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Restoring Sovereignty: Advancing Tribal Jurisdiction Through Extradition Treaties

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Introduction

The landscape of federal criminal jurisdiction in Indian Country is a complex issue, colliding with historical treaties, tribal sovereignty, and overarching federal authority. Central to this complexity is the fundamental question of the scope and exercise of federal power within indigenous territories; how much is too much? While federal jurisdiction seeks to uphold the rule of law and safeguard the rights of all citizens, mounting apprehensions show how easily it encroaches on tribal sovereignty and adversely impacts indigenous communities.

The exercise of federal jurisdiction in Indian Country has been a source of contention and debate among tribal nations, legal scholars, and policymakers. Critics argue that the current system grants the federal government disproportionate power and undermines tribal sovereignty by circumventing tribal courts and legal processes.[1] They contend that tribes should have greater autonomy to adjudicate crimes committed within their territories and assert their legal authority.[2]

Among the glaring deficiencies within the current jurisdictional framework is the absence of a formal extradition process for tribal members implicated in federal criminal offences. Unlike the established extradition protocols governing inter-state or international legal transfers, tribal entities lack a structured mechanism to initiate the transfer of tribal members into federal custody, and vice versa. Consequently, unilateral assertions of federal jurisdiction ensue, creating friction between tribal governments and federal agencies. These issues occur against a backdrop of historical injustices, including centuries of colonialism, assimilationist policies, and forced displacement, which have corroded tribal sovereignty and sown deep-seated distrust between indigenous communities and the federal government.

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[1] Theodora Simon, *Tribal Sovereignty Under Attack in Recent Supreme Court Ruling,* ACLUNC Blog (Jul 12, 2022), https://www.aclunc.org/blog/tribal-sovereignty-under-attack-recent-supreme-court-ruling

[2] *Id.*

In response to these prevailing issues, this paper will first examine the past and present state of federal criminal jurisdiction in Indian Country. Proposing a roadmap for reform, it endeavours to realign the balance of power, restore tribal sovereignty, and foster enhanced collaboration between tribal authorities and federal entities. This paper argues that the establishment of extradition treaties, modelled after those existing between the United States and Canada, can provide a clear and structured framework within which federal agents and tribal authorities can work together, as well as promote respect for tribal sovereignty. Tribes must be allowed to have full unrestricted criminal jurisdiction if they so choose, and should work collaboratively, not subservently, with federal authorities. Under this system, states would have no criminal jurisdiction over tribes.

Ultimately, the overarching objective is to empower tribal nations with greater autonomy, enabling them to assert control over their communities and administer justice in a matter consistent with their cultural heritage and inherent rights, regardless of the ethnicity of the victim or the perpetrator. By embracing these principles and implementing comprehensive reforms, the United States can fulfil its moral and legal obligations to indigenous communities, fostering a future where justice is truly equitable and inclusