Indian laws that had major impacts on Tribes and books/articles written by Indian authors will guide the answer to promulgate higher standards of efficiency and effectiveness. What did the government promise in their laws and what did they provide to establish successes and failures? What events happened in Indian country that impacted social justice in Indian Country through Federal Indian policy.

John McCoy pursued a career working for Tulalip working as the Tribes Governmental Affairs Director. He worked his way to become the Washington State 38th District Representative and currently a Washington State Senator. John would like to see more Indians running for political office and more Indian students researching and learning about political offices. However, he would like to see more practitioners bringing Tribal culture into the office rather than become assimilated into the US government structure. (McCoy, Senator, 2017)

John has drafted many bills to benefit not just Tulalip, but all Washington Tribes. Legislation that deterred PL 280 and gave Tribes jurisdiction over non-Indians on Tribal lands. This jurisdiction along with VAWA and the Tribal Law & Order Act gives Tribal police jurisdiction to arrest suspects of domestic/family/sexual violence on Tribal lands. More Indians involved in the US political arena should balance the scales of justice for Indian Country. (McCoy, Senator, 2017)

John also drafted legislation that requires Washington schools to include Coast Salish history in their curriculum. Tribes will consult with the state Department of Education to draft the curriculum and implement in the state's schools. John McCoy, a Tulalip Tribal member, a Washington State Senator, working to improve the lives of his people while serving all people of the state.

Indian Country Today (ICT) an online magazine that publishes news from around Indian country. ICT reported about Indian women from around the US that are running in elections for political offices. ICT reports that Republican Donna Bergstrom, Red Lake Band of Chippewa Indians, and Democrat Peggy Flanagan, White Earth Nation, joined their running mates Tuesday and secured a line on the November ballot. Bergstrom is running with Jeff Johnson and Flanagan with Tim Walz. Let's put this in perspective. Two Native women are party nominees for Congress. (One more, Amanda Douglas, Cherokee, has a primary at the end of this month.) Deb Haaland, Laguna Pueblo, in New Mexico and Sharice Davids, Ho Chunk, in Kansas. Two Native women are party nominees for governor; Democrat Paulette Jordan, Coeur d'Alene, in Idaho and Republican Andria Tupola, Native Hawaiian, in Hawaii. (Trahan, 2018)



These Indian women are building careers in the US political arena. Bringing their Tribal teachings, education and experience to the US government should they succeed in their elections. Maintaining their cultural teachings, education and experience once in office will provide Tribes with a voice at the congressional table when legislation is promulgated or amended. Senator Murry, although a non-Indian, supporting Debra Parker's quest to include Tribes in the VAWA amendments demonstrates a cooperative relationship between Washington government and Tribes. However, having Indian women at the legislative table brings strength in numbers to correct a tragic history and provide a positive future for generations. More Indians are needed at the legislative table to provide balance in US and Indian law making.

Not listed above is Deb Haaland, elected to Congress in 2018 and has now become the first Native American woman to sit in the Speaker's chair during debate. Haaland presided over debate on H.R. 1, the For the People Act. The For the People Act is House Democrats' transformative bill aimed at ending corruption in politics and ensuring fair access to the ballot box. (NM State, 2019)

Deb statement from her office:

“When a young woman of color sees me in the Speaker's Chair, I want them to think ‘I can do that,’ that's part of why I'm here,” said

Congresswoman Deb Haaland. “I want to help those who have not been represented before to identify with me and identify with Congress. It's their Congress too – it belongs to all of us.” (NM State, 2019)

Congresswomen Deb Haaland (NM-01) and Sharice Davids (KS-3) introduced a historic resolution recognizing Native American women for Women’s History Month, alongside 19 original cosponsors, including Native American Caucus Co-Chair Rep. Tom Cole (OK-4). It is the first time a resolution recognizing Native American women has been introduced in the U.S. House. (Haaland House, March)

The resolution honors the heritage, culture, and contributions of American Indian, Alaska Native, and Native Hawaiian women in the United States. It also calls attention to the challenges that disproportionately affect women in Native communities including the wage gap disparity and domestic violence that contribute to the epidemic of missing and murdered Indigenous women. (Haaland House, March)

“Women’s History month is all about recognizing the contributions women have made to this country while recommitting ourselves to fight for equality. My resolution honors the stories and contributions of Native American women, which are often left out of the conversation. By giving a voice to a whole group of women who have never had a voice in Congress, we’re also drawing attention to the struggles and challenges our community still faces,” said Representative Deb Haaland, Co-Chair of the Native American Caucus and one of the first Native American women serving in Congress. (Haaland House, March)

“Every March, we come together to celebrate women who have shaped our nation’s history, and those who continue to pave the way for future generations. Native American women are not always thought of in that celebration, so I am proud to partner with Representative Haaland to make sure we remember all that Native American women have contributed to our society, to advocate for Native women, and to work on the issues impacting our communities,” said Representative. Sharice Davids, one of the first Native American women serving in Congress. (Haaland House, March)

Mark Powless, Oneida Tribal member and elder, states that the Oneida Tribe is a matriarchal Tribe. Although their Tribal Council consists of Tribal men, Oneida women are the forefront of the political body. Oneida women stand behind the men in Tribal Council meetings and provide their Tribal Council with guidance. The women have the authority to remove the men from council if they determine cause to do so. (Powless, 2017) Mark also states that the Oneida's are one Tribe from the Iroquois Confederacy that assisted the US government in developing the US governmental structure known today as the US Constitution.

Historically, through all the pain and suffering of the boarding school life, some students survived and strived to become better to help their people. Anna Moore Shaw, a Pima, became the first Native American women to graduate college and the first to be educated in both the "Indian and white" worlds. Susan and Suzette LaFlesche used their education to promote Indian rights and laws that would prevent Native Americans dependency on the United States. Charles Eastman graduated college and went on to use his education and skills to benefit his people while proclaiming his heritage as an Indian that could adapt to the changing world, but without total assimilation. (Galloway, 2004)

Tribes implemented their own justice systems with Tribal Police forces and Tribal Courts that includes Tribal Appellate Courts. Tribal Courts mirror US Courts using Tribal culture and traditions as a driving force to develop healing courts rather than punitive courts. Should we have Indians in the US Court system to provide additional balance to the scales of justice or should they stay in our Tribal Courts. That is a question for another research paper, as our Indian Judges are also needed at home to provide Indian justice.

Tribes have also formed organized programs to provide a strong presence in the US legislative forum. Organizations such as the National Indian Gaming Association (NIGA), who provide Tribal Gaming Operations with various forms of training, guidance and support at the legislative table. The NTGCR, who provides regulatory training to Indian Gaming Regulators across the nation and

regulatory support to NIGA and vice versa. The National Congress of American Indians (NCAI), who provide support, guidance and legislative services to Indian country. All bringing various levels of expertise of issues in Indian country to educate the public and federal legislators.

6.2 National Unity

National Congress of American Indians (NCAI)

NCAI was established in 1944 in response to the termination and assimilation policies the US government forced upon tribal governments in contradiction of their treaty rights and status as sovereign nations. To this day, protecting these inherent and legal rights remains the primary focus of NCAI. (NCAI, 2001-2019)

NCAI Mission (NCAI, 2001-2019)

- Protect and enhance treaty and sovereign rights.
- Secure our traditional laws, cultures, and ways of life for our descendants.
- Promote a common understanding of the rightful place of tribes in the family of American governments.
- Improve the quality of life for Native communities and peoples.

NCAI History (NCAI, 2001-2019)

In Denver, Colorado, in 1944, close to 80 delegates from 50 tribes and associations in 27 states came together to establish the National Congress of American Indians at the Constitutional Convention. Founded in response to the emerging threat of termination, the founding members stressed the need for unity and cooperation among tribal governments and people for the security and protection of treaty and sovereign rights. The Founders also committed to the betterment of the quality of life of Native people.

“[NCAI] is one of the most important intertribal political organizations of the modern era. It has played a crucial role in stimulating Native political awareness and activism, provided a forum for debates on vital issues affecting reservations

and tribes, overseeing litigation efforts, and organizing lobbying activities in Washington,” – from *The National Congress of American Indians: The Founding Years* by Thomas W. Cowger (NCAI, 2001-2019)

Seventy Years of NCAI: From Imminent Threat to Self-Determination

From 1944 to the modern era of government relations between tribal governments and US governments, NCAI has been a leading force and voice in protecting tribal sovereignty.

NCAI Founding Principles: (NCAI, 2001-2019)

- To secure and preserve American Indian and Alaska Native sovereign rights under treaties and agreements with the United States, as well as under federal statutes, case law, and administration decisions and rulings.
- To protect American Indian and Alaska Native traditional, cultural, and religious rights.
- To seek appropriate, equitable, and beneficial services and programs for American Indian and Alaska Native governments and people.
- To promote the common welfare and enhance the quality of life of American Indian and Alaska Native people.
- To educate the general public regarding American Indian and Alaska Native governments, people, and rights.

NCAI is considered the national representative of Indian country. NCAI provides a political presence at the legislative table by appearing at federal hearings on rulemaking or other issues that impact Indian Country. The NCAI Chairman is considered the President of Indian Country. They represent all political issues at the legislative table.

