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NATIVE AMERICAN REPRODUCTIVE HEALTH LAW—REPRODUCTIVE JUSTICE: THE POLITICS OF HEALTHCARE FOR NATIVE AMERICAN WOMEN

Reviewed by:
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"No Money, No People, No Service"- Sarah[1]

I. INTRODUCTION

One in four Native American children are born in Indian Health Services ("IHS") hospitals.[2] After birth, Native American women are four times more likely to hemorrhage, three times more likely to have gestational diabetes, and preeclampsia occurs twice as often than the national average.[3] On the Pine Ridge Reservation ("Pine Ridge"), one in three young women are sexually assaulted; the teen pregnancy rate is five times higher, and sexually transmitted diseases are nineteen times higher than the national average.[4]

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[1] BARBARA A. GURR, REPRODUCTIVE JUSTICE: THE POLITICS OF HEALTH CARE FOR NATIVE AMERICAN WOMEN 1, 74 (Rutgers Univ. Press, 2015). Notably, this is not the informant's real name. *Id.*
[2] *See Highlights in AI/AN Reproductive and Maternal and Child Health Formative Research*, CDC.GOV, https://www.cdc.gov/reproductivehealth/mchepi/ai-an/highlights.html (last updated Feb. 8, 2017) (reporting statistics on various aspects of Native American women's reproductive health). *See also* Stephen J. Bacak et al., *Maternal Morbidity During Delivery Hospitalizations in American Indian and Alaska Native Women*, 32 THE IHS PRIMARY CARE PROVIDER 34-36 (2007) (describing research and statistics found among Native Women accessing reproductive healthcare through IHS).
[3] *See* Bacak, *supra* note 2, at 34-36 (noting statistics on Native women's reproductive health issues).
[4] *See Pine Ridge Indian Reservation – Health & Wellness*, BLACK HILLS KNOWLEDGE NETWORK, http://www.blackhillsknowledgenetwork.org/community-profiles/pine-ridge/pine-ridge-indian-

Barbara Gurr lived in South Dakota, on Pine Ridge, with the Oglala Lakota Nation ("Lakotas"), for one year researching and absorbing everything about Native Health.[5] Gurr reported personal stories to explain the greater effects of healthcare in Indian Country ("Indian Country") on a national scale.[6] Gurr confronts the effect of the complicated way the United States government has provided reproductive healthcare for Native Women as it relates to their culture.[7] *Reproductive Justice: The Politics of Healthcare for Native American Women* ("*Reproductive Justice*") sheds light on how tricky it is to be a sovereign within a sovereign, and how the politics of healthcare affect race, gender, and cultural norms.[8]

One of the many issues affecting Indian Country is how decisions are made regarding Native women's healthcare.[9] Native healthcare is regulated through the federal government, IHS, and the Tribes themselves.[10] Two sovereigns attempting to control Indian Country creates a unique set of complications as the federal government acts as a "guardian" to Tribes.[11] Gurr discusses these complications in Native women's ability to

reservation-health-wellness-2.html (last visited Apr. 16, 2018) (reporting sexual assaults on the Pine Ridge Reservation).

[5] *See* GURR, *supra* note 1, at 1.

[6] *See id.* at 23 (describing hardships among the Native women Gurr worked with on the Pine Ridge Reservation).

[7] *See id.* at 53 (explaining how the relationship between Native communities and the federal government).

[8] *See* GURR, *supra* note 5, at 45 (analyzing the impact of shifting access to prenatal care through hospitals had upon various social distinctions). *See* Kevin Fiscella, *Does Prenatal Care Improve Birth Outcome? A Critical Review*, 85 OBSTETRICS & GYNECOLOGY 468-79 (1995) (examining the importance of women's ability to access prenatal care). *See, e.g.,* Andrew Healey et al., *Early Access to Prenatal Care: Implications for Racial Disparity in Prenatal Mortality*, 107 OBSTETRICS & GYNECOLOGY 625-31 (2006) (researching perinatal mortality and racial disparities for women with earlier access to prenatal care).

[9] *See* GURR, *supra* note 5, at 29. *See* BLACK HILLS NETWORK, *supra* 4.

[10] *See About IHS*, INDIAN HEALTH SERVICES, https://www.ihs.gov/aboutihs/ (last visited Apr. 16, 2018).

[11] *See* U.S. v. Kagama 118 U.S. 375, 382-83, (1886). At issue in this case was whether the state courts had jurisdiction over a Native American murder case. *Id.* at 376. Procedurally, there was a disagreement as to whether the Tribal Court or District Court should have jurisdiction for crimes between Native members on the reservation. *Id.* Ultimately, it was decided that because it was a

access reproductive healthcare specifically in the following areas: birth control, abortion services, and other seemingly routine reproductive health services.[12] Most importantly, Gurr addresses how healthcare within Tribal Nations can be improved while also confirming a "cultural match".[13]

This piece will discuss the effect of Gurr's book on the reader. This piece begins by building a basic understanding of Federal Indian Law, develops the major concepts in healthcare that affect Native women, and the major themes addressed in Gurr's book. Next, this piece analyzes each of Gurr's topics for a reader who has limited knowledge of issues facing Indian Country regarding women's reproductive healthcare. This piece also

murder case located within the state's borders, the defendants were subject to the state's jurisdiction. *Id.* at 385. In deciding this matter, the court asserted that Native communities are wards of the United States, and as they are dependent Congress has plenary power, and federally recognized Tribes are owed specific obligations. *Id.* at 383. *See also* Cherokee Nation of Oklahoma v. U.S., 21 Cl. Ct. 565, 573 (1990). The Cherokee Nation brought claims against the United States for not maintaining its fiduciary duties and unfairly taking land and resources on Native land, focusing heavily on the issue of removing timber and minerals from Native land. *Id.* at 569. The Cherokee Nation argued that because of the "guardian-ward" relationship established in *Kagama*, the United States had breached its obligations. *Cherokee Nation of Oklahoma*, 21 Cl. Ct. 565, 573. The court found that this relationship did exist, but that the United States acted within their obligation. *Id.* Therefore, reinforcing the guardian-ward relationship between Native Americans and the federal government. *See generally* Choctaw Nation v. Oklahoma 397 U.S. 620, 626, 635 (1970). Here the court was to decide whether treaties negotiated between tribes and the federal government also mandated this trust relationship. *Id.* The treaty at issue negotiated lands and resources on the Arkansas River. *Id.* at 628. The state had leased rights, and the Chocktaw Tribe filed a claim asserting that the state did not have ability to do so. *Id.* at 643. The court reasoned that a state's decision to enter the Union meant they too would uphold the treaties created between Tribes and the federal government. *Id.* Ultimately, begging the question as to whether treaty rights fell under the obligations owed by the federal government, here the court stated it does. *Id.*

[12] *See* GURR, *supra* note 5, at 13-14. Plan B is considered "emergency contraception" to be used after having unprotected sex and meant to prevent pregnancy. *Plan B One-Step*, WEBMD, https://www.webmd.com/sex/birth-control/plan-b#1 (last visited Apr. 16, 2018) (explaining the purpose and use of Plan B as a contraceptive). In this instance, routine reproductive healthcare focuses on prenatal care, procedures for the birth of a child, and services for sexual assault victims. GURR, *supra* note 5, at 13.

[13] GURR, *supra* note 5, at 148. *See generally* Charles W. Grim, Symposium, *Making Medicine*, SOVEREIGNTY SYMPOSIUM XX (May 30, 2007), *available at* https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/2007_Statements/SovereigntySymposium2007-web.pdf (explaining cultural competency and its importance to the work of Indian Health Services).

addresses how the Violence Against Women's Act should aid in prosecuting sexually violent crimes on Indian Reservations and proposes a resolution to close the jurisdictional gap.

II. FOUNDATION OF FEDERAL INDIAN LAW

Two bodies govern Tribal Nations: the federal government and individual Tribes.[14] The Supreme Court established precedent in a set of cases known as the Marshall Trilogy.[15] The Supreme Court's holdings in *Johnson v. McIntosh*,[16] *Cherokee Nation v. Georgia*,[17] and *Worcester v. Georgia*[18] establishes foundational legal principles between the United States and Native Nations.[19]

[14] MATTHEW L.M. FLETCHER ET AL., FEDERAL INDIAN LAW 37 (West Academic 7th ed. 2016). Chief Justice Marshall wrote the opinion for all three cases, hence the "Marshall Trilogy". *Id.* at 37.
[15] *Id.* at 73.
[16] *See generally* Johnson v. McIntosh, 21 U.S. 543 (1823) (deciding tribes do not have title recognized by the United States courts).
[17] *See generally* Cherokee Nation v. Georgia 30 U.S. 1 (1831) (refusing to grant injunctive relief to the Cherokee Nation from Georgia statutes).
[18] Worcester v. Georgia, 31 U.S. 515, 515-562 (1832).
[19] FLETCHER, *supra* note 14, at 73.

In *Johnson v. McIntosh*,[20] where the Court considered a property dispute between two non-native settlers, the Court reasoned that because of the "doctrine of discovery,"[21] Native Tribes did not have the power to transfer their lands, rather Tribes have what is known as "Indian Title."[22] The Court held that because Europeans had "discovered" the land, the federal government limited Native American rights to sovereignty over their land, thus, becoming dependents of the United States.[23]

Following *Johnson*, the Court delivered an opinion where the state of Georgia attempted to impose their laws on a Tribal Nation in *Cherokee Nation v. Georgia*.[24] The

[20] *Johnson*, 21 U.S. 543, 571-596. Johnson received possession of the land from the Indian Tribes residing in Illinois and the Piankeshaw Nation. *Id.* at 571. McIntosh received possession of the land from the federal government of the United States. *Id. See* United States v. Lara, 541 U.S. 193, 199-207 (2004). A Native American defendant of another Tribe assaulted a police officer and was tried in both the federal and tribal court system. *Lara*, 541 U.S. at 197. The defendant argued that this was improper under the prohibition against double jeopardy. *Id.* The Court found that tribal courts may prosecute any Native American that violates tribal law, because the federal prosecution and tribal prosecution were based on different charges, and that there was no need to bar prosecution in the tribal courts. *Id.* at 210. *See also Kagama*, 118 U.S. at 381 (noting that tribal nations do not possess "the full attributes of sovereignty"). *E.g.* United States v. Wheeler, 435 U.S. 313, 323 (1978). After a member of the Navajo Tribe was charged in Tribal Court with statutory rape and aiding the delinquency of a minor, the federal government then also prosecuted the defendant for violating the Major Crimes Act. *Id.* at 315-16. The defendant argued that this was a violation of the prohibition against double jeopardy. *Id.* at 314. The Court held that prosecuting tribal citizens who violated tribal law was an inherent sovereign right of the Tribe, not one that was delegated by Congress. *Id.* at 329. The Court reasoned that because the Tribal Court was not an extension of the federal government, there was no double jeopardy. *Id.* at 330.

[21] *Johnson*, 21 U.S. at 573. The Court asserted that conquest of the land allowed the conquerors discretion over the land. Marshall demonstrated the "doctrine of discovery", comparing English settlers' rights to land when colonizing in other developing countries. *Id.*

[22] *Id.* at 587. The Court defined Indian Title as providing all other property rights such as occupation and possession, with the exception of transferring the land. *Id.*

[23] *Id.* at 596.

[24] *Cherokee Nation*, 30 U.S. at 20. Cherokee Nation filed an injunction against the State of Georgia and many of the state's officers of the law to stop the state from imposing its laws upon Native people and their land. *Id.* at 1. The Cherokee Nation argued that by attempting to regulate the Tribe through the state laws, that Georgia was violating a treaty between the Tribe and the State. *Id.* The Court defines "domestic dependent nations" as:

> They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian.

Court reasoned, that jurisdictional issues dictated whether the Court had the ability to hear the case.[25] The Court concluded that the Cherokee Nation was not a foreign nation, nor were its members citizens of the United States, and Tribes were designated as "domestic dependent nations".[26] The Court held that it did not have jurisdiction over the dispute because of the Cherokee Nation's "domestic dependent" status, while also recognizing that the "guardian-ward" relationship meant that the United States government owed specific benefits and services to Tribes.[27]

Id. at 17.

[25] *Id.* at 20.

> The court has bestowed its best attention on this question, and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the constitution and cannot maintain an action in the courts of the United States.

Id.

[26] Major Crimes Act, 18 U.S.C. § 1153 (2006); *Cherokee Nation*, 30 U.S. at 20. This act narrows Tribes authority to whom may be prosecuted in Tribal Courts, it also limits the scope the crimes that a Tribal Court can hear by limiting the amount of jail time and fine amount. *Cherokee Nation*, 30 U.S. at 20. Included on the list is murder, rape, and manslaughter. *Id.* *See also* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978). Two defendants were arrested during a Tribal celebration for assaulting a Tribal police officer. *Id.* at 194. The two defendants were non-Native residents of the reservation, who argued that the Tribal Court did not have authority to hear the case. *Id.* The Court reasoned that because Tribes "submit to the overriding sovereignty" of the United States, Tribal Courts do not have jurisdiction over non-Native residents. *Id.* at 209, 210. Thus, the Court held that the Suquamish Tribal Court did not have the jurisdiction to "impose on the personal liberties" of non-Native residents of the reservation. *Id.* at 210. *See also* Public Law 280 (PL 280) 18 U.S.C. § 1360. This act allows states to have criminal and civil jurisdiction over crimes on Native land. *Id.* Only a few states have enacted this law, South Dakota being one of them, where Pine Ridge Reservation is located. *Id.*

[27] *Cherokee Nation*, 30 U.S. at 17 (comparing "guardian-ward" relationship to "domestic dependent" status). *See supra* note 11 and accompanying text.

Last of the Marshall Trilogy is *Worcester v. Georgia*.[28] The State of Georgia attempted to impose state laws on non-natives within the borders of Cherokee Nation.[29] The Court reasoned that the Cherokee Nation did in fact have exclusive jurisdiction within its borders, as it comprises "distinct political communities."[30] The Court further held that Congress is the only entity that has the right to exercise power over Tribes, as explicitly written in the Constitution.[31] Thus, unless Congress exercises its plenary power, Tribal Nations have exclusive jurisdiction.[32]

[28] *See Worcester*, 31 U.S. at 515-62. Georgia attempted to regulate all those entering the borders of the Cherokee Nation, including a man named Samuel Worcester. *Id.* at 515. Worcester was charged with violating state law on Cherokee land, and in this instance, argued that the state does not have jurisdiction on Cherokee land. *Id.* The Court agreed with Worcester's argument. *Id.* at 562. *See also* Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982). The Jicarilla Apache Tribe placed a severance tax on the mineral resources that Merrion extracted from the Native reservation lands. *Id.* at 133. Merrion filed suit claiming that the Tribe did not have authority to impose taxes. *Id.* at 134. The Court reasoned that due to the set precedence in Worcester v. Georgia, as Tribes are considered as "distinct, independent communities, retaining their original natural rights" they also have the power to tax. *Id.* at 159.

[29] *See Worcester*, 31 U.S. at 515.

[30] *Id.* at 557.

> All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guarantied by the United States.

Id.

[31] *See Worcester*, 31 U.S. at 558-59.

> This instrument also gave the United States in congress assembled the sole and exclusive right of 'regulating the trade and managing all the affairs with the Indians, not members of any of the states: provided, that the legislative power of any state within its own limits be not infringed or violated.'

Id. at 558-59.

[32] *Id.* at 562.

III. IHS'S ROLE IN INDIAN COUNTRY

IHS is federally operated and funded under the direction of the Department of Health and Human Services.[33] For a member of the Native American community to access healthcare through Indian Health Services five factors are often considered, but the most important information is for an individual to demonstrate he or she is a member of a federally-recognized tribe.[34] Members of a federally-recognized tribe may seek medical care at I.H.S hospitals, however, the hospitals reserve the right to evaluate whether tribal members fall within the scope intended.[35] If deemed outside the scope,

[33] *See* INDIAN HEALTH SERVICES, *supra* note 10 (discussing the federal government's regulation of Native healthcare through IHS). *See also Mission Statement*, BUREAU OF INDIAN AFFAIRS, https://www.bia.gov/bia (last visited Apr. 16, 2018).

[34] *See* INDIAN HEALTH SERVICES, INDIAN HEALTH MANUAL § 2-1.2 (2017). Other factors include:

> (2) Resides on tax-exempt land or owns restricted property. (3) Actively participates in tribal affairs. (4) Any other reasonable factor indicative of Indian descent. (5) In case of doubt that an individual applying for care is within the scope of the program, as established in 42 C.F.R. § 136.12(b), and the applicant's condition is such that immediate care and treatment are necessary, services shall be provided pending identification as an Indian beneficiary.

Id. See also The Snyder Act, 25 U.S.C. § 13 (1921); *Frequently Asked Questions*, U.S. DEPT. INTERIOR: INDIAN AFFAIRS, https://www.bia.gov/frequently-asked-questions (last visited Apr. 16, 2018) (answering frequently asked questions relating to Tribal governments). There are 567 federally recognized tribes. *Id.* Tribes are considered federally recognized when the United States acknowledges an "American Indian or Alaskan Native tribal entity . . . as having a government -to-government relationship with the United States." *Id.* Tribes can be conferred with federal recognition through an act of Congress, administrative procedures, or a U.S. Court decision. *Id.* Tribes that are not federally recognized may incorporate as if they were a business, may be state recognized or perhaps be deemed a non-legitimate Tribe. NATIONAL CONGRESS OF AMERICAN INDIANS, AN INTRODUCTION TO INDIAN NATIONS IN THE UNITED STATES 12-18, *available at* http://www.ncai.org/about-tribes/indians_101.pdf (last visited Apr. 16, 2018) (providing background information regarding Tribal Nations and their governance in the U.S.).

[35] *See* INDIAN HEALTH SERVICES, *supra* note 10. There are 567 federally recognized tribes, and sixty-two state-recognized tribes. *Id.* The services provided by Indian Health Services do not apply to the state-recognized tribes. INDIAN HEALTH SERVICES, *supra* note 34, at §2-1.2.

I.H.S may send individuals to alternative resources.[36] While I.H.S covers a wide array of health services, women's reproductive health primarily focuses on prenatal care.[37]

IV. FRAMEWORK OF *REPRODUCTIVE JUSTICE*

Gurr opens her account by describing her own connection to the Native world, her child, and more specifically, her decision to conduct her research on Pine Ridge.[38] Chapter one organizes *Reproductive Justice*, where Gurr begins to develop the reader's perspective. Chapter two identifies the creation of the Lakota people, and begins to outline the statistical struggles that Native people face.[39] Notably, this chapter establishes the values of Native people, how community centered the culture of Indian Country is, and explains the intricate, complex, and vast trials Native peoples face.[40]

In chapter three Gurr outlines how Native women are specifically suffering the most, yet are least likely to receive benefits because of their race and gender.[41] This

[36] *Id.* at §2-1.3. Alternative resources may include local state, district or county hospitals; however, these alternatives may refuse to serve the Tribal member as well, and then the Indian Health Services may reevaluate to determine the severity and necessity of the care the Tribal member is seeking. *Id.* at §2-1.3(a)–(b); *see also* Williams v. U.S., 242 F.3d 169, 173 (2001). A non-native man sought medical attention at an "Indian" Hospital, where he was rejected for medical care. *Id.* at 171. The next day, the man died, and his wife filed a claim in part asserting that if her husband had received medical attention right away at the designated Indian Health Services hospital, he would not have died. *Id.* at 172. The court reasoned that the purpose of Congress in creating and funding acts and institutions, such as the Indian Health Services, was "the elimination [of] the deficiencies in health status . . . of all Indian tribes . . ." *Id.* at 174 (quoting 25 U.S.C.S. § 1621(a) (2018)). Thus, it was up to the hospital's discretion; therefore, the hospital was not mandated to provide medical treatment to a non-Native. *Id.* at 175.

[37] INDIAN HEALTH SERVICES, *supra* note 10. Though prenatal care is at the forefront, Indian Health Services does cover specific "health topics" related to reproductive rights, some such as Intimate partner violence have direct remedies within Indian Health Services, and some such as HIV/AIDs and Sexual Assault make suggestions with critical information and send Tribal members outside of the Indian Health Services system to seek medical care. *Id.*

[38] *See* GURR, *supra* note 1, at 1.

[39] *Id.* at 13-18.

[40] *Id.* at 24-25.

[41] *Id.* at 27 ("However, the State's interest in producing a collective national identity assigns different values to different reproductive bodies, reflecting and producing different reproductive experiences."). *See Sexual Health of Adolescents and Young Adults in the United States*, KAISER FAM. FOUND. (Mar. 2013), *available at* https://www.hivlawandpolicy.org/sites/default/files/Sexual%20Health%20of%20Adolescents

chapter introduces reproductive justice as a general and foundational right on an international scale.[42] The United Nations established through the Universal Declaration on Human Rights that "motherhood and childhood are entitled to special care and assistance."[43] The United States ratified and signed this declaration, attempting to bind the country to uphold, and affirm those rights for all individuals within their nation.[44] The U.S. healthcare system struggles with the "intersectional matrix of race, gender, sovereignty, class, and immigration status that complicates debates on reproductive politics in the United States for women of color."[45] As a result of the clash within the healthcare system, women of color – especially Native women – are often marginalized, therefore, unable to seek healthcare that supports basic reproductive needs.[46]

V. NATIVE HEALTH CARE OPTIONS AND THE CONNECTION TO NATIVE WOMEN'S REPRODUCTIVE HEALTH

The Ruling Relations of Reproductive Health Care discusses how regulations affect Native women and their care nationally.[47] Throughout history women's

%20and%20Young%20Adults%20in%20the%20United%20States%20%28Kaiser%20Family%20Foundation%29.pdf (evaluating the statistics of women of color and their access to healthcare).

[42] *See* GURR, *supra* note 1, at 33 (explaining the United Nations take on reproductive justice).

[43] *See* G.A. Res. 217 (III) A, Universal Declaration of Human Rights, at Art. 25(2) (Dec. 10, 1948) (determining that motherhood and childhood deserves special assistance).

[44] *See id.* The declaration provides that once signed and ratified a state (this case the United States) has an affirmative duty to individual citizens to progress towards adequate access to healthcare. *Id.*

[45] Loretta Ross, *African American Women and Abortion: A Neglected History*, 3 J. HEALTHCARE FOR POOR & UNDERSERVED 274-84 (1992) (explaining the impact of history on healthcare access for African American women).

[46] *See* Indian Health Service, *Indian Health Service Strategic Vision 2006-2011*, U.S. DEP'T OF HEALTH AND HUM. SERV. PUB. HEALTH (2006), http://digitalrepository.unm.edu/cgi/viewcontent.cgi?article=1049&context=nhd (describing Native population statistics). *See also* Katherine O'Hanlon, *Health Policy Considerations of Our Sexual Minority Patients*, 107 AM. C. OBSTETRICS & GYNECOLOGY: CURRENT CONTEMP. 709, 709-14 (2006) (referencing how promoting healthcare policies for minority women provides access to equal healthcare).

[47] *See* GURR, *supra* note 1, at 39-47.

reproductive care was dominated by women and their families in Native culture.[48] White communities in the United States started to use doctors during the eighteenth century, while African American and minority women continued to use other women within their rural communities.[49] As medicine advanced, so did the prestige of the profession but not the amount of doctors who were from and understood minority communities.[50]

While the rise of doctors providing prenatal care became standard, minority women consistently made up a large percentage of those not receiving any or adequate prenatal care.[51] Minority women are unable to connect with their providers having suffered through experimentation and forced sterilization, as a result of the traumatic history, minority communities substantially distrust healthcare obtained from government

[48] *See* JUDITH LEAVITT, BROUGHT TO BED: CHILDBEARING IN AMERICA, 1750 -1950, 10 (Oxford University Press, 1986) (finding childbirth to be a collective experience in which friends gather to assist with childbirth). *See also* RICHARD WERTZ & DOROTHY WERTZ, LYING-IN A HISTORY OF CHILDBIRTH IN AMERICA (Yale University Press, 1989) (explaining childbirth was mainly done by midwifes or other women); LAUREL THATCHER ULRICH, GOOD WIVES: IMAGE AND REALITY IN THE LIVES OF WOMEN IN NORTHERN NEW ENGLAND 1650-1750 (Knopf, 1982) (explaining why women in the 17th century were called Good Wives).

[49] *See* LEAVITT, *supra* note 48 (discussing spread in women's access to medical professionals historically). Similar to many other notable academic analysis of these issues, this book review focuses primarily on rural communities. WERTZ & WERTZ , *supra* note 48. *See also* NANCY FRASER, UNRULY PRACTICES: POWER, DISCOURSE AND GENDER IN CONTEMPORARY SOCIAL THEORY (Univ. of Minn. Press, 1989); Ruth Schaffer *The Health and Social Functions of Black Midwives on the Texas Brazos Bottom, 1920-1985*, 56 RURAL SOC. 89 (1991); LAURIE WILKIE, THE ARCHAEOLOGY OF MOTHERING: AN AFRICAN AMERICAN MIDWIFE'S TALE 119 (Routledge, 2003); GURR, *supra* note 1, at 40.

[50] *See* Lisa A. Cooper & Neil R. Powe, *Disparities in Patient Experiences, Health Care Processes and Outcomes: The Role of Patient-Provider Racial, Ethnic, and Language Concordance*, THE COMMONWEALTH FUND (2004), *available at* http://www.commonwealthfund.org/programs/minority/cooper_raceconcordance_753.pdf (analyzing the relationship between doctors and patients of the same and opposite races). *See also* ASS'N OF AMERICAN MED. COLLEGES, DIVERSITY IN THE PHYSICIAN WORKFORCE: FACTS & FIGURES 2010, 11-49 (2010), *available at* https://www.aamc.org/download/432976/data/factsandfigures2010.pdf (providing statistics about the amount of minority physicians graduating and practicing medicine).

[51] *See* KAISER FAM. FOUND., *supra* note 41 (showing gaps in access to care between groups). Statistics show this discrepancy in care for minority groups is clear as recently as 2007. *Id.* "Although birth rates have fallen for teens of all races and ethnicities, the rates for African American, Hispanic and Native American teens are over twice the rates of White and Asian American youth." *Id.* at Figure 2.

entities.[52] To overcome these barriers, IHS began to develop practices to sustain a cultural match such as further educational materials for patients and Tribal consultations for doctors practicing within IHS.[53] These advances are not met in reproductive health by IHS.[54]

Following "The Ruling Relations of Reproductive Health Care," is the explanation of "Producing the Double Discourse," which affirms the previously explained jurisdictional issues, and the "guardian-ward" relationship.[55] The constant battle between sovereignty and dependency has played a negative role in identifying how IHS should provide reproductive healthcare.[56] Congressional policy of self-determination attempts

[52] *See* Claire Wendland, *The Vanishing Mother: Cesarean Section and "Evidence Based Obstetrics"*, 21 MED. ANTHROPOLOGY QUARTERLY 218, 218-33 (2007) (discussing evidence-based medicine and social influences); David Frankford, *Scientism and Economics in the Regulation of Health Care*, 19 J. HEALTH POLITICS, POL'Y & L. 773,773-79 (1994) (highlighting ignorance of the cultural effects of solutions to medical problems). *E.g.*, Wendy Rogers, *Evidence-based Medicine and Justice: A Framework for Looking at the Impact of EBM upon Vulnerable or Disadvantaged Groups*, 30 J. MED. ETHICS 141 (2004); Andrew Beck, *The Flexnor Report and the Standardization of American Medical Education*, 291 J. AM. MED. ASSOC. 2139, 2139-40 (2010); Christina Lopez, *Norplant & Depo-Provera*, FREEDOM SOCIALIST PARTY (Oct. 1999), http://socialism.com/fs-article/norplant-depo-provera/. Slave women were used for experiments for gynecological cures, and even after finding the cure slave women were used to teach new doctors how to perform the procedure. *Id.* Unfortunately, this is not the only instance where doctors have used minority women to test out questionable procedures or drugs, as Native American women were used to test antimalarial medicine as a form of contraceptive. *See* Kati Schindler, *Indigenous Women's Reproductive Rights: The Indian Health Service and Its Inconsistent Application of the Hyde Amendment*, NATIVE AMERICAN WOMEN'S HEALTH EDUCATION RESOURCE CENTER (Oct. 2002), *available at* https://www.prochoice.org/pubs_research/publications/downloads/about_abortion/indigenous_women.pdf. *See also* Shaye Beverly Arnold, *Reproductive Rights Denied: The Hyde Amendment and Access to Abortion for Native American Women Using Indian Health Service Facilities*, 104 AM. J. PUB. HEALTH 1892 (2014) (offering information on severely ill-equipped Native American care facilities).

