

**10x Red: Exploring MMIW Case Jurisdiction Through a Lens of Trust in Law
Enforcement, Sovereignty and Healing**

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“A nation is not conquered until the hearts of its women are on the ground. Then it is finished, no matter how brave its warriors, or how strong their weapons” -Tommy Orange

At the start of my research, I came across the following statistic: Native women are 10 times more likely to be murdered than the national average in the United States. As an Indigenous woman from Yaqui and Purepecha roots, the Missing and Murdered Indigenous Women epidemic is always in the back of my mind. As young women, many of us are raised to be hyper aware that we are the demographic of women that are most at risk of being a statistic. I grew up going to a reservation in Northern Nevada where missing women, and funerals for women relatives were more common than weddings. Where I was not allowed to wander too far off when I reached a certain age because my family did not want me to become one of those numbers. Though, what most people don't see beyond these statistics is the family and community that exists behind these women. The beautiful strong women that are raised in these communities rooted in resiliency despite the fear looming in front of them. In this literature review I remain unbiased to the research I have found and chosen to include.

Though this literature review is based on scholarly articles, law reviews, law journals and dissertations; this literature review is written for the Native communities who have long suffered the consequences of violence against their women. There is a lack of sources in general when it comes to MMIW and its relationship to court systems, policing systems and community healing; though the work to identify key problems in the current system is starting to appear. There is an even larger gap between knowledge of the court/policing jurisdiction systems and the Native communities they are supposed to serve. There is work to be done within Native communities and within the way policing and law enforcement handle MMIW cases. This work could benefit

from more research, policy efforts, healing, sovereignty policies and much more branches that MMIW touches; though to hone my research, I focused on five separate key terms that guided my research and appeared frequently throughout the literature from various Native scholars.

The first key term that underlined the entire foundation of my research was the word *Justice*. Though this word would come to also be the very system that I was aiming to understand and decolonize. Throughout my research I learned that justice has many definitions depending on the context it is being used in. In the case of my research, I explored what the state court system considers justice, versus how Native families and loved ones of the MMIW viewed justice. In law journals, written by Brooke Hare and Elaina Erola, justice comes to be defined as the justice that is served when a case is solved or closed in the courts or through law enforcement.

According to this definition “justice” ends there. For Native scholars, such as Cutcha Risling-Baldy and Deborah Miranda, justice comes to have a different definition that goes much farther than the court system implies. Their definition of justice is an act of decolonization to heal from the effects of colonialism that are still causing damage to their communities. This is the emphasis of my research, and the question I was asking myself throughout, but how do you decolonize what justice means? Each author presents their own definition, and it is through the lens of decolonization that we begin the healing. Ultimately, the justice of the current court system is not the justice these families are seeking.

In order to fully understand how to decolonize justice, there also needs to be an understanding of the legacies colonialism has left behind. Violence against Native women was used as a strategy of colonization, the second key term. This continued violence is a remnant, or a legacy passed down from colonialism. Authors like Risling-Baldy, Miranda and Luhui Whitebear all discuss these legacies of colonialism through an in depth analysis of the trauma

and history of colonialism. Though, other authors like Hare and Erola describe the legacies of colonialism through the lens of how the colonial system continues to affect Native women. In this literature review, the authors discuss different forms of legacies of colonialism and how they appear in the modern MMIW movement.

Alongside my two main key terms, there are three other smaller themes that were prominent in the writings on MMIW and decolonization of justice. One prominent theme is the conversation surrounding tribal sovereignty. Tribes have long been fighting for sovereignty on stolen land, though the sovereignty laws they fight for, are the same laws that put limits on how MMIW cases are handled. Another crucial component of understanding MMIW case jurisdiction are the tribal courts and their current systems. Tribal court is not only a sovereign right, but also an exploration of decolonization within the justice system for MMIW cases. Native feminism was the final theme that emerged throughout my research, especially through how communities are taking care of themselves and bringing back traditional ways in order to decolonize and undo the lasting impacts of colonialism. The definitions of these key words were also deeply rooted in the writing of various authors that appear in the *Native Keywords* book which features; Vine Deloria Jr, Elizabeth Cook-Lynn, Susan Williams and M. Kathryn Hoover. These authors come together to help set the foundation for defining these key terms with a Native lens which is crucial in MMIW research, community work and healing.

Methods of Colonization and Legacies of Colonialism

The Missing and Murdered Indigenous Women movement exists to bring awareness to the epidemic that affects the women of Native communities. Though many epidemics that plague Native communities originated from the lasting impacts of colonialism. Communities are reeling

from the trauma of colonization and falling into patterns of abuse, alcoholism, and violence. Women are raised in these communities knowing that they are more likely to experience violence in their lifetimes. However, this is not the way it has always been for women in their own communities. In this section I will be looking at three authors; Dr. Cutcha Risling-Baldy, Deborah Miranda and Luhui Whitebear, all who are Native women writing about their own communities and how colonization and strategies used in colonization such as rape, sexual violence and violation of Native bodies has led to a changed perception of women in their own communities and even further, a continued cycle of violence that we now know as the MMIW epidemic.

It has become normalized for women to be victims of misogyny, contrary to traditional teachings, women were seen as sacred beings that were respected by their communities. A Native scholar named Dr. Cutcha Risling Baldy who comes from the Hupa, Karuk and Yurok tribes, and is an enrolled member of the Hoopa Valley Tribe researches Native feminisms and how they are crucial to a post-colonial Native existence. In her book, *We Are Dancing For You: Native feminisms and the revitalization of women's coming-of-age ceremonies*, she specifically analyzes the effects of colonization on the perception of Native women, She breaks down how the strategies used by colonialists sought to break down the women in these Native communities. Risling-Baldy in chapter 2 writes about how important these strategies were to colonialists in order to conquer California Native people, “Women especially, once centrally important to many Native societies, were targeted for gender violence because of how important they were to culture and politics in their communities. Antonia Castaneda writes that ‘in California as elsewhere, sexual violence functioned as an institutionalized mechanism for ensuring subordination and compliance. It was one instrument of sociopolitical terrorism and

control—first of women and then of the group under conquest.” (Risling-Baldy 54) looking at California’s colonization history is crucial to understanding how the past trauma of Native ancestors has continued forward and exists in present day violence against women. As Risling-Baldy points out, women were targeted specifically because of their empowerment and leadership roles that were crucial to the functioning of Native communities. Colonizers specifically targeted women and used sexual violence to violate and degrade women. This was rewriting what women were taught through their traditions. Taking away the empowerment of women created space for colonization to thrive therefore allowing for mistreatment of women by abusers.

Another Native scholar, Deborah Miranda dives into archives that recount colonization in California, documenting the shift in how women were treated prior to colonial arrival, and how sexual violence was used to degrade women. In Miranda’s article, “Saying the Padre Grabbed Her” she recounts the story of a California Indian woman named Vicenta Gutierrez who suffered from colonial sexual violence. In Miranda’s piece, she explores more of Vicenta’s story and uncovers strategies used by colonizers in order to dominate their communities while leaving their women in pieces. Miranda writes, “Thus, Isabel’s story about Vicenta becomes a historical microcosm of rape as a primary tool of colonization. These actions include not only violence against native women’s bodies, but a rape of native men’s masculinity, and qualify as a kind of torture, both emotional and mental, of both spouses.” (Miranda 94-96) What is truly unique about the archivist work that Miranda does, is that it uncovers not only the truth of what happened to women at the time of colonization and the use of women’s bodies as a strategy for colonization, but it also uncovers the beginning of the origins of the toxic masculinity that remains as a consequence of colonialism.

Both Risling-Baldy and Miranda detail the horrors of colonialism and how women were targeted in order to accomplish a complete takeover of the land here in California. What is crucial to understand from both of these Native women authors, is that the current perception of Native women does not reflect past representation of women as “sacred beings” but instead incorporates colonial views of women that emphasizes manipulation and a focus on their bodies. This was not something that was passed down in tribal traditions. The current perception of Native women in tribal, urban and modern communities is a direct consequence of colonization.

Such high numbers of sexual violence committed against Native women is a direct consequence of colonization, and Miranda begins to detail just how much colonialism shifted the perception of Native women and how they are treated. Miranda compares the story of Vicenta to one of a woman from the Caribbean who was also subjected to rape as a tool in order to demonstrate the colonial strategy that women were subjected to. “From this Caribbean woman to Vicenta Gutierrez we see a direct line to contemporary rape statistics among American Indian women: one in three of us is sexually assaulted, more than 2.5 times more likely to be raped than any other ethnic group, and 80% of those rapes by non-native men (Amnesty,2). Along the way, we learned these lessons: Indian bodies are inferior bodies. Indian women’s bodies are rape-able bodies. Indian bodies do not belong to Indians, but to those who can lay claim to them by violence.” (Miranda 96) Miranda writes of something that is unfortunately considered a “legacy of colonization” that has been passed down from generation to generation and has now landed these communities in an epidemic of Missing and Murdered Indigenous women. Looking at the historical pathway that was paved from rape as a colonial strategy, to the current effects of misogyny and the growing violence against Native women in their own communities.