National Indian Gaming Association (NIGA)

The mission of NIGA is to protect and preserve the general welfare of tribes striving for self-sufficiency through gaming enterprises in Indian Country. To fulfill its mission, NIGA works with the Federal government and Congress to

develop sound policies and practices and to provide technical assistance and advocacy on gaming-related issues. In addition, NIGA seeks to maintain and protect Indian sovereign governmental authority in Indian Country. (NIGA, 2019)

The National Indian Gaming Association (NIGA) is a voluntary association composed of Member Tribes and Associate Members representing federally recognized Tribal governments, gaming Tribes, Nations, Rancherias, Pueblos, Bands and Businesses engaged in gaming enterprises in Indian Country. (NIGA, 2019)

NIGA's Objectives is to promote, protect and preserve the general welfare and interest of Indian Gaming Tribes through the development of sound policies and practices with respect to the conduct of gaming activities in Indian Country; To assist in the dissemination of information to the Indian gaming community, federal government and the general public on issues related to the conduct of gaming in Indian Country; To preserve and protect the integrity of gaming in Indian Country; To maintain, protect and advocate Indian Tribal sovereignty. (NIGA, 2019)

Incorporated in 1985, National Indian Gaming Association (NIGA) is an inter-tribal association of federally recognized Indian Tribes united with the mission of protecting and preserving tribal sovereignty and the ability of Tribes to attain economic self-sufficiency through gaming and other forms of economic development. The common commitment and purpose of NIGA is to advance the lives of Indian peoples economically, socially, and politically. NIGA operates as an educational, legislative, and public policy resource for tribal policy makers as well as the public, on issues related to Indian gaming and tribal community development. (NIGA, 2019)

Located on Capitol Hill²⁸, NIGA is a leading voice for Indian Country, working diligently to ensure that the special status of tribes is recognized and protected

²⁸ Washington D.C. US Capitol Building

when issues affecting tribal sovereignty arise. NIGA advocates on behalf of Indian tribes with Congress, the White House and federal agencies. In order to accomplish its mission, NIGA often works with Congress and the administration on all Indian Issues under the Commerce Clause. (NIGA, 2019)

National Tribal Gaming Commissioners/Regulators (NTGCR)

NTGCR's Mission is to promote cooperative relationships among the commissioners & regulators of tribal gaming enterprises and other organizations; to promote the exchange of thoughts, information, and ideas which foster regulatory standards and enforcement that lead to consistent regulatory practices and methods of operations among the NTGC/R members. (NTGCR, 2019)

The purpose of the NTGCR as set forth in the By-Laws reads as follows: (NTGCR, 2019)

Article II - Purpose

Section 1. Purpose. The purpose of the NTGCR is to:

- Promote cooperative relationships among the commissioners & regulators of Tribal gaming enterprises and other organizations;
- Promote exchange of thoughts, information and ideas which foster regulatory standards and enforcement that lead to consistent regulatory practices and methods of operations among the NTGCR members;
- Promote educational seminars, which include commission/regulatory training, and other related activities; and
- The NTGCR may act as a gaming regulatory advisory group to Tribal gaming organizations and others.

Since the year 2000, NTGCR under its present leadership and with the assistance of numerous hard-working committee members has held two national conferences a year (spring and fall). The focus of the conferences is regulatory education. Nationally known figures in Tribal gaming provide informative general session presentations, and an extensive agenda of specialized quality

training seminars are conducted by highly competent and experienced instructors. (NTGCR, 2019)

NCAI, NIGA and NTGCR provide effective and efficient leadership by and on behalf of Tribes across the nation. All three organizations promote strength through unity. Although, NIGA and NTGCR are gaming organizations, they provide and promote much more than gaming. The intent is always to protect sovereignty through presence and unity. Many more National Tribal organizations protect sovereignty. These three are the primary and largest organizations.

6.3 Independent Forums

In addition to national organizations, Tribal members from around the nation and other countries rally to publicly address issues close to their hearts. Indigenous Grandmothers is an international forum consisting of Indigenous elderly women from around the world. Missing and Murdered Indigenous Women (MMIW) rally to address Indigenous women that are either missing and/or murdered and law enforcement fails to investigate the cases. These Independent forums provide education and support to the lobbying efforts of Tribes to educate the politicians and to provide the public with the knowledge of their causes. MMIW and the 13 Grandmothers are those experts in their fields to testify before Congress, to inform them of their data.

There are hundreds of forums organized by Indian families that have causes close to their hearts. Indigenous Grandmothers and MMIW are identified in relation to impacts to Tribes, Tribal members and Indian communities. The safety of Indigenous women struggles with federal laws and jurisdictional quagmires such as PL 280. The Grandmothers hope to educate younger generations with Indigenous teachings to care for themselves and to heal, healing is a priority. These organizations or forums bring individuals to the forefront

Indigenous Grandmothers

In 2004, thirteen Indigenous Grandmothers from all four corners, moved by their concern for our planet, came together at a historic gathering, where they decided to form an alliance: The International Council of Thirteen Indigenous Grandmothers. The grandmothers are from Gyalton, Brazil/Japan, Oglala-Lakota, Mexico, Yupik-Alaska, Tamang-Himalaya, Cheyenne-Arapaho, Omyene-Africa, Brazil, Hopi/Havasupai and Siletz Oregon. Facing a world in crisis, they share with us their visions of healing and a call for change now, before it's too late. This film documents their unparalleled journey and timely perspectives on a timeless wisdom. (White Wolf Pack, 2019)

Grandmother's Mission Statement:

"We, the International Council of 13 Indigenous Grandmothers, represent a global alliance of prayer, education and healing for our Mother Earth, all her inhabitants, all the children, and for the next seven generations to come. We are deeply concerned with the unprecedented destruction of our Mother Earth and the destruction of Indigenous ways of life. (White Wolf Pack, 2019)

We believe the teachings of our ancestors will light the way through an uncertain future. We look to further our vision through the realization of projects that protect our diverse cultures: lands, medicines, language and ceremonial ways of prayer and through projects that educate and nurture

our children." (White Wolf Pack, 2019)



13 Indigenous Grandmothers (International Council of Thirteen Indigenous Grandmothers, 2019)

The grandmothers travel the world spreading their message. They, host conferences and make special appearances. Their mission statement stands alone in their work to improve Indigenous lives. Their compassion for mother earth and Indigenous people provides generations of Indigenous people with guidance and role models for improving the efficiency and effectiveness of the world we live in now.

13 grandmothers provide positive role models and teachings for Indigenous people around the world. The grandmothers provide a forum for all ages to participate in the protection of the earth, our precious home. Our home that provides us with sustenance, breath and life. They provide Indigenous teachings to continue our ancestral ways. The grandmothers educate Indigenous people, both as individuals and as a whole, politicians and young people, across the world about the Indigenous ways, cultures and traditions. These teachings help guide the direction of legislative rule making concerning Indigenous ways.

Missing, Murdered Indigenous Women (MMIW)

Individual Tribal members have organized programs to bring education and acknowledgment of issues in Indian Country. Organizations such as Missing and Murdered Indigenous Women (MMIW) educates the public and strives for increased investigations of Missing and Murdered Indigenous women in the US and Canada.

Organizers argue that any chances of success lie in the government's willingness to follow the lead of communities most impacted. (Brown, 2018)



Two red dresses hang in a tree at Swan Creek Park on May 11, 2018, in Tacoma, Wash. The red dresses symbolize missing and murdered Indigenous women.

As Annita Lucchesi, a Southern Cheyenne cartographer who is building a database of missing and murdered Indigenous women, put it, “I don’t think you can fix problems that have been created by poor legislation with more legislation rooted in the same way of knowing and in the same culture.” (Brown, 2018) Lucchesi’s database includes cases in the U.S. and Canada going back to 1900, relying on news reports, law enforcement data, government missing persons databases, and information shared by Indigenous families and

community members. So far, her data set includes 2,501 unresolved cases of missing or murdered women, and it is far from complete. (Brown, 2018)

Behind the vanishing women is an array of causes — domestic violence and sex trafficking, as well as police indifference, racism, lack of resources allocated to tribal governments, and complex jurisdictional issues between tribal, federal, and local law enforcement that slow down investigations in their crucial first days and make it easier for non-Indigenous people to get away with violent crime²⁹. For most criminal cases, tribal courts lack the ability to prosecute perpetrators who are not tribal members. Although the 2013 Violence Against Women Reauthorization Act allowed tribal courts to pursue domestic violence cases committed by non-Native people, not all tribes exercise that jurisdiction, and many other types of physical and sexual violence are not covered by the exception. (Brown, 2018)

This grassroots organization has promoted the need for increased awareness for missing and murdered Indigenous women. There is also a greater need for law enforcement to fully investigate reports of missing Indigenous women. While jurisdiction excuses partial blame, ExParte Crow Dog and the Major Crimes Act delegate the authority and responsibility to investigate to the federal government. The US and Canada continue to fail to protect Indigenous women and continue to fail to bring the violators to justice. (Brown, 2018)

This organization publicly protests the failure to protect Indigenous women, protests are scheduled for February 2019 at the University of Washington. Protests occurred in Washington DC and they have marched through major cities. The members are making noise and do not plan to stop until the government hears their concerns and acts to ensure an investigation occurs and the victims receive justice. (Brown, 2018)

This forum uses social media to announce missing and murdered women. Their Facebook page has hundreds of pictures of missing women. Some as recent as

²⁹ Examiner wants Tribal members included in jurisdictional statements. Tribes have criminal jurisdiction over their own members, except when the Major Crimes Act prevails (rape and kidnapping)

this year and others missing since 1982 from the Quinault reservation on the Washington coast. They also use their Facebook page to announce gatherings in various locations. MMIW in Washington gatherings are held in Seattle, Olympia and as far north as Blaine, Washington on the Washington/Canada border. (Facebook, 2019)

MMIW identifies multi-jurisdictional issues that prevent or hinder investigations and prosecution of violators who engage in this violence against Indigenous women. Investigations or lack of, and the mission of MMIW is a research topic all on its own. The effectiveness of legal pluralism in this issue is below the same standards of missing non-Indigenous women, yet Tribal members and Tribes across the nation are making sufficient noise for the US government to hear. MMIW and Tribes lobbying efforts to correct this travesty is the solution for the legislature to listen and take action.

6.5 Gaming

Tulalip opened a bingo operation in 1983, the operation brought in \$1 million revenue. In 1992, Tulalip built an addition to the Bingo structure to house a casino. Initially, the Tribal/State Compacts only authorized table games with \$25.00 maximum betting limits. Over time the Compact was amended to add technology to the mix for tracking revenue, tracking players, tracking gaming supplies such as cards and dice.