[53] Yvette Roubideaux, *Preventing and Treating Diabetes and Its Complications in American Indians and Alaska Natives*, UNIV. OF COLO. (2012), *available at* https://www.ihs.gov/newsroom/includes/themes/newihstheme/display_objects/documents/2012_Speeches/PreventingAndTreatingDiabetesAIAN_UCOSpeakerSeries.pdf.

[54] *Id.* at 6 (discussing advances in diabetes treatment for underserved populations). *See also* Arnold, *supra* note 52 (showing continued barriers to reproductive care for native populations).

[55] *See* GURR, *supra* note 1, at 74 (explaining the explanation of "producing the double discourse" and the "guardian-ward" relationship).

[56] *Cherokee Nation*, 30 U.S. at 17. The court denied a motion for an injunction prohibiting the enforcement of the state's laws in Cherokee nation territory and offered three alternatives. *See also,* Duane Champagne, *Rethinking Native Relations with Contemporary Nation-States*, INDIGENOUS

to eliminate assimilation imposed throughout history, while still maintaining "domestic dependent" rights as prescribed by the Marshall Trilogy and treaties.[57] While the "guardian to ward" relationship recognizes the designation of funds for services at IHS, those services are poorly defined and consistently limited.[58] Understanding this detailed background supplies the basic knowledge to inform the following chapter, The Double Discourse of the Indian Health Service.[59]

Sarah, a former IHS administrative worker on Pine Ridge, highlights that IHS places concerns regarding reproductive healthcare as a low priority.[60] Donna, another

PEOPLES & MOD. ST. 3, 3-24 (2005). "Native peoples insists on rights to land and self-government that are highly unusual and outside the theory of the formation and growth of nation-states." *Id.* at 4.

[57] STEPHEN ROCKWELL, INDIAN AFFAIRS AND THE ADMINISTRATIVE STATE IN THE NINETEENTH CENTURY 159-87 (Cambridge University Press, 2010). These tribal nations are recognized as "domestic dependent" nations. *Id.* US Commission on Civil Rights, *A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country* (2003). "This report examines federal funding of programs intended to assist Native Americans" at a number of department agencies. *Id.* US Commission on Civil Rights, *Broken Promises: Evaluating the Native American Healthcare System* (2004). "The report concludes that our nation's lengthy history of failing to keep its promises to Native Americans includes the failure of Congress to provide the resources necessary to create and maintain an effective health care system for Native Americans." Indian Self-Determination and Education Assistance Act of 1975, 93 P.L. 638, 88 Stat. 2203 (summarizing the Indian Self-Determination Act of 1975). *See also* 25 U.S.C.S. § 5302 (LexisNexis, Lexis Advance through PL 115-128, approved 2/22/18). "Self-Determination" is a policy established by congress in 1975, it is the most recent legislation governing how Native peoples shall govern, stating "an orderly transition from Federal domination of programs for and services to Indians to effective and meaningful participation by the Indian people in the planning, conduct and administration of these programs and services . . ." § 5302(b). *See also* FLETCHER, *supra* note 14 (explaining the importance and relevance of the Marshall Trilogy).

[58] Scholder v. US, 428 F.2d. 1123, 1125-131 (1970). Scholder and a class of Native Americans filed suit against the Bureau of Indian Affairs arguing that the Bureau did not have the authority to pay for an irrigation pipeline meant for Native Americans, off Native land. *Id.* The Court reasoned that because Congress had not explicitly restricted this ability that the Bureau had authority and could, therefore, appropriate funds to a non-Native member living off Native land. *Id. See also* HARVARD PROJECT ON AMERICAN INDIAN ECONOMIC DEVELOPMENT, THE STATE OF THE NATIVE NATIONS: CONDITIONS UNDER U.S. POLICIES OF SELF-DETERMINATION (Oxford Univ., 2008) (describing the various times budgets have been limited for Native American services).

[59] *See* GURR, *supra* note 1, at 74 (describing the shortage and limitations on resources that end in deferring services).

[60] *Id.* at 74. "She felt these budget areas required so much funding that the amount remaining for nonemergency care, including reproductive health care, was entirely inadequate."

informant living on Pine Ridge, stated, "[r]eproductive health care? Oh no, not at IHS They don't pay any attention to that."[61] IHS on Pine Ridge has focused on three major areas of health concerns: emergency services, cardiovascular health, and diabetes treatment.[62] Access for Lakota's living both on and off the reservation is critically lacking because of proving eligibility, and lack of appropriate staffing.[63]

VI. STORIES FROM INDIAN COUNTRY

The three chapters in this section presents the informant interviews and candid research Gurr developed which demonstrates the complexities and consequences of the former chapters. When describing reproductive health many of the Lakota women interviewed most immediately thought of prenatal care.[64] Gurr compares stories among several of her informants that demonstrate how government policies have played a role among various age groups within Pine Ridge, regarding access to prenatal care from IHS,

[61] *Id.* "Informants who have experience with HIS as care providers and/or health advocates agreed that reproductive health care in HIS is generally inadequate, despite efforts by both HIS and the Public Health Service."

[62] I.H.S, *supra* note 10 (analyzing mortality rates between U.S. Citizens and American Indian/Alaska Natives). From 2008-2010, the American Indians and Alaska Natives' mortality rates from heart diseases totaled 189.7 per 100,000 population. *Id.* U.S. citizens that do not fall within the previously referenced population from 2009 died at a rate of 182.8 per 100,000. *Id.* For diabetes, the mortality rate was 63.6 per 100,000 for American Indians and Alaska Natives, while U.S. citizens outside of the two groups died a rate of 21 per 100,000. *Id.*

[63] *See* Rose Pfefferbaum et al, *Providing for the Health Care Needs of Native Americans: Policy, Programs, Procedures, and Practices* 21 AM. INDIAN LAW REVIEW 212-216 (1997) (explaining that the IHS is understaffed and cannot effectively distribute care). Some Native peoples do not have access to federal services despite being classified as sovereign Indian nations. *Id.* at 213. Despite the progress in the last twenty years, the quality of health of native people remains lackluster compare to U.S. citizens. *Id.* at 217. The amount of Indians not eligible for IHS services number around 1.43 million. *Id. See also* Thomas Sequist et al., *Trends in Quality of Care and Barriers to Improvement in the Indian Health Service* 26 J. OF GENERAL INTERNAL MED. 480, 480-486 (2011) (describing the lack of funding needed for health services and the limited number of clinicians); Ralph Forquera, *Urban Indian Health,* HENRY J. KAISER FOUNDATION (2001), http://kff.org/disparities-policy/report/urban-indian-health/ (describing IHS eligibility restrictions that leave 1.5 million native people without medical treatment and resources). *See generally* IHS *supra* note 10, (describing health disparities that still exist between American Indians and Alaska Natives versus U.S. citizens).