Another scholar named Luhui Whitebear discusses the path from colonization to how the perception of Native women is within their communities through a lens of Native feminisms. Whitebear's journal titled "Resisting the Settler Gaze: California Indigenous Feminisms" analyzes that sexual violence against Native women as a direct result of what she calls the "settler gaze" which hyper sexualizes, and degrades the Native body, much how Miranda described from the archives. Whitebear "For Indigenous women and Two-Spirit people, the settler gaze has been used to depict our bodies as being deserving of violence due to heteropatriarchal and heteropaternalist constructions of perceptions that we are 'weak, incompetent, naïve, and confused' (Arvin, Tuck, and Morrill 2013, 13). The continual over-sexualization of Indigenous women has also created a means to embed these violences into everyday life and in law and policy." (Whitebear 101) Whitebear reinforces the theme that all three of these Native women authors have come to, where it is detailed that there is a pipeline of tribal communities being so heavily affected by the trauma of colonization and sexual violence that women and men have endured that the perception of women in these communities has shifted along with it. Whitebear puts in very clear words that the "settler gaze" which stems from colonialism is one of the core reasons women are suffering from sexual violence, violation of their bodies and murder.

All three of these women focus on a crucial part of history that reshaped Native women as a part of their modern day communities. Cutcha Risling-Baldy breaks down colonial strategy and emphasizes that women were used for their leadership roles and sacredness in order to break down the communities surrounding them. Deborah Miranda reached for the archives to further discover that women were strategically used and violated to erase the knowledge of empowerment they once had. Miranda brings forward a crucial point discussing how men were

also violated of their manhood which fuels the misogyny that we see in modern communities. Whitebear continues to analyze how colonialism shapes what women are now taught through generations and that the harm of colonization brings forth the sexual violence that came with it. However, Whitebear brings into conversation how this current, harmful perception of Native women is now affecting policy, and more importantly law. When it comes to the modern colonial violence, we land on the MMIW epidemic which lacks resources, representation and most of all, conflicts with the current laws making it extremely difficult if not impossible to find a solution. In the next section I will be exploring how laws and court systems play a role in the continued MMIW struggle and ongoing legacy of colonization.

Colonized Court Systems and Evading Jurisdiction

The trauma of colonization and the lasting impacts of colonialism is deeply rooted in many systems that are core to the vision of justice the United States relies on. The court system in this country has continuously failed Native women who have gone missing or who have been murdered. The continued cycle of distrust of policing systems throughout Indian country has allowed for a record high number of unsolved cases, and missing and murdered Indigenous women. Though what is most complex when it comes to MMIW cases and case jurisdiction, is that the exact policies in place to bring tribal sovereignty, are also the exact policies that cut off resources that could be used to help these families find the women from their communities. In this section, I use the case of *Oklahoma v. Castro Huerta*, along with multiple law review articles written by Native, practicing attorneys that explore not only the cycle of policing and MMIW, but also explore the policies in place that make it difficult to bring these women justice.

MMIW case jurisdiction is unfortunately complex for a number of reasons. When looking at MMIW cases, it is important to know that there are two types of MMIW cases that are brought to court. One is a non-Indian offender against an Indian woman, or an Indian offender against an Indian woman as it is explained in court. This information is crucial to how case jurisdiction follows each specific MMIW case. The second factor that increases the complexities of how MMIW cases are handled, is whether the offense occurred on Indian tribal territory, or if it occurred off of tribal territory. When it comes to criminal jurisdiction, if the person who committed the crime is a tribal member the tribes then have complete criminal jurisdiction over the offender and the case itself. If the offender is non-Indian, and the crime is committed on Indian territory, federal law under the Women's Protection Act gives tribes the jurisdiction over the case, depending on the land the crime was committed on. (Public Law 280) Each state also has provisions on how tribal courts can or cannot have jurisdiction over tribal matters or cases involving tribal matters and MMIW cases. Along with these complexities comes a hesitancy from states and federal courts to step in when tribal courts no longer have the resources to address and solve these cases. The main hesitation comes from an infringement on sovereignty laws which not only continues a distrust of law enforcement and the notion that "police will do nothing" when it comes to tribal needs, but it also creates a loss of resources for the families whose cases are on hold due to a lack of resources within the tribal courts and tribal police forces.