In 1995, technology brought Class II gaming machines into Indian Country. Although, considered a novelty game to the customers, not until 1999 when Washington Tribes and the state reached an agreement to allow Class III gaming machines with a lottery ticket concept³⁰. In the same structure, Tulalip provided a mix of bingo, table games and gaming machines to satisfy the wishes of customers.

Eventually, Tulalip built a new Bingo facility so that the existing property could expand machines and table games. In 2003, Tulalip opened the Tulalip Resort Casino. A 200,000 foot gaming floor and 379 hotel rooms. Tulalip

³⁰ Each time the “spin” button is hit, a lottery ticket is drawn from a virtual pool of tickets.

strives to maintain a four diamond resort with the utmost customer service possible.

NIGC Chairman Jonodev Chaudhuri explained how Indian gaming is not just about economic development. It also demonstrates that tribal regulation, as opposed to state regulation, works. To illustrate this, Chaudhuri pointed out that although in 2017 Indian gaming officially generated \$32.4 billion in revenue, the “boogeyman” of organized crime infiltrating the industry has never appeared. (Hopper, 2019)

“Why?” Chaudhuri asked. “Because tribal regulators had the most interest in protecting tribal assets and operations and have worked hand-in-hand with federal regulators to make sure that organized crime’s been kept at bay.” (Hopper, 2019)

Chaudhuri stated he and the commission have seen first-hand how this built-in aspect of self-determination, that of protecting one’s own people, which is not present in state-run regulation, is a major cause of IGRA’s success. “These self-determination principles all reflect the idea that not only should tribes have authority, jurisdictional authority, over activities within their lands, but tribes themselves are best suited to understanding the needs and solutions for matters within their lands.” (Hopper, 2019)

Chaudhuri also believes the success of the tribal regulatory mechanisms established by IGRA will ultimately influence future federal policymaking in other areas and will help keep those policies tilted toward self-determination and away from state control. In a very real way, Indian gaming drives self-determination. (Hopper, 2019)

NIGA Chairman Ernie Stevens says:

“We need the world not to be afraid of Indian people expanding our horizons because we got a long way to go. In the next six months, I’m going to hold two more brand new grandbabies. So I’ll be up around 17 grandchildren. I want these kids to have something to live for and

I want America’s children to have something to live for. That’s what Indian gaming is all about.” (Hopper, 2019)

In the gaming arena, Tribes are consistently looking to the future. Here, two National organizations are looking 30 years ahead to ensure that gaming is protected. As Chauderi states, IGRA provides Tribes with the primary responsibility to regulate Indian Gaming. Tribes have a vested interest in the success of Indian gaming. Congress concern that Tribes are not protected from organized crime has not materialized. Obviously, the public welcomes Indian Gaming by contributing \$32.4 Billion of their hard earned money to Indian Gaming.

6.6 Regional Forums

Northwest Intertribal Court System (NICS)

NICS was founded in July of 1979 and incorporated on March 11, 1980. The Northwest Intertribal Court System (NICS) is a consortium of Native American Indian Tribes in the Pacific Northwest region of the United States. It is one of the only intertribal court systems in the country. The original fifteen tribes, through their representatives on the NICS Governing Board, adopted the following mission statement for the organization:

NICS mission is to assist the member tribes, at their direction, in a manner which recognizes the sovereignty, individual character and traditions of those tribes in the development of tribal courts which will provide fair, equitable and uniform justice for all who fall within their jurisdiction.

Each tribe has its own independent court and codes. NICS provides Tribes with trial and appellate judges, assistance with code development, training and technical assistance. Each member tribe appoints by resolution a representative

to the NICS Governing Board, which sets policy for and governs all administrative actions of the organization.

Initially comprising thirteen members - Chehalis, Lummi, Muckleshoot, Nisqually, Port Gamble S'Klallam, Puyallup, Sauk-Suiattle, Skokomish, Squaxin Island, Suquamish, Swinomish, Upper Skagit, and Shoalwater Bay - the consortium quickly grew to fifteen members with the addition of Hoh, Nooksack and Tulalip (Puyallup withdrew in 1991). NICS provides these Tribes with judges, prosecutors and an appellate court for separation from the Tribal legislative and administrative bodies. Adding legitimacy while removing conflict for Northwest Tribes.

NWIFC is another regional forum, covering Washington, Oregon and Idaho Tribal fishing rights, which in turn requires advocacy for environmental protection for the fish to return, spawn and provide sustenance to Tribal members as well as commercial fishing for both Tribal and non-Tribal members. Billy Frank dedicated a lifetime to ensuring fish and environmental habitat are protected, along with cooperative co-management of such resources per the Boldt decision.

6.7 Tulalip Tribal Court Criminal Defense Clinic

Tulalip sought a unique approach to the problem of providing defense counsel for tribal members. It should be noted that under the Indian Civil Rights Act of 1968 (U.S.C. § 1302-02(6)), tribes, due to economic reasons generally are not required to provide for defense counsel. The main reasons are because of the concerns of costs and the difficulty in arranging such representation given the circumstances of poverty and distances involved, that many reservations still experience. To require tribes to pay for the costs of defense would be an undue burden. However, in 2003, the Tribes developed an institutional relationship with the University Of Washington School Of Law - Native American Law Center for the Tribal Court Criminal Defense Clinic, which was designed to provide representation to low-income Tulalip tribal members charged with crimes on the

reservation. The Clinic is funded through Tulalip³¹ Appendix X casino derived funds and first began taking cases in July of 2003. (Church W. A., 2006)

6.8 Tulalip Tribal Court

The judicial arm of the Tulalip Tribal government has provisions under the Tulalip Constitution which provides for law and justice on the reservation under Article VI, Sec. 1.k., in which to: "... promulgate and enforce ordinances, which are subject to review by the Secretary of the Interior, governing the conduct of members of the Tribes, and providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers. (Church W. A., 2006)

The Tribes' Law and Order Code, the first ordinance enacted by the Tribes, was first approved by the U.S. Department of Interior, August 6, 1938, to provide "adequate legal machinery for the enforcement of law and order for the Tulalip Indian community and civil redress for which no adequate Federal or State provision is otherwise made. The code would be amended several more times before and after retrocession. (Church W. A., 2006) Currently the Criminal Law and Order code exists under Tulalip Tribal Code, beginning with Chapter two.

In the early days of the court, there was no courtroom. Court was presided over and held at the home of Carl C. Jones, Jr., a Tribal member and logger by trade in the mid-1950's up until 1967. Judge Jones also held Shaker Church meetings in his home. In an interview with Commandeer Hank Williams, tribal member, he recalled in the early days that he and two others were sentenced with disturbing the peace because of a loud car exhaust pipe. Judge Jones sentenced the trio with a \$25 dollar fine and 2- days of work at the Tribal cemetery. The Tribes also had a game warden, Billy Willy, who issued citations for fisheries violations. Additionally, Tribal member, Billy Dunbar acted as a pro se lawyer for Tribal members charged with minor offenses. (Church W. A., 2006)

³¹ Tulalip Tribal/State Compact

Sometime later, when fisheries or housing eviction disputes arose, these cases were heard in the Tribes' Boardroom. However, with the Tribes growing caseload, the Board designated one of its small buildings as a court. After Retrocession, it became absolutely necessary for the Tribes to re-evaluate the accommodations and conditions of its court. (Church W. A., 2006)

Harvard University implemented The Harvard Project On American Indian Development. The Program honors Tribal nations with exemplary performance in Tribal programs with a Honoring Nations award. Tulalip received the Honoring Nations Award in 2006 for their Alternative Sentencing Program (now called Wellness to Healing Court). Harvard outlines Tulalip Judicial history and the successes of the program. (hpaled, 2006)

The Alternative Sentencing Program brings traditional values to the forefront of the judicial process by focusing on restoration, recovery, healing, and the bolstering of family and community connections. By creating a code and process that force interaction, recovery for the citizen is stressed over punishment and all parties have a voice and are working to create a healthy community. (hpaled, 2006)

The Alternative Sentencing Program also offers the Healing to Wellness Court (also known as the drug court). The initiative, started in 2006, brings an even larger range of interested tribal parties into the healing circle, both literally and figuratively. Not only do the judge, defendant, compliance officer, prosecutor, and defense counsel participate directly in conversations with defendants about their drug use, crime, and rehabilitation, but also law enforcement officers, a representative from the gaming commission, members of the Tribes' Board of Directors, services providers, elders, family members, and peers are included. The focus is on correcting behavior, not penalizing citizens. (hpaled, 2006)

The scope of the Alternative Sentencing Program is quite broad. Recognizing that this method of justice and rehabilitation will not work for everyone, and that some offenders benefit from the structure of custody, the Program is currently working with other tribes in Washington to create a Native-controlled jail. The

jail will incorporate Native philosophies and healing techniques, bringing the services of rehabilitation to the incarcerated. (hpaled, 2006)

The Alternative Sentencing Program is a case of the Tulalip Tribes reclaiming and strengthening sovereignty within a PL 83-280 state and creating a culturally appropriate justice system. Beyond creating appropriate government infrastructure by partnering with other organizations, the Program has created trust among the Tulalip citizens. By making the reservation safer, and by focusing on recovery and healing rather than punishment, the Alternative Sentencing Program has improved Tulalip Tribes citizens' lives and the environment they live in. (hpaled, 2006)

Lessons: (hpaled, 2006)

- A prerequisite to the implementation of culturally grounded approaches to criminal justice is the assertion of jurisdiction over criminal matters; appropriate intergovernmental arrangements make this possible even in PL 83-280 states.
- Effective tribal criminal codes, the development of accompanying tribal institutions, and clearly specified partner roles and responsibilities strengthen tribal sovereignty and promote productive intergovernmental cooperation on criminal justice issues.
- By focusing on restorative justice, interagency cooperation, and offenders' recovery and wellbeing, the tribal justice system can become a key actor in improving community health.