[64] *See* GURR, *supra* note 1, at 91 (describing that IHS has prioritized prenatal care on Pine Ridge and elsewhere on tribal land).

midwives, or other private medicine.[65] For instance, Donna, the eldest of the women interviewed, stated she chose not to see doctors because she ". . . didn't trust the doctors . . . cuz [sic] I was fine and I had my mom and my cousins to help me."[66] Another informant, Talia, likely the youngest, stated that she believed she was "supposed" to obtain prenatal care and utilize IHS services at the start of her pregnancy, but by when in labor she needed to drive to Rapid City, over ninety miles away, to deliver because the basic birthing services she needed were unavailable.[67]

Gurr's research demonstrated that some women on Pine Ridge specifically chose Native midwives over doctors because they were culturally competent, and "know all the traditional ways."[68] Traditional birthing practices for the Lakota may include burning sage or sweetgrass, having an elder woman from the Tribe wipe the baby's mouth once born, to have water around constantly as an establishment of the relationship between woman, child and nature, and have "woman" songs performed during labor.[69] Ultimately, a Native woman's pregnancy is defined by the services that are accessible, as many find that the nearest culturally competent hospital is over ninety miles away.[70]

[65] *Id.* at 96-104 (explaining that Centering Pregnancy group encourages the development of culturally sensitive methods of prenatal care).
[66] *Id.* at 94-95 (describing intense distrust of the government and I.N.S. from commonplace violence occurring on Pine Ridge).
[67] *Id.* at 94-95 (describing shift in the relationship between IHS and Lakota women thirty-five years later).
[68] *Id.* at 99 (explaining the apparent cultural preference towards Native midwives versus IHS officials).
[69] *Id.* at 100 (describing the traditional techniques utilized by Native midwives during childbirth).
[70] *See* GURR, *supra* note 1, at 97-104. The closest hospital is in Rapid City, off the Reservation, and IHS in some instances does not subsidize the birth and delivery, even though IHS is meant to do so. *Id. See also,* American Civil Liberties Union *Complaint for Injunctive Relief, Civil Action* (2010) https://www.aclu.org/legal-document/aclu-v-indian-health-services-complaint (filing a complaint against IHS for the violations against Native Americans).

VII. SEXUAL ASSAULT IN INDIAN COUNTRY

One in three Native American women is sexually assaulted; which is over two and a half times more than other American women.[71] Several of Gurr's informants stated it would be a disservice to do research on reproductive healthcare in Tribal Nations without addressing the high rate of sexual assault and rape cases that occur within Tribal land.[72] Sam, a male informant, stated "[w]ell, we gotta take care of all the rapes. Our women are getting hurt all the time," when initially asked about the problems facing women's reproductive health in Pine Ridge.[73] Eighty-six percent of the perpetrators who commit sexual acts of violence against Native women are non-Native men; fifty-seven percent of these perpetrators are white.[74] While IHS is improving the recognition and reporting of sexual assault, the facilities remain ill-equipped to provide forensic exams for rape victims, treatment for injuries resulting from sexual assault, counseling, access to emergency contraception, and treatment for sexually transmitted diseases.[75]

[71] *See Maze of Injustice: The Failure to Protect Indigenous Women from Sexual Violence in the USA*, AMNESTY INTERNATIONAL (2007), *available at* https://www.amnestyusa.org/pdfs/mazeofinjustice.pdf (describing the amount of sexual assault that occurs in Indian Country). *See also* BLACK HILLS NETWORK, *supra* note 4.

[72] *See* GURR, *supra* note 1, at 106-107. Charlene, a female informant and midwife in Pine Ridge stated, "there is no justice if women are afraid all the time." *Id.* at 107. *See also,* Patricia Tjaden & Nancy Thoennes, *Prevalence, Incidence and Consequences of Violence against Women: Findings from the National Violence against Women Survey NIJ Center for Disease Control and Prevention*, 3 U.S. DEPT. JUST., NAT'L INST. JUST. 22 (D.C. 2000), *available at* https://www.ncjrs.gov/pdffiles1 /nij/183781.pdf (analyzing violence against women on a national scale). Women are constantly worried about sexual assault due to the complex jurisdictional issues surrounding the prosecution of someone accused of rape. *See supra* note 11 and accompanying text.

[73] *See* GURR, *supra* note 1, at 106.

[74] Ronet Bachman et al., *Violence against the American Indian and Alaska Native Women and the Criminal Justice Response: What Is Known*, U.S. DEPT. JUST., UNPUBLISHED GRANT REP. 38-39 (2008), *available at* https://www.ncjrs.gov/pdffiles1/nij/grants/223691.pdf (reporting acts of sexual violence committed against Native women and the justice system's response). *See also, supra* note 26 and accompanying text.

[75] *See* AMNESTY INTERNATIONAL, *supra* note 71, at 53-59. *See also Indigenous Women's Reproductive Justice: A Survey of Sexual Assault Policies and Protocols within Indian Health Service Emergency Rooms*, NATIVE AMERICAN WOMEN'S HEALTH & EDUCATION RESOURCE CENTER 4-5 (2004), *available at* http://www.nativeshop.org/images/stories/media/pdfs/SurveyofSexualAssaultPoliciesRepo WithinIHS2004.pdf (analyzing the I.H.S protocols in place to aid sexual assault victims); *see*

One of the largest issues facing Native women, and their Tribes, is prosecuting those men who commit acts of sexual violence.[76] Enforcement through tribal, state or federal laws on non-Native individuals committing sexually violent crimes on Native land is insufficient.[77] The federal government has started to take legislative measures to help mitigate this problem through the Tribal Law and Order Act, and the Violence Against Women Act ("VAWA").[78] These legislative measures have not yet adequately combatted the negative repercussions of systematic inequality.[79]

Amnesty International *Lack of Equal Access to Health Services for Native American and Alaskan Native Women Following Sexual Violence*, Rep. to U.N. Working Group (Oct. 26, 2015), *available at* https://www.ushrnetwork.org/sites/ushrnetwork.org/files/lack_of_equal_access_to_health_services_for_native_american_and_alaskan_native_women_following_sexual_violence_unwgdaw_shadow_report.pdf (reporting discrimination and lack of access to services owed by IHS to Native women).

[76] *See* Tjaden & Thoennes, *supra* note 72. *See also* Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978); Duro v. Reina, 495 U.S. 676, 679-86 (1990). In Duro v. Reina, a defendant was brought to Tribal court after murdering an individual within the borders of the Pima-Maricopa Reservation. *Duro*, 495 U.S. at 679. Defendant argued that though he was Native, he was not a member of the Pima-Maricopa tribe; therefore, the Tribal Court did not have jurisdiction to hear his case. *Id.* at 682. The Court held that while tribes have sovereignty to govern their own affairs, they do not have "the authority to impose criminal sanctions against a citizen outside its own membership". *Id.* at 679. The Court reasoned that allowing jurisdiction over either non-Native individuals, or Native members who were not a part of that particular Tribe would go against the "dependent" nature of the Tribes. *Id.* at 684-86.

[77] *See supra* note 26 and accompanying text.