The complex relationship of case jurisdiction I detail above really began with the case of *Oklahoma v Castro-Huerta*. This case began as a child-abuse and child neglect case brought against a father named Victor Castro-Huerta. His daughter was a member of the Cherokee Nation and they both lived on Muscogee Nation Tribal Reservation which is designated tribal land.

Since Castro-Huerta was a non-Native man, the tribal court and state court battled on who had jurisdiction due to existing sovereignty laws and tribal territory laws. The case moved all the way to the Supreme Court where there was a 5-4 decision made that voted in favor of the state's involvement in cases involving a non-Native offender. With this vote, came a huge retaliation from tribal territories due to what they felt was an infringement on their sovereignty to be seen as individual and free nations, rather than an entity of the state (*Oklahoma v Castro-Huerta*, Brooke Hare). This case began a shockwave of not only retaliation amongst tribes, but also directly changed the way that case jurisdiction works for tribal courts and tribal policing. The direct effects of a ruling like *Oklahoma v Castro-Huerta* hit MMIW cases in a way that not only limited resources within policing, but now created more and more obstacles. Brooke Hare, during her time at Denver Law School wrote in a law review journal titled, "Re- Writing Precedent: An Exploration of the Negative Impact on Native Rights in the Wake of *Oklahoma v. Castro-Huerta*", "Additionally, the relationship between state and tribe 'can impact service delivery quality.' 'Many states, counties, and local governments actively ignore treaties' and instead expend resources to dispute the jurisdictional bounds of Indian Territories. When resources are used to dispute jurisdictional bounds, they are not, in turn, used to actually deliver police services." (Hare 435) The impacts that a federal level case like this one had, not only began to infringe upon tribal sovereignty, but also created an excuse for state policing systems to not provide adequate resources for MMIW, or to simply not touch these cases in confusion of certain state jurisdiction.

Hare makes a connection between MMIW case jurisdictions and the *Oklahoma v Castro-Huerta* case is at the core of the jurisdictional confusion between the state, the tribes and the Federal government. However, another author named Elaina Erola who was writing for the

Texas Tech Law Review believes that the core of the jurisdictional problems we are seeing in MMIW is a direct link to another case. In her article, *Legal Obstacles in the Epidemic of Missing and Murdered Indigenous Women in the United States*, Erola argues that the jurisdictional trouble we see today is a combined result of Public Law 280 and the *Oliphant v Suquamish* case. This case followed two non-Indian men who assaulted a tribal officer. The case was taken to the Supreme Court and it was ultimately decided that tribal courts do not have jurisdiction over cases involving non-Indians. This even further complicated the jurisdiction process for MMIW cases. Erola explains this complication in a very tangible way, “If a woman is raped, trafficked, or murdered, it must be handled by federal jurisdiction. If it is a minor crime and the perpetrator or the victim is Native American, it can be handled by tribal authorities. However, if the crime occurs in a state where PL 280 applies, there is no federal jurisdiction, and the perpetrator must be prosecuted by a state jurisdiction, a tribal jurisdiction, or a combination of both.” (Erola 170) She also explains that after the *Oliphant v Suquamish* case it created more complications to who would have jurisdiction over the MMIW cases based on how, who, and where it occurred.

Both cases discussed in this section were crucial points of origin for the court system's complications for court jurisdiction over these cases, though one thing is clear from any angle; justice is not being brought to these families. After the Supreme Court decision on *Oliphant v Suquamish*, the prosecution for MMIW cases fell to less than 8% (Saunooke). This justice system is not working for the families of these women and it is clear that with the continued complexity of sovereignty, court jurisdiction and the increasing numbers of MMIW, there needs to be a change in how these cases are addressed. This justice system is not working.

Decolonizing Justice and Helping Our Own

Beyond the historical analysis and the jurisdiction complexities that come with the MMIW crises in Native communities, this issue cannot be viewed solely through these two lenses. It is crucial to understand how much these numbers have come to affect Native women and their loved ones. There is a saying that goes around Native communities that says, “when you’re Native, you go to more funerals than weddings.” and this is a direct result of the legacy that colonialism has left with Native peoples. It is common in Native communities to know a woman who has gone missing or who has been murdered. MMIW is a very real crisis that leaves lasting trauma on our peoples. Though it is through this hurt and trauma that the fight for justice emerges.