Today, Tulalip Tribal Court is fully functional, to include (but not limited to) a Wellness Court (formerly the Tulalip Alternative Sentencing Program) for addicts to guide them through a stringent process that holds the Tribal member accountable for their crimes and ensure all necessary treatment is available. Available resources are required of Wellness Court clients and compliance is

mandatory to remain in the Wellness Court Program. The following provides Wellness Court successes for 2017: (Church W. , 2017 Report for GM, 2018)

- Wellness Court had active 15 participants with the majority of them in compliance and doing extremely well!
- Wellness Court Standard Operating Procedures finalized!
- Wellness Court Researcher was hired in 2017, provides research and statistical information for Wellness Court.
- The National Drug Court Institute held training regarding the opiate epidemic and also to learn more about Wellness Court.
- Wellness Court Coordinator successfully applied for and received a DOJ/CTAS grants.
- Wellness Court Coordinator presented on innovative incentives at the National Association of Drug Court Professionals Conference.
- Wellness Court hosted “Thinking for a Change” training. At no cost to the Tribe, we were able to train five tribal employees to administer the Thinking for a Change curriculum. Thinking for a Change is a 12-week class to help participants/probationers to change their thinking process in a positive way.
- Approved and received Charitable Funds to provide training for team members, emergency housing, transportation, and incentives for participants as well as education for the Tulalip community.
- Snohomish County Drug Court observed Wellness Court; a lot of positive feedback from them!

- In 2017 we had multiple Tribes observe our staffing and court to help them in the implementation of their Wellness Court. We have received very positive feedback from everyone that has observed. The Director of Probation from Choctaw Nation has recently asked if some of their team members could visit our Wellness Court and the probation office for a week in the near future as they felt our Wellness Court was one of the better programs they have seen.
- Implemented Recovery Trek software for Wellness Court. The new software has been designed to track the necessary data we will need to comply with grants as well as data to track who is being served within the community and the overall progress of our participants and program.

Court Statistics for 2017 (Church W. , 2017 Report for GM, 2018)

**TOTAL
CRIMINAL
FILINGS**

Year	Filings
2014	282
2015	368
2016	337
2017	348

The chart below indicates the number of cases by category in Tulalip Tribal Court:

CRIMINAL CASE TYPES	2015	2016	2017
Alcohol Offense	11	16	24
DV	38	46	27
Drug Offense	66	111	90
Family Violence	28	21	18
Misc. Criminal	182	162	112
Sex Offense	12	12	11

These statistics provide an overview of Tulalip Tribal Court cases; however, it also provides a view of Tulalip Tribal jurisdiction. The number of cases reflect a consistent pattern over the reporting years. While some categories decrease in numbers, others stay consistent. Although, the statistics do not indicate repeat offenders, but portray general outcomes of Tribal Court cases. Alcohol offenses increase over the years, as family violence decreases. The decrease in family violence over the years demonstrates the Tribes purpose and intent of the Domestic Violence Code is successful. However, the sex offenses remain steady over the years.

6.9 Conclusion

Historically, the US constitution was drafted and promulgated with the assistance of the Iroquois Confederacy, a matriarchal society governed by both men and women. (Powless, 2017)

John McCoy states we need more Indians in US government and today Indian women are on the election ballots for political positions. Tribes are not without non-Indian politicians who provide a tremendous amount of support for Tribal issues. These politicians also stand in public forums with our Tribal members to show their support for issues such as VAWA legislation. Their public actions demonstrate a fair and just mindset to correct the imbalance of Tribal Sovereignty and protection of our Indian people.

Tribes do need more than politicians to support Tribal issues on the political arena. Tribes need Indians to teach the politicians about Tribal issues. The primary reason for bringing Indians to the legislative table, to tell our story of treaties, poverty, boarding school traumas, struggle and survival. Stories of our world living in their world. Telling our story of finding balance in our world to protect our children and grandchildren for the next seven generations. (McCoy, Senator, 2017)

For centuries, Indians have used the western ways to improve the lives of their people. Charles Eastman refused to lose his heritage while educating himself in

the western ways, with the goal of protecting and helping his people survive and strive. Such Indians are now ancestors and have paved the road for their future generations to survive and strive. Although, always a struggle when dealing with the Federal government, ancestors were and always will be our role models and influencers for working to protect our people.

Tribes build and the US responds with a US law. States want authority or jurisdiction over Tribal issues and respond with court filings. At times, the court decisions respond with orders that require states and Tribes to cooperate with each other, such as the Boldt decision (WA v US 1974). The US gives Tribes access to resources in their laws, but in reality does not grant that access until a tragedy occurs. The US then responds with assistance to Tribes but not without conditions such as pilot programs until Tribes can prove they will not abuse the access (TAP program).

Tulalip has built its justice system over decades. Its justice system includes a legislative process, police and a court. Tulalip's justice system also includes civil processes such as marriages and divorce (dissolution of marriage). All businesses, non-Indian and Indian are required to submit to Tribal jurisdiction for all disputes. Tulalip has an award-winning justice system as recognized by Harvard University.

Tribes are building their own justice systems, forming inter-tribal, state, national and international forums to educate the public, politicians and ourselves, and Tribal members seeking higher education in effort to grow into the political battle between Tribes, states and the US government. Our ability to walk in two worlds to protect sovereignty and self-governance, grows stronger with each generation. Another historical series of struggle, survival and resilience.

Tribes have demonstrated an ability to use the federal justice system to protect Sovereignty and our existence. Court cases do rule in favor of Tribes. The US joins Tribes in cases against states. Boarding school survivors are reflected as leaders. As the US grows, Tribes are growing just as strong. We still have weaknesses that need to be addressed before tragedy occurs, however the US

moves quickly after those tragedies to improve Tribal processes with local, state and federal jurisdictions.

CHAPTER SEVEN

Thesis Overview

7.1 Introduction

Although, assimilation has also guided us through the last few centuries, we also work to balance European expectations with our own traditions and cultural practices. The opportunity to decolonize methodology in effort to tell our story is one to enhance our research, to commingle the two worlds by documenting in our own words, our oral histories, traditions, culture, while working towards improving our present day and future systems. How can we make legal pluralism better, effective and efficient to protect our Indigenous people?

This chapter will answer the research questions:

1. What is the history of Indian law?
2. How do Tribes respond to Federal Indian policy?
3. What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian policy?
4. How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population?

1. What is the history of Indian law?

Crow Dog begins Tribes journey in the US justice system and his case is still used today to fight state self-imposed jurisdiction over Tribal lands and Indian crimes. The basic concept “Territories (states) do not have criminal jurisdiction to this day in Indian country is continually challenged by states despite many court cases ruling differently. *Herrera v. Wyoming* and *Carpenter v. Murphy* are prime examples of states concept of their own power. Yet, the US Supreme

Court has the power to rule and devastate Tribal jurisdiction with their decisions in these cases.

The US Constitution clearly states that only Congress can address Indian issues, approve treaties, denounce treaties and regulate commerce with Tribes. Mark Powless tells the Iroquois story of assisting the US government with the drafting of the US Constitution using their own unwritten governance practices that are still in place today. Although, the Tribes of the Iroquois Confederation were moved from their original homelands to reservations, they continue to practice their governance as a whole. Unbroken centuries later, despite the assistance they gave the US to develop their governance.

Indian people have survived the boarding school era, Indian children raised without their parents, never learning to become parents themselves. Some Indian children did not survive the illnesses and diseases caused by boarding schools missing sanitation and lack of medical expertise. Indian adults that attended the boarding schools refused to discuss their boarding school days. Those that did survive, some became Tribal leaders, teachers, doctors, lawyers, whatever they could to improve the lives of their people, despite US assimilation policies. Although, the success of these students is admirable, not all survived with such strength and resilience. The trauma caused by the boarding schools led to alcoholism, domestic violence and sexual assault. Issues that the newly formed leaders desperately attempted to heal. That healing continues today.

The Marshall trilogies originally created traumatic transitions for Tribes and their members, by giving authority to Georgia over Tribal lands in Georgia. Other states followed Georgia in removing Indians to the Indian Territory in Oklahoma. Sometimes walking Indian women, children and men thousands of miles to reach Oklahoma. Many died along the way. Known as the Trail of Tears. US Supreme Court Chief Justice Marshall eventually rules in favor of Tribes and reinstates Tribal sovereignty and jurisdiction. The Marshall Trilogies are still used today.

Although Chief Justice Marshall ruled against Cherokee nation in Cherokee Nation v. Georgia, Tribes continue to use the language from the court order

“domestic and dependent nations” to support the separation from states and the lack of state authority and jurisdiction on Tribal lands. The decision supported by the US Constitution, Tribal sovereignty and treaty rights for generations to come and for future arguments against states self-proclaimed authority.

Fish wars in Washington on the Nisqually reservation resulted in death of Nisqually Tribal women, children and men for fishing on the Nisqually River. The Nisqually River is their usual and accustomed fishing place secured in the Medicine Creek Treaty. Yet Washington state Fish and Wildlife Officers felt the need to enforce their interpretation of Nisqually fishing rights. Washington Tribes filed an appeal in the 9th district Court of Appeals, Judge Boldt declared and ordered that Tribes and the state are co-managers of the natural resources required to protect the salmon and that Tribes are subject to 50% of the eligible fish catch. The US also joined Tribes in this case, as support to the lack of state jurisdiction per the US Constitution. This case has led to generations of treaty rights for hunting and fish rights for Washington Tribes. The case also helped other Tribes treaty rights across the nation using the decision as citations in many other court cases as well.

PL 280 transferred federal authority to states over Tribes. States did not have the funding or the manpower to address criminal and civil issues occurring on tribal lands. Tribal lands became a lawless society. Leaving Indian people subject to violence without retribution for crimes or liberties taken against them. PL 280 was later amended by the US government to allow Tribes to approve their PL 280 status or to retrocede from PL 280 status and become self-governing.