[78] Tribal Law and Order Act of 2010, Pub. L. No. 111-2, §201, 124 Stat. 2258 (2010) (hereinafter "TLOA"); *Tribal Law and Order Act*, THE U.S DEP'T JUST., https://www.justice.gov/tribal/tribal-law-and-order-act (last updated Feb. 7, 2018). The purpose of TLOA is to address the high rate of violence occurring on Native lands by supplying funding for additional Tribal officers and giving more authority to the Tribes to be able to prosecute those who commit crimes in Native lands. *Id. See also* Violence Against Women Reauthorization Act of 2013, Pub. L. 113-4, 127 Stat. 54 (2013) (hereinafter "VAWA"); *Violence Against Women Act (VAWA) Reauthorization 2013*, THE U.S. DEP'T JUST., https://www.justice.gov/tribal/violence-against-women-act-vawa-reauthorization-2013-0 (last updated Feb. 7, 2018). VAWA attempts to remedy some of the jurisdictional complexities when the criminal activity relates to domestic violence and sexual assault as it relates to Native women. *See* VAWA, *supra*. The act was signed into law in 2013, and Tribes may criminally prosecute a new pool of offenders starting in 2015. *Id.* This act now allows those who were in a relationship with a Native woman, whether Native or non-Native, to be held criminally accountable for any domestic or dating violence or violations of protection orders. *Id.* This law, however, does not allow a Tribe to prosecute crimes of sexual assault between two strangers, two individuals who are not Native, those who commit these crimes outside of Native land, nor those who "lack sufficient ties to the tribe". *Id.*

[79] *See* VAWA, *supra* note 78; *see also supra* note 26 and accompanying text. *See also* Carole Goldberg-Ambrose, *Public Law 280 and the Problem of Lawlessness in California Indian Country*, 44 UCLA L. REV. 1405-48 (1997) (explaining the vast negative impact that Public Law 280 created);

VIII. ANALYSIS

A. Violence Against Women Act and the Jurisdictional Gap

A major shortcoming of the federal government's regulation of Indian Country is the inability to appropriately prosecute non-Native individuals for sexually violent crimes.[80] VAWA attempts to close the prosecutorial and jurisdictional gap by incorporating the Stand Against Violence and Empower Native Women Act ("SAVE").[81] Ideally, Native American women would have a law independent within their sovereignty that does not merely attempt but closes this loophole.[82] VAWA has a narrow scope as to whom may be prosecuted in Tribal Courts for committing a sexually violent crime: those who have or had a dating relationship with a Native woman.[83] Although VAWA allows for prosecution of non-Native individuals, it only begins to address the amount of sexually violent crimes in Indian Country, as it does not close the gap between strangers, those who are not partners, and those who can simply prove that they "lack sufficient ties to the Tribe".[84]

Samuel Cardick, *The Failure of the Tribal Law and Order Act of 2010 to End the Rape of American Indian Women*, 539 ST. LOUIS U. PUB. L. REV. 539-78 (2012), *available at* https://www.narf.org/nill/bulletins/lawreviews/articles/Cardick.pdf (explaining the complicated jurisdictional issues, and failings of TLOA).

[80] *See* GURR, *supra* note 1.

[81] *See* VAWA, *supra* note78; Stand Against Violence and Empower Native Women Act, H.R. 757 (113th Congress) (Feb. 15, 2013) *available at* https://www.congress.gov/bill/113th-congress/house-bill/757 (reporting the purpose and duties of the bill if passed).

[82] VAWA, *supra* note 78. VAWA is a piece of legislation that creates avenues for Native Women but is not solely created to respond to the problems specifically faced by women in Indian Country. *Id.* It addresses dating and sexual violence for other populations such as immigrant women, and young women nationally. *Id; see* Jessica G. Griffith, *Too Many Gaps, Too Many Fallen Victims: Protecting American Indian Women From Violence on Tribal Lands* 36 U. PA. J. INT'L L 785, 789-813 (2015) (analyzing the shortcomings of VAWA for Native American Women); *see also* Sarah Childress, *Will the Violence Against Women Act Close a Tribal Justice "Loophole"* , FRONTLINE (Feb. 4, 2013), https://www.pbs.org/wgbh/frontline/article/will-the-violence-against-women-act-close-a-tribal-justice-loophole/ (addressing the need for the act but that it is only a first step).

[83] *See* VAWA, *supra* note 78.

[84] *Id. See* Griffith, *supra* note 82, at 810.

Currently, Tribes are seeking an expansion of Tribal Court jurisdiction to be able to prosecute acquaintance and stranger rape.[85] Jaqueline Agtuca, a policy consultant for the National Indigenous Women's Resource Center succinctly states the issue:

> Domestic violence cases are very complicated and often involve more than just an abuser and his victim—they can involve the parents of the victims, neighbors, cousins, pets—anyone who happens to be in the home at the time of the assault. So while the [granting of special domestic violence criminal jurisdiction] is historic, we feel it ran short of offering comprehensive protections to Native women.[86]

As Tribes are sovereign nations, Congress should consult Tribal members to create an independent act that allows for Tribal Courts to sufficiently address the problems facing their community.[87] The high percentage of sexually violent crimes committed, let alone those committed by non-Native individuals begs for a fair and just result that is simply lacking even with VAWA in place.[88]

While expansion of VAWA may be helpful, legislation that would close this gap using the input of Tribes would be best.[89] Consulting Tribes when it comes to legislation is not a new concept, in fact, the United Nations Declaration on the Rights of Indigenous Peoples ("UNDRIP") provides for such efforts.[90] Therefore, it is reasonable to expect

[85] Kanya D'Almeida, *Tribal Leaders Call for Expanded Jurisdiction Over Non-Native Domestic Violence Offenders*, INDIAN LAW RESOURCE CENTER (Feb. 23, 2016), http://indianlaw.org/safewomen/tribal-leaders-call-expanded-jurisdiction-over-non-native-domestic-violence-offenders (reporting Tribal leaders frustrations about the narrow scope of VAWA).

[86] *Id.*

[87] *See supra* note 11 and accompanying text.

[88] *See supra* note 74 and accompanying text.

[89] *See* Griffith, *supra* note 82, at 810 (discussing current Tribe measures for dealing with non-Indian abusers).

[90] United Nations Declaration on the Rights of Indigenous Peoples, Art. 19 (Mar. 2008), *available at* http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf (stating states shall consult and cooperate in legislation affecting indigenous peoples). In most recent history, Tribes have been consulted in the United States when changing racist mascots. *See* Kelly P. O'Neill, *Sioux Unhappy: Challenging the NCAA's Ban on Native American Imagery*, 42 TULSA L. REV. 171, 195 (2013). While the NCAA set a ban in place for school's using "abusive and hostile" representations of Native American mascots, some tribes such as the Sioux in North Dakota, or

the United States adhere to its role as "guardian" and incorporate the perspectives and experiences of Native women and their communities in adequately legislating prosecution of sexual assaults in Indian Country.[91]

SAVE, the proposed legislation created by Tribes, needs to be implemented as its own piece of legislation.[92] The primary purpose of SAVE should be protection of youths, and prosecutions of offenders over state, and tribal borders.[93] Implementing SAVE as an independent form of legislation would help close the VAWA loophole between federal and tribal prosecutions.[94] Admittedly, the narrow scope of VAWA offenders would remain in place, however, SAVE would allow Tribal Courts further jurisdiction.[95] This plan is a step in the right direction where the federal government would recognize the necessity of specialized legislation that honors the realities Native women face in combatting sexual assault.[96]

the Seminole tribe in Florida worked with the University's to approve a use of their name or mascot. *Id.*

[91] *See Kagama*, 118 U.S. at 382-383 (discussing whether the Tribal Court or District Court had authority over a murder the reservation).

[92] *See* Stand Against Violence and Empower Native Women Act, *supra* note 81 (noting suggested changes to Federal law to help Native women).

[93] *Id.* (describing the contents of the bill). *See* Laura Garbes, *SAVE Native Women Act: Addressing Domestic Violence on Reservations*, CULTURAL SURVIVAL (July 12, 2012), https://www.culturalsurvival.org/news/save-native-women-act-addressing-domestic-violence-reservations (discussing instances of abuse and the effect of SAVE being incorporated into VAWA). Shortly after this bill received bipartisan support it had become incorporated into VAWA, rather than remain its own bill. *Id.*

[94] *See* Garbes, *supra* note 93 (discussing the effects of the SAVE bill into VAWA, and the disconnect between authorities).