For Native communities in the US, the hit of a gavel in the courtroom is not their own definition of justice. It is simply not enough to heal and serve justice to all the hurt and trauma that is caused to these communities. Where does this leave the Native communities that are being affected? The MMIW movement began as a way to combat the violence and to bring national attention to the high numbers of women that were being affected. Though beyond the fight for national recognition, and a call to action, tribes are taking action internally to begin the healing process for the families affected, while also learning what a decolonized version of justice looks like to them, and not the court system. For some, this took the form of bringing awareness to MMIW through the act of running in their tribal territories, or it may look like an even longer process of decolonization in their own tribal communities in order to bring back matriarchal roles, and the respect for women that existed before colonization.

When the court systems fail to bring justice to MMIW, Native people take it on themselves to begin the healing process. Two Native women named Rosalie Fish and Jordan Marie Daniel, who are marathon runners in their communities began to use running to not only

bring awareness to MMIW, but to also cope with the weight of losing women in their own circles and tribes. Author Robert O. Saunooke wrote about the two women who used running as their way of carrying this burden; “‘You’re running for Misty and Jackie and Renee and Alice. But you’re also running for your little sister Solstice and your older sister Cedar, and you’re running for my daughters Nyala and Khalil. And you’re running for all of the little girls at Tribal school, and you’re running for indigenous women everywhere.’ And he said, ‘That matters most to you, not how tired you are.’” (Saunooke 23) These words were said to Rosalie one day while she was running a marathon, and what her coach said was completely true. These women do not run just to win the race, but they run to bring awareness to this epidemic and how many lives are lost in our communities.

Though this burden is heavy to carry for the community alone. Jordan Marie Daniel shared with Saunooke that carrying the burden puts a lot of weight onto her shoulders. She mentions that seeing the data of the increasing numbers of women going missing or being murdered is enough to put her in a dark environment (Saunooke 22). This burden is a heavy one to carry, especially for such few people in their communities. There is not much of the burden being lifted by the government or the state court system. As Saunooke also points out in his article, that 90% of the offenders that are non-native, were never prosecuted (Saunooke 22). The current system is not serving justice, nor is it helping solve the MMIW epidemic, and leaves the communities to heal on their own.

The current systems in place are not working for our communities. The current court systems are not bringing justice to these women and their families. When looking into potential solutions to the MMIW epidemic, I knew I would not land on a sole answer. This issue is far bigger, and one “solution” is not enough to bring justice to these families, though looking at how

we as communities could begin to decolonize internal systems that are contributing to the MMIW crises. Turning to look at tribal courts, there are many that are still struggling for resources, and jurisdiction rights in their own land; but there are tribal courts that are no longer seeking “justice” as defined by the court system. Now the tribal courts are looking to their communities and taking justice much further than closing the case. The Yurok tribal court in Klamath, California is providing support for MMIW survivors and their families beyond legal help. Their new project titled *To’ Kee Skuy’ Soo Ney-Wo-Chek’ (I Will See You Again in a Good Way) Project* aims to bring justice to these families through “Yurok Tribal Court initiative focused on justice, healing, and prevention. We honor and seek justice for missing and murdered Indigenous individuals by: Advocating for systemic change; Supporting affected families; [and] Strengthening collaboration between tribal, local, state, and federal partners.”

(Yuroktribalcourt.org) This kind of initiative is aiming for a decolonized form of justice by looking past the lawyers and court cases. Instead they are rooted in healing and restoration in their communities. This is a system that could help bring justice to MMIW and begin the decolonization work that we need as a community.

The Missing and Murdered Indigenous Women movement is one that has touched many families, communities, tribes and women. Our communities are hurting, and the current system in place to bring “justice” to our families is not working. I believe that based on what these authors have written, it can begin with a decolonization of our own communities. When reading Risling-Baldy’s work and Whitebear’s article, it becomes clear that our communities could benefit from bringing back the way women are valued in our traditions. Decolonizing the settler gaze, while also fighting for more clear jurisdictional boundaries could potentially help our MMIW relatives. The relationship between the state, federal and tribal courts needs to be

stronger. In many cases, jurisdiction is unclear and our relatives do not get the help they need in these cases. MMIW is something that all women in Native communities are taught to be cautious of. We are told to be aware and alert since the statistics are so high. It should not have to be this way. Though in the meantime let's continue to fill the gaps of data on MMIW, and continue to fight for a decolonized form of justice.

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