Public Law 280 was promulgated by the US government to delegate federal jurisdiction on Indian lands to respective states. Yet, Chief Jay Goss explained that this delegation created manpower needs for outside law enforcement agencies. Many of those agencies would or could not respond to calls on reservations. Eventually, the law was amended to allow Tribes to retrocede from state jurisdiction. (Goss, 2012) Chief Jay Goss was hired by Tulalip to retrocede from Washington state authority. Chief Goss created the Tulalip Police

Department, which in turn enhanced the Tulalip Court criminal authority and jurisdiction.

Wendy Church describes Tulalip's retrocession as a guiding force to Tulalip's growing economic development. Businesses on Tulalip lands required police protection, a forum for due process, contracts with businesses on Tulalip lands are required to settle all disputes in Tulalip Tribal Court. The Tulalip justice system provides sovereignty for all business conducted on Tulalip lands, provides added protection to domestic/family violence and yet our judges also perform marriages and child welfare cases. Tulalip's justice system is an answer to the legal pluralism caused by PL 280.

Oliphant v. Suquamish also diminished Tribal jurisdiction over non-Indian crimes on Tribal lands. Leaving Tribal lands across the nation lawless, leaving women without recourse for domestic and sexual violence, leaving victims traumatized and fearful. Their violators free to commit their crimes repeatedly.

VAWA initially failed to include Tribes to expand Tribal jurisdiction to include Tribes in the law. Indian women remained unprotected from non-Indian perpetrators, as *Oliphant v. Suquamish* removed Tribal jurisdiction over non-Indian criminals. Eventually, in 2010, President Obama signed an amended VAWA that gave Tribes jurisdiction over non-Indian perpetrators and extended the sentencing authority for Tribal Courts.

TLOA provided Tribes with resources to enter crime data into state and federal crime databases, but failed to give Tribes access to the databases to enter crimes committed on Tribal Lands. The TAP program of 2016 provides testing for Tribes to demonstrate their ability to adhere to FBI standards for entering Tribal crime data into the National Crime Database. A step forward in protecting all people on Tribal lands.

Pending US Supreme Court cases indicate that states continue to protest Tribal jurisdiction and Tribal Treaty rights. When Tribes appeal state actions and win in lower courts, states appeal to the US Supreme Court claiming Treaties are

invalid when statehood is obtained. Although, the US Supreme Court has ruled many times throughout centuries that Treaty rights are applicable today.

Federal Indian law, history of US response to Indian actions in the US Judicial system.

2. How do Tribes Respond to Federal Indian Law?

Crow Dog responded to Federal Indian law by appealing his murder conviction to the US Supreme Court. Setting the jurisdictional standards for generations following him. Captain Jack and Chief Leschi, both convicted of murder during war as war crimes and sentenced to hang. Yet, the Nisqually Tribe, who wanted retribution for Chief Leschi also appealed to the Washington State Supreme Historical Court to overturn his conviction. That court overturned Leschi's conviction, as his actions were during a time of war. While, all three Chief's fought for the protection of their people in the 1800's, the Chief's set the standards for future generations to respond to Federal Indian laws.

US Supreme Court decisions are detrimental to Tribes, yet sovereignty and jurisdiction challenges are normally upheld by the high court. When those decisions are not upheld by the high court, the Tribes respond with actions via court appeals, proposing and lobbying for legislation (getting our voices heard) as a whole rather than individually as independent Tribes. Organizations such NCAI or NIGA play a key role in educating politicians and the courts on Indian issues, sovereignty and jurisdiction.

Cherokee Nation did not give up after the first Marshall Court ruled against them. They continued to file their grievances in the high court until the court finally ruled in their favor. Resilience and consistency. Tulalip continues to file cases in the US judicial system to protect our people and the environment. Decisions are still pending the high court's rulings, yet we have faith that history will prevail.

National, regional, Tribal and independent forums provide a platform for Tribal members to get involved in protecting sovereignty. This platform also provides direction for Tribal members across the nation to get involved in Tribal, state and federal politics on behalf of their Tribes. MMIW challenges the lack of investigations for missing and murdered Indigenous women across the world. This forum creates a platform for Tribal members to public identify those agencies that have not resolved these investigations of missing and murdered family members across the nation. Their forum educates the public and politicians of a greater need to protect women and young girls from violence. These forums partially address Tribes response to Federal Indian policy. They are letting the government know they are dissatisfied with the number of MMIW and want action taken.

NCAI plays the role of all Tribes in one government. The leader is the President of Indian people, our President of Indian country. NCAI represents Indian country to educate US legislators and the public about Indian issues. The US promulgates laws without taking Tribes into consideration, centuries of no consultation with Indians about Indian laws. NCAI resolves the lack of communication by testifying to Congress about their actions, sending lobbyists to discuss Indian issues with Congress. NCAI as an organization protects the interests of Indian people with their presence. The NCAI leaders are proactive in approaching Congress; they no longer wait to see what Congress will do,

Interviews with Tribal members from across the nation do not provide one single definition of Sovereignty. Sovereignty is defined in multiple ways, but with the same meaning – self-governance. Most Tribal members answering the question “do you believe Tribal Justice Systems are truly sovereign?” most answer “no”. Their responses are common as they believe that the federal government interferes with our sovereignty with their actions, lack of actions and promulgation of laws that impact us without having knowledge of our communities and culture. The TAP program is a prime example of US interference by requiring a test program to ensure that Tribes are capable of meeting the government standards for using their National Crime Database.

Tribes respond with action, proactive abilities to walk in their world and succeed. For example, Tulalip retroceded from PL 280 and built an award winning justice system to include a Tribal Police Department and a Court System that provides resources to Tribal Members and other Native Americans that assist them in restoring their health and provide restitution to their victims. Senator John McCoy proposed state law that passed the legislature that recognizes Tribal Police as a State Peace Officer if the Officers meet the same State requirements as other law enforcement agencies.

3. What do Tribal leaders, elders and Tribal membership think about the effectiveness of Federal Indian Policy?

Crow Dog's US Supreme Court case seems to be a win for Indian country, as the standard was set for future generations when the court ordered the Dakota Territories did not have criminal jurisdiction for Indian to Indian crimes on Tribal lands. Mark Powless states that the primary issue in Crow Dog is that Tribes already addressed his behavior through generations of behavior modification and punishment that the Iroquois Confederacy practices still today. The high court only stated what Tribes already knew.

PL 280 and *Oliphant v. Suquamish* the Federal government stripped Tribal sovereignty, by delegating their jurisdiction to states. Chief Jay Goss describes the lack of funding and manpower that state law enforcement agencies experienced through this delegation. Leaving Tribes without assistance for crimes committed on Tribal lands. Celeste Hughes describes similar circumstances for California Tribes who are still PL 280 Tribes. She describes continued problems with PL 280 status with law enforcement agencies refusal to provide Tribes with assistance. She is hopeful that California Tribes will retrocede soon.

VAWA was amended several times before including Indian women in the act. For centuries, this omission left Indian women unprotected from domestic/family/sexual assault. Many Indian women died as a result of a lack of response from law enforcement. Tribes lacked jurisdiction to prosecute non-

Indian violators as a result of *Suquamish v. Oliphant* and PL280, in turn failed to protect Indian women from abuse and even death.

Tribal members Deborah Parker and Theresa Sheldon continue to testify to Congress about the impact of the US lack of actions to protect Indian women and children. Deb Haaland, newly elected Indian Congress woman defends Tribes right to be protected under VAWA. When VAWA was amended to include Indian women, Tribes have hope to protect Indian women and hold accountable their violators, whether Indian or non-Indian.

VAWA and the TLOA possessed the authority of the FBI to provide Tribal law enforcement agencies and Tribal courts with the resources to protect Indian people, to track protection orders that would prevent unauthorized purchase of weapons, to prevent unauthorized placement of Indian children in inappropriate foster homes, to prevent the employment of ineligible persons. Yet a tragedy occurred causing collateral damage to many youth and families before access was granted to Tribes via National Crime Database via the TAP program. Today, Tulalip and ten other Tribes across the nation are online with the TAP program.

The FBI waited until the death of five teenagers, a dad sent to prison, and an entire high school traumatized before allowing Tribal access to a resource authorized by federal law. This trauma, collateral damage and the impact to our community will never be forgotten. Community forgiveness is not in sight at this point for our little shooter or his family, and his dad will never get those years back that he spent in prison. However, the US did jump on reparation of their neglect to correct a wrong in their process.

Although, a tragedy occurred before granting such access, ten Tribes across the nation are currently entering arrests, convictions, and protection orders into the national crime database. This will help ensure the protection of women, children, men and Tribal employers by providing Tribes and outside agencies with important information concerning criminals. Yet, Tribes should focus on proactive approaches to missing resources. The more Indian politicians, the

better the stories at the legislative table to help in these instances. This is their opportunity to educate the other politicians.

Tribes struggled for decades with outside law enforcement agencies failures in aiding with enforcement of Tribal court orders. Tribal courts have made attempts to work through these failures with outside agencies. Chief Justices have provided the state law that grants Tribal Courts full faith and credit of any state court. Yet those law enforcement agencies continue to challenge Tribal courts. (1, 2017) The TAP program helps to ensure that outside agencies have the information on Tribal criminal data and once the test program is complete and Tribes have proved themselves fully capable once again, other Tribes across the nation will have the same access to enter their crime data into the National Crime Database. Once all Tribes have this access, all Tribes and other law enforcement agencies will have the Tribal Crime data nationwide.