[95] *Id.* (discussing the limit on Tribes being able to adjudicate crimes against Native people).

[96] *See* H.R. 757, *supra* note 81 (proposing expanding the scope of Indian Court's jurisdiction on civil and criminal matters); VAWA, *supra* note 78 (broadening courts' jurisdictions to prosecute crimes involving violence against women). While this law made it possible for Tribes to prosecute a larger pool of people, it is still limited. VAWA, *supra* note 78. *See Duro*, 495 U.S. at 676 (ruling Native American Tribal Courts had no jurisdiction to impose criminal punishments on non-tribe members). *See also Lara*, 541 U.S. at 193 (deciding that Indian Courts could try and order criminal punishments against non-member Indians).

B. Consequences of Insufficient Access to Healthcare in Indian Country

Access to reproductive healthcare in Indian Country has been drastically affected by the constant shift of federal policies, resulting in monumental consequences for Tribes.[97] Having two or more government bodies regulating Indian Country, makes it nearly impossible to provide services and sex education, ultimately contributing to the high teenage pregnancy rate, lack of access to abortion, counseling, and contraception.[98] The lack of resources and information means Native women often make extreme or permanent decisions, such as late term abortions and hysterectomies.[99] While some Tribal members view an abortion as consistent with colonization and genocide, others perceive abortion as an act of tribal sovereignty.[100] For instance, Pine Ridge's former President,

[97] *See* Bruce Johansen, *Reprise/Forced Sterilizations: Native Americans and the Last Gasp of Eugenics*, 15 NATIVE AM.: AKWEKON'S J. INDIGENOUS ISSUES 44-47 (1998) (describing how states systematically sterilized Native women); Thomas Volscho, *Sterilization Racism and Pan-ethnic Disparities of the Past Decade: The Continued Encroachment on Reproductive Rights*, 25 WICAZO SA REV. 17 (2010) (describing systemic sterilization of minority women and its impact on minority communities).

[98] *See Oliphant*, 435 U.S. at 210 (holding Tribes submit to the overriding authority of the U.S. federal government). *See also* Pub. L. No. 111-8 § 507. The Hyde Amendment restricts federal funding for abortions, even with minimal funding eighty-five percent of IHS facilities do not provide for abortion or counseling services that would fall within the scope of the amendment. *Id.* *See also* NAWHERC, *supra* note 52 (advocating for women's rights and reproductive resources for Native Americans).

[99] *See* ANDREA SMITH, CONQUEST: SEXUAL VIOLENCE AND AMERICAN INDIAN GENOCIDE 79, 81, 97-107 (2002), *available at* https://rosswolfe.files.wordpress.com/2015/07/andrea-smith-conquest-sexual-violence-and-american-indian-genocide-2005.pdf (explaining the lack of choice, resources, and options Native women possess).

[100] *See* Tim Giago, *Oglala Sioux President on State Abortion Law*, INDIANZ.COM (reporting the female, Oglala Sioux president's thoughts on the state abortion law). When responding to the state law banning abortions in South Dakota, President Cecilia Fire Thunder commented that "it is now a question of sovereignty". *Id.* The president said she would build a Planned Parenthood clinic on her reservation, putting it outside the state's authority, serving all women of the state. *Id.* Council member William Peters stated the reason for impeachment was "Lakota people were adamantly opposed to abortion on our homelands". Carson Walker, *Tribal Leader Ousted Over Abortion* Clinic, THE WASHINGTON Post (June 30, 2006, 12:57 PM), http://www.washingtonpost.com/wp-dyn/content/article/2006/06/30/AR2006063000700.html. Several of Gurr's informants stated that those in opposition found abortion to be against "traditional views," but that abortions still occur at a high rate for Pine Ridge women. *See* GURR, *supra* note 1, at 131-32.

Cecilia Fire Thunder stated, "[a]n Indian reservation is a sovereign nation and we're going to take it as far as we can to exercise our sovereignty. . . . As Indian women, we fight many battles. This is just another battle we have to fight."[101]

C. Native Women Enduring Fight for Reproductive Justice

In the final chapters, Gurr presents the strengths within Pine Ridge that may be reinforced by IHS, as well as conclusions that help the reader consider the importance of cultural competency in reproductive healthcare.[102] Gurr argues that for Lakota women specifically, having a strong cultural identity is essential in fighting against state interference, even with facing persistent inadequate access to reproductive healthcare.[103] Although, IHS is making strides towards contemporary cultural competency, it is also necessary for the Department of Health and Human Services understand the historical trauma facing Native women on Pine Ridge to better inform, support, and care for their reproductive health.[104]

Native women need to be at the center of the necessary changes developed to provide competent healthcare generally.[105] While the intersectionality of governmental forces has obstructed appropriate means, Native women persist, remain present, and

[101] *See Indian Tribe Challenges Abortion Law with Clinic*, WORLDNETDAILY (Apr. 1, 2006, 5:00 PM), http://www.wnd.com/2006/04/35526/. *See also* Walker, *supra* note 100 (reporting the impeachment of President Fire Thunder for attempting to open an abortion clinic).
[102] *See* GURR, *supra* note 1, at 91.
[103] *See* GURR, *supra* note 1, at 137. This strong cultural identity aids the development of more "tradition oriented" practices to become a part of the health care received. *Id.* at 139, 146, 147. *See* PATRICIA ALBERS & BEATRICE MEDICINE, *The Role of Sioux Women in the Production of Ceremonial Objects: The Case of the Star Quilt*, *in* THE HIDDEN HALF: STUDIES OF PLAINS INDIAN WOMEN 123-142 (Univ. Press of America, 1983) (describing cultural practices and the importance of Native women's roles in them). Some of Gurr's informants state this community can feel too small, as they worry that by going to IHS in a small community, they will be gossiped about. *See* GURR, *supra* note 1, at 141.
[104] *See* GURR, *supra* note 1, at 145. *See* IHS, *supra* note 10 (providing some resources to the Native American population). *See also*, Smith, *supra* note 99.
[105] *See id.* at 155 (examining the role Native women should have in decisions about their healthcare system).

embody sovereignty by fighting for access to reproductive healthcare that suits their needs.[106] Gurr's informants provide the reader with a deeper understanding of Native women's experiences, shedding light on how "health and wellness, about race, class, gender and sexuality, about nation-building and the reproductive body" promotes change.[107]

IX. CONCLUSION

Gurr weaves her research and the stories from the women of Pine Ridge eloquently and affectively. The explanation of the connection between various governments, what it means to be a sovereign within a sovereign, and how difficult it can be to maintain cultural identity while demanding resources owed, is both complex and masterfully done. While IHS has perfunctorily preformed its duties, it is beginning to recognize the importance of understanding Native American culture through all aspects of Native women's reproductive health. Within the Lakota Nation, substantial room remains to provide better access, better care, and better understanding. As the Lakota pray, all things are connected, *Mitakuye Oyasin*.

[106] *Id.* at 156 (explaining Native women's unique power to combat external federal and state interference).
[107] *Id.* at 157 (describing the correlation between these social distinctions and the affect upon women's health and well-being).