“Public defenders are as committed to principles of public safety as prosecutors are. We want to ensure that an individual’s rights are protected all along the path of the justice system, the path for all of us, and we don’t want to see people wrongfully convicted, certainly not wrongfully accused.... (W)e want to ensure that justice is done. And at Tulalip that’s what we are trying to do. ”*Janice Ellis, Prosecutor Tulalip Tribes Testimony before the Indian Law and Order Commission, Hearing at Tulalip Indian Reservation September 7, 2012*

MMIW voice their thoughts on Federal Indian policy with their nationwide public protests about the lack of investigating for MMIW. MMIW struggle with the law enforcement agencies that fail to investigate missing Indigenous women. Another issue demonstrating federal laws are in place and yet those responsible for investigating do not. Similar to the neglect California Tribes experience with California law enforcement agencies. Yet, MMIW is formed by families, mothers, fathers, grandparents, sisters, brothers, auntie’s, and uncles who have missing family members. Organized protests in large cities and universities to voice their sadness and anger for those who cannot. These family members publicly announce their dissatisfaction with the jurisdictional maze caused by legal pluralism in Indian Country. They testify to state and federal legislators to

seek improved investigative authorities to law enforcement agencies to protect their women.

Jonodev Chauduri voices his thoughts nationally as well on behalf of gaming Tribes. As the Chairman of the NIGC, he announced that Tribes are fully capable of protecting their vested interest in the \$40 plus billion-dollar investments. He states the boogey man that Congress is concerned with has not made a presence in Indian country. Organized crime has not infiltrated Indian gaming as Congress feared. Tribes have responded to IGRA with responsible gaming, robust regulatory programs and the ability to protect our investment.

NCAI is the nationwide voice for Tribes to respond to Federal Indian law. NWIFC is the northwest response to Federal Indian law and US Supreme Court cases, to protect the fish, the environment and Treaty rights. NCAI forms relationships with the federal government and NWIFC forms relationships with state and federal governments. Both provide unity to speak on behalf of Tribes in response to Federal Indian law. Between these organizations, Tribes speak as one, Tribes respond with unity.

By asserting their inalienable rights, The Tulalip Tribes have been able to increase their standing within the area, as well as support funding for several varied community projects. Profits made today, will be reinvested in expanding the potential of tomorrow's youth. This mentality will lead to a strong, prosperous native community for generations to come for continued response to Federal Indian laws.

Tribe's responses to Federal Indian law is growing exponentially through lobbying efforts, organizing, participating and educating legislators on behalf of Tribes. Rather than address as individual Tribes, unity is key to protecting treaty rights and being heard. Tribes no longer wait and see what will happen. Tribes make sure they are heard. They participate on the state and federal processes, they will not be forgotten.

4. How can the promulgation of Federal Indian policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population?

Under the United States' Federal system, States and localities, such as counties and cities, have primary responsibility for criminal justice. They define crimes, conduct law enforcement activity, and impose sanctions on wrongdoers. Police officers, criminal investigators, prosecutors, public defenders and criminal defense counsel, juries, and magistrates and judges are accountable to the communities from which victims and defendants hail. Jails and detention centers often are located within those same communities. It's the American Way: local communities address local criminal justice problems with locally controlled and accountable institutions. In contrast, the Federal government's role is limited to enforcing laws of general application, and even then, Federal agencies often work in partnership with State and local authorities. (Department of Justice, 2017)

This familiar framework stands in stark contrast to the arrangements in federally recognized Indian country, where U.S. law requires Federal and State superintendence of the vast majority of criminal justice services and programs over local Tribal governments. In recent decades, as the Tribal sovereignty and self-determination movement endorsed by every U.S. president since Richard Nixon has taken hold, Tribal governments have sought greater management of their own assets and affairs, including recovering primary responsibility over criminal justice within their local Tribal communities. (Department of Justice, 2017)

This year (2019), two Indian Women ran for Congress positions and won. One of them nominated and appointed as the Speaker of the Floor to facilitate the Congressional meetings and hearings. Not only are these women the first Indian women elected to Congress, but she is the first Indian woman appointed as Congressional Speaker. She has put legislation on the floor for Native American Women day, testified at the most recent amendments to VAWA, and she appeared on her first day as Congresswoman in her traditional regalia. She states

that foremost she wants to provide a positive influence to young Indian women to be all they can be.

When Tribal law enforcement and courts are supported—rather than discouraged—from taking primary responsibility over the dispensation of local justice, they are often better, stronger, faster, and more effective in providing justice in Indian country than their non-Native counterparts located elsewhere. After listening to and hearing from Tribal communities, the Commission strongly believes that for public safety to be achieved in Indian country, Tribal justice systems must be allowed to flourish, Tribal authority should be restored to Tribal governments when they request it, and the Federal government in particular needs to take a back seat in Indian country, enforcing only those crimes that it would enforce in any case, on or off reservation. The Federal trust responsibility to Tribes turns on the consent of Tribes, not the imposition of Federal will. The Commission also believes that what is not warranted is a top-down, prescriptive Federal solution to the problem. (Department of Justice, 2017)

Some states struggle with Tribal sovereignty and defend their position on sovereignty through filing lawsuits with the US Supreme Court. Their hope is that the US Supreme Court will justify their beliefs that statehood eradicated Treaties and sovereignty. The US has joined Tribes in these lawsuits between Tribes and states, as when states challenge such sovereignty, they also challenge the US Constitutional jurisdiction over Tribes. Hunting, fishing, gaming, environment, education, health care, housing, etc., are all jurisdictional issues that states struggle with.

Although, states and the US struggle with legal pluralism with Tribes across the nation, the US promulgates laws that impact all three jurisdictions. While IGRA identifies Tribes as the primary authority of regulation of gaming, it also gives states concurrent jurisdiction over the regulation of Indian gaming. The US walks the fence between Tribes and states when they give states authority of any kind in federal Indian law.

PL 280 also grants states authority over Tribes for civil and criminal jurisdiction in Indian Country. Yet states fail to protect PL 280 Tribes by refusing to provide support when criminal behavior is conducted by non-Tribal members. This puts *Oliphant v. Suquamish* to the test when Tribes do not have their own justice systems such as in California. States that have jurisdiction over Tribes and fail to respond as needed, also fail to protect Tribal communities and their members. PL 280 requires as much effort as VAWA and TLOA from both Tribes and Federal legislators. PL 280 must meet the needs of California Tribes.

As John McCoy states, research and practice, educate the public and politicians, stay Indian.

7.4 Conclusion

The history of Federal Indian law is centuries old, this research only addressed a few of the thousands of laws the federal government promulgated in response to their own US Supreme Court decisions, or to actions by ancestors such as Captain Jack, Chief Leschi and all warriors before them. Tribes have learned to respond to Indian law by participating, lobbying and becoming involved in the federal government's processes.

We are still impacted by laws such as PL 280 that removed criminal jurisdiction and delegated to states. However, Tribes protect their own, they unite in organizations such as NCAI, NTGCR, NIGA, 13 Indigenous Grandmothers and MMIW. They make their voices heard.

As the end of writing this research, I learned that it is not Tribes responding to Indian law, it is the government responding to Tribes actions through their judicial systems. History has demonstrated Tribes ability to assimilate to the US judicial system and the US has responded by promulgating Indian laws, not vice versa. We are strong, survivors and resilient. They are chasing us, we are not chasing them in these two worlds.

The purpose of this study was:

1. to investigate the effectiveness of legal pluralism between Tribes and the Federal government
2. to study the impacts of legal pluralism on Tribes.
3. to evaluate the effectiveness of the Federal Indian policies for Tribes.

In effort to address the purpose, the research questions addressed the history of Indian Law, Tribes response to Federal Indian policy, Tribal leaders, elders and membership thoughts on the effectiveness of Federal Indian and how the promulgation of Federal Indian Policy be improved in order to achieve both the higher standards of efficiency and effectiveness to protect and serve the Indian population.

The research questions were answered through Indigenous Methodologies using oral history and traditions. Interviews of Tribal members, Tribal leaders and various organizations were conducted to obtain their perspective from boarding school era through today. Most importantly, their stories do not reflect the brutal boarding school history, but rather the result of strong leaders that lead us to where we are today.

The results of Crow Dog's Supreme Court decision continues throughout court cases today to establish Tribal Sovereignty over States jurisdictions. Chief Leschi's exoneration from his war crimes committed during a war retells his story of protecting his people. Indian authors writing books about how the laws impact Tribes or how US Supreme Court cases impact us. They all tell a story leaving our history in own words about the impact of legal pluralism and the effectiveness of Federal Indian policies for Tribes. Tribes have held the US to the words of the treaties; those words are used in US court decisions at all levels, upholding the treaties as the Supreme Law of the land.

Although, Indian history and Indian law go hand in hand, synchronizing the two at the hands of the US, Tribes strive to become stronger, to have our voices heard, to join a melting pot of legislative processes for all Tribes to become stronger in the political arena. If we are impacted by legal pluralism, Tribes bring in

expertise to ensure we are protected and considered equally in legislation. The experts evaluate the effectiveness of Federal Indian policies, inform and educate Tribal leaders and Tribes respond to inform and educate the US politicians. Tribal Members such as John McCoy and Debra Haaden elections to the Senate and Congress provide additional education to legislators. Moving us closer to equality at the hands of Tribes.

As we move forward to protect Tribal Sovereignty and Tribal Self-governance, Indigenous youth require the same education on political powers and legislative processes to maintain the political growth Tribes currently bring to the table. Our Tribal youth must learn Tribal history, culture and traditions and then apply them to the political world. They must learn to protect and serve Indian country with their knowledge for the next seven generations.

Tulalip has developed a Tulalip Tribal Youth Council. They are similar to our Board of Directors, to include a Chairman, Vice Chair, Secretary and Treasurer. The Tulalip Youth Council has attended our General Council³² meetings, while sitting at another Diaz in front of the membership. This allows the youth to listen to and hear the concerns of the Tribal membership, while learning how to mitigate Tribal issues. Many issues such as housing, Indian Child Welfare, employment, recovery programs, etc., are addressed at these meetings. Issues that the youth will experience as young adults and they can possibly bring new ideas to the table for future members. (Tulalip Tribes, 2019)

The Tulalip Youth Council developed a Unity Network Creed to guide them through their service to Tulalip Youth. Although, this Unity Network Creed does not relate to legal pluralism, as we know it today, the creed identifies the goals of Tulalip youth to grow and strive into Tribal Leaders.

Tulalip Youth Council
UNITY NETWORK CREED

I accept spirituality as an important foundations for a healthy, balanced
lifestyle;

...recognize that pride in my culture and preservation of my heritage give me

³² Annual Tribal Membership meetings.

strength and dignity;
...will be honest, understanding and respectful of the diversity and uniqueness
of self, others and our environment;
...know the importance of refraining from the abuse of alcohol, tobacco and
drugs to maintain physical and mental well-being in order to be a positive role
model for present and future generations, and finally ...make a personal
commitment to strive toward reaching my full potential. (Tulalip Tribes, 2019)



Tulalip Youth Council 2019

Tribal youth are the future of Indigenous people around the world. We must educate them to protect sovereignty, to stand up for sovereignty and to walk in two worlds. John McCoy's legislation for Time Immemorial requires Washington State to include the actual history of Tribes in the educational curriculum. The legislation requires the state educators to include Tribes as consultants to ensure the curriculum is accurate. (McCoy, Senator, 2017)

Once the Time Immemorial program is implemented, Tribal youth will learn their history in schools as well as in their homes, from Tribal elders, Tribal events and from their peers on the Youth Council. Tribal students should learn the

various levels of Tribal laws, similar to state and federal government levels that they learn in school. Students should learn how to amend the laws to meet the needs of the time, to provide community justice and fairness to all Tribal members.

The Tulalip Youth Council is on the road to experiencing Tribal Governmental Operations and politics. They are currently the voice for all Tulalip Tribal youth. The Youth Council provides a safe place for youth to increase or to find their identity in our world of unhealed trauma from boarding schools, from our school shooting, from the numerous deaths due to drug overdoses. They are our future; we need to educate them so that they can improve their own future and the generations following them.

Overall, in closing, this research provided healing in a manner thought impossible. The research tells the story of how a history of trauma, murder, slaughter, rape of children created generational and historical trauma for Indigenous people of the US. Yet, the story also provides the positive results of such trauma. A story of endurance, survival and strength of our ancestors. We cannot disappoint our ancestors. We must continue our work to protect sovereignty for our ancestors and for our own future, the future of seven generations. We must educate people and continue to demonstrate our abilities to live in two worlds for healing of Indigenous people everywhere. Our stories need to be told to create such healing processes. Our people must learn how and why we are the way we are, what our ancestors endured for our futures.

The following story completes the story of Tribes struggle, survival and resilience of walking in two worlds:

“Old Indian Woman”

From time to time I would sit and LEARN from her. On her 107th birthday I visited her and I said...

They took your land?

She said: It wasn't ours to keep.

They gave you smallpox blankets?

She said: But we survived the winter.

They broke the Treaty?

She said: it was merely paper.

They stampede buffalo at you when you stood by the cliffs.

She said: Our spirits flew and became eagles, hawks and crows.

They killed your leaders?

She said: they became our ancestors.

I was visibly frustrated with my old friend and that's when she smiled and said...

I used to be angry (like you).

Until I woke up and realized my LIFE is their constant failure. You see, despite their efforts I SURVIVED...and became an OLD INDIAN WOMAN.

(Unknown, 2019)

APPENDICES

Congressional assimilation

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FIFTEENTH CONGRESS. SESS. II. CH. 83, 84, 85. 1819.

STATUTE II.

March 3, 1819.

[Obsolete.]
Act of April 19, 1816, ch. 57. Instead of four sections, &c., any contiguous quarter sections, fractions, &c., may be located under direction of the legislature.

CHAP. LXXXIII.—*An Act respecting the location of certain sections of lands to be granted for the seat of government in the state of Indiana.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That instead of four sections, provided to be located under the direction of the legislature of the state of Indiana, and to be granted for the purpose of fixing thereon the seat of government for that state, it shall be lawful to locate, for that purpose, under the direction of the legislature aforesaid, any contiguous quarter sections, fractions, or parts of sections, not to exceed, in the whole, the quantity contained in four entire sections: Such locations shall be made before the commencement of the public sales of the adjoining and surrounding lands, belonging to the United States.

APPROVED, March 3, 1819.

STATUTE II.

March 3, 1819.

[Obsolete.]

Appropriations for finishing the wings of the Capitol.

Centre building.

Gates, iron railing, &c.,

Enlarging offices west of President's house.

Purchasing a lot of land, and supplying the executive offices with water. To be paid out of money in the treasury.

CHAP. LXXXIV.—*An Act making appropriations for the public buildings, for the purchase of a lot of land, and furnishing a supply of water for the use of certain public buildings.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That there be appropriated for finishing the wings of the Capitol, in addition to the sums already appropriated, the further sum of fifty-one thousand three hundred and thirty-two dollars.

For erecting the centre building of the Capitol, one hundred and thirty-six thousand six hundred and forty-four dollars.

For finishing the gates, the iron railing, and the enclosure north of the President's house, five thousand three hundred and forty-four dollars.

For enlarging the offices west of the President's house, eight thousand one hundred and thirty-seven dollars.

For purchasing a lot of land, and for constructing pipes, for supplying the executive offices and President's house with water, nine thousand one hundred and twenty-five dollars.

Which said several sums of money, hereby appropriated, shall be paid out of any money in the treasury not otherwise appropriated.

SEC. 2. *And be it further enacted,* That the several sums hereby appropriated, shall be expended under the direction of the President of the United States.

APPROVED, March 3, 1819.

STATUTE II.

March 3, 1819.

The President authorized to employ capable persons to instruct Indians in agriculture, and to teach Indian children reading, writing and arithmetic, &c.

CHAP. LXXXV.—*An Act making provision for the civilization of the Indian tribes adjoining the frontier settlements.*

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That for the purpose of providing against the further decline and final extinction of the Indian tribes, adjoining the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be introduced with their own consent, to employ capable persons of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic, and performing such other duties as may be enjoined, according to such in-

Chronology of Tulalip History

1792 Snohomish tribes meet explorer Captain George Vancouver, who concludes that they had not met Europeans or Americans before.

1820 Fur trade routes established though Puget Sound region.

- 1833 Possible date of Camano Head falling and burying a Snohomish village below it, causing a large number of deaths.
- h1841 Captain Charles Wilkes is the first American to chart the waters of Puget Sound.
- 1842 Settlers start to move into the Puget Sound region. U.S. Government starts to sell land and open areas for homesteads without having title to the land.
- 1848 The Oregon Territory is created with the provision that Indian lands and property cannot be taken without Indian consent.
- 1853 The Washington Territory is created as a separate entity from the Oregon Territory with the provision that the United States has the right to regulate Indian land, property and other rights.
- 1853 Several Americans build a sawmill and homesteads on Tulalip Bay. After the Treaty of Point Elliott is signed, the U.S. Government pays these settlers for their improvements.
- 1855 On January 22nd, Governor Isaac Stevens concludes the Treaty of Point Elliott at Mukilteo, which establishes the Tulalip Reservation.
- 1855 Hostilities erupt between Native Americans and whites in the Puget Sound Region, but the people in the area around the Tulalip Reservation are not involved.
- 1857- Father E.C. Chirouse, a French Roman Catholic of the Oblates of Mary
1863 the Immaculate, establishes and conducts a school for boys on the Tulalip Reservation.
- 1859 Treaty ratified by U.S. Congress, and soon, the Tribes that agreed to the treaty begin to settle in the vicinity of Tulalip Bay.
- 1860 More than 200 Indians have settled near Father Chirouse and he has 15 pupils. At Tulalip, an agency is established under the Washington Superintendence and an agent is assigned.
- 1859- Political appointees serve as Tulalip agents, followed by military
1869 officers.

- 1861 Revenue cutter Jeff Davis disembarks a detachment of troops to supervise the disposition of supplies to the Indians. In August, Growler arrives with first cargo of annuity goods promised by the treaty. The following month goods are unloaded and distributed to approximately 2,300 Indian people.
- 1861 Snohomish County is created.
- 1863 Father Chirouse opens a new school on the Tulalip Reservation.
- 1868 Sisters of Charity of Montreal begin the education of Indian girls on the Tulalip Reservation.
- 1869 Father Chirouse receives a contract with U.S. Government to support the Tulalip Mission School of St. Anne.
- 1875 Congress extends the homestead laws to Indians willing to abandon their tribal affiliation.
- 1875 Canning process improves and a large commercial fishery begins to develop.
- 1878 Oblate fathers lease Tulalip Mission School and the U.S. Government transfers boys to Sisters of Charity school in the same location.
- 1883 John Slocum founds the Indian Shaker Church near Olympia, a form of religion that some Tulalip people will join.
- 1884 Allotment of Tulalip Reservation begins.
- 1887 Congress passes the General Allotment Act, also called the Dawes Severalty Act, which allots land on reservations to individual Indians. Remaining reservation lands are then sold. The Tulalip Reservation will be completely allotted to tribal members.
- 1889 Washington becomes a state.
- 1891 Seattle and Montana Railway is completed through Marysville. This rail service is the first in the vicinity of the Tulalip Reservation.
- 1896 Congress objects to federal support of sectarian schools and reduces financial support to the Tulalip Mission School. The Catholic Bureau

	of Indian Missions increases its contributions to the boarding school on the Tulalip Reservation.
1900	Government assumes possession of school buildings and begins conducting its own school.
1901	Position of Tulalip Indian agent abolished in favor of a school superintendent. The first superintendent is Dr. Charles M. Buchanan.
1902	A new school is built on Tulalip Reservation, called the Tulalip Indian Boarding School.
1915	A Tulalip Indian is jailed for hunting on contested reservation land. Buchanan writes to Washington State Legislature urging recognition of Indians' treaty rights.
1920	Dr. Buchanan serves until his death.
1912	First Tulalip Treaty Days celebration is held through the efforts of William Shelton to preserve the songs and dances.
1916	Destruction of fish habitat begins through logging, dredging, agriculture, industry and the creation of dams, sewage systems and housing developments.
1924	Indian Citizenship Act passed by Congress. Indians become citizens and can now vote.
1924	Steelhead becomes a game fish.
1928	The Problem of Indian Administration, also called the Meriam Report, is presented and is highly critical of U.S. Indian policy and urges reforms. Improvement in Indian welfare follows.
1930	Beginning of fish ladders being installed on dams.
1933	Steelhead becomes a sport fish.
1934	Indian Reorganization Act is passed by Congress, enabling tribes to organize in local self government and elect leaders.
1935	Indians of the Tulalip Reservation write a constitution and vote to approve it.

- 1936 The secretary of the Interior approves the Tulalip Constitution, and Tulalips elect their first Board of Directors.
- 1939 Tulalips begin to lease land for homes on Tulalip Bay.
- 1946 Congress creates Indian Claims Commission to settle disputes between Indians and the Federal Government.
- 1950 Tulalip Agency of the BIA is moved from Tulalip Reservation and the new Western Agency is located in Everett, Washington.
- 1968 Puyallup Tribes v. Washington Department of Game (U.S. Supreme Court) allows the state to regulate Indian fishing for conservation purposes.
- 1973 Washington Department of Game v. Puyallup (U.S. Supreme Court) gives Indians the right to fish steelhead.
- 1974 U.S. v. Washington State (the Boldt decision) gives Washington Indian Tribes the right to co-manage fishing resources and take 50 percent of the harvestable fish.
- 1975 The Indian Self-Determination and Education Assistance Act is passed, allowing Tribes to assume responsibilities formerly reserved to the BIA.
- 1978 The American Indian Religious Freedom Act passed, which protects the traditional religious practices of Native Americans.
- 1979 U.S. Supreme Court upholds the 1974 decision of U.S. v. Washington (the Boldt decision).
- 1979 Tulalip revives the First Salmon Ceremony, which continues to be held annually.
- 1985 Pacific Salmon Treaty signed between the United States and Canada.
- 1985 Puget Sound Salmon Management Plan adopted by the Washington Department of Fisheries and the Indian Tribes with the Puget Sound Region.
- 1985 Puget Sound Water Quality Authority is created by Gov. Booth Gardner, with Tribal representatives being appointed to it.

1990 Native American Graves Protection and Repatriation Act passed by
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(TTT, 2018)

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CFR TITLE 25

List of Subjects revised as of Jan. 2, 2018.

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VAWA Washington State Senator Patty Murray testimony to Congress

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VIOLENCE AGAINST WOMEN ACT

Mrs. MURRAY. Mr. President, I rise today to speak about the Violence Against Women Act, which Congress has finally reauthorized after many delays. As my colleagues know, the final bill passed the Senate on Friday, it passed the House on Saturday, and it is now headed to the President for his signature.

As domestic violence leaders in my home State of Washington will tell you, this reauthorization is long overdue. VAWA has been a critical tool for fighting domestic violence, and it should have never been allowed to expire. The Republican leadership finally recognized that, and now we will strengthen and expand that critical law.

Today I want to discuss some of the improvements we have passed--including new tools related to health care, housing, and abuse that involves police officers. I also want to share my disappointment that the economic protections I have worked to include were removed when this bill was considered by the Senate Judiciary Committee.

I have tried to advance critical economic protections at every turn, and I want to update my colleagues--and advocates in Washington State--about where those efforts stand. I do want to thank several of my colleagues for their hard work on this bill, including Senators Leahy, Specter, Biden, Hatch, and Kennedy.

The original Violence Against Women Act, VAWA, created a national strategy for dealing with domestic violence. And that strategy has been very successful. VAWA brought together victims' advocates, social service providers, and law enforcement professionals to meet the immediate challenges of domestic violence. This bill reauthorizes and strengthens those core programs.

This bill also creates new programs that represent important steps forward in areas such as health care, housing and officer-involved abuse.

The first new step concerns health care. For the first time, VAWA includes a national health care response to domestic violence, dating violence, sexual assault and stalking. It authorizes new grants to train health care providers to recognize and respond to domestic or sexual violence. These grants will help establish partnerships between victims service providers and health care providers in State hospitals and public health departments. It also provides funding for direct services for sexual assault victims, including 24-hour emergency and support services.

Second, this law now addresses housing inequities for victims by providing new grants to help victims find long-term housing. It also protects the confidentiality of victims who are receiving assistance from Department of Housing and Urban Development-funded programs. VAWA also now includes provisions to protect mail-order brides and expands protections for immigrant victims.

This legislation also addresses the issue of police officer-involved domestic violence. I have spoken about this issue on the Senate floor before because of a terrifying case in Washington state. In April 2003, Tacoma police chief David Brame shot and killed his wife, Crystal Judson Brame. Then he took his own life, all while their two young children watched. The final tragic act was the last in a long history of abusive events.

In response to this incident, the City of Tacoma, the Tacoma Police Department, and others formed a task force to examine officer-involved domestic violence. They created a new policy for the Tacoma Police Department, and they helped pass a State law which requires that departments have policies on officer-involved abuse.

This VAWA bill gives local communities new resources to deal with abuse that involves police officers. It funds the Crystal Judson Domestic Violence Protocol Program. It allows law enforcement agencies, victim service providers, and Federal, State and local governments to use STOP grant funds to create new protocols for handling officer-involved domestic violence.

What happened in Tacoma is a tragedy that cannot be weighed. Out of that tragedy, Washington State changed its laws, and now the Federal Government is giving communities across the country new tools to address officer-involved abuse. So that new provision--along with the healthcare and housing measures--represent new progress in fighting domestic violence. But frankly, we have got

a lot more work to do. I am deeply disappointed that the economic protections I have been fighting for since 1998 were not included in this reauthorization--despite some early progress.

If we are going to break the cycle of violence, we need to address the economic barriers that trap victims in abusive relationships.

We know that financial insecurity is a major factor in ongoing domestic violence. Too often, victims don't have the financial strength to leave a violent relationship. As a result, they are forced to choose between protecting themselves and keeping a roof over their heads. When a victim cannot afford to move out, or cannot afford to pay the rent, or has lost a job because of abuse, that person is trapped, and Congress needs to help free them from that trap.

In this bill, we had an opportunity to help victims. In the Senate version of the bill, I worked to include an unpaid leave provision. It was in the Senate version, but it was dropped by the Senate Judiciary Committee.

In my view, that was wrong. It is like leaving someone trapped in a burning building. We should have knocked down the barriers and thrown open the exit doors, but the Senate failed and that will have a real impact on people trapped in abusive relationships.

The protections I sought were reasonable. It would have allowed victims to take up to 10 days of unpaid leave per year to address domestic violence. Over 40 percent of American workers get no paid time off. They cannot use vacation time to address abuse, and missing work puts them in danger of losing their job. My provision would have allowed victims to take unpaid leave to get a protective order, see a doctor, or make a safety plan.

But unfortunately, there was opposition and complaints about jurisdiction, and these protections were stripped from the bill during consideration in the Judiciary Committee.

Once those protections were dropped, I kept fighting. I offered another tool to help victims escape abusive relationships. I asked the managers of the bill to include a provision on unemployment insurance. I asked them to provide victims of domestic violence, dating violence, sexual assault, or stalking with unemployment insurance if they have to leave their job or are fired because of abuse. We know that a job is often the only way for victims to build up the

resources to leave a violent relationship, but abuse and stalking can make it impossible for a victim to keep a job.

Many of my colleagues may recall the story of Yvette Cade, of Maryland. As reported in the Washington Post, Ms. Cade's estranged husband showed up at her job at a wireless phone store, threw gasoline on her, and lit her on fire. A restraining order against her estranged husband had been dropped shortly before the incident, even though she had indicated he was still threatening her.

Ms. Cade was burned over 60 percent of her body and remains in the hospital. There are many more cases of abusers who deliberately sabotage a victim's ability to work, placing harassing phone calls, cutting off their transportation, and showing up at the workplace and threatening other employees. When a victim loses a job because of violence, that victim should have access to unemployment compensation benefits.

Some people might claim that it is too expensive to allow victims to access unpaid leave. But I would remind my colleagues that domestic violence imposes costs on a workplace too. When violence follows victims into the workplace, it doesn't just hurt victims--it hurts their employers. It means less productivity and higher insurance costs.

So anyone who says it is too expensive to provide unpaid leave should also remember that domestic violence is expensive to businesses in both lives and dollars. Providing the tools that will allow abused women to escape abusive relationships can help offset billions of dollars in costs that domestic violence imposes on businesses.

Unfortunately, my efforts to include unpaid leave provisions were rejected as well. But I am not giving up. I have been at this since 1998 and I know who I am fighting for. I have been to the shelters in my State, and I have talked with the victims. I have met with their advocates, and I am not giving up on them.

I am going to keep pushing for my SAFE Act, which stands for the Security and Financial Empowerment Act. It contains the protections victims need to break the cycle of violence. I thank Senators Leahy, Corzine, Dayton and Dodd for signing on as original cosponsors, and would invite all of my colleagues to sign on as well.

I am going to continue to tell their stories because we need to hear their voices here in the Senate. It is easy to argue about jurisdiction, but that doesn't mean anything to someone who is getting beaten up every night. It is easy to argue about the cost of unpaid leave--but that doesn't mean anything to someone who needs to get a protective order so they can escape a violent relationship.

This Congress has a lot of work to do to help victims, and I will come to this Senate floor as many times as it takes, until we finally give victims the help they need and deserve.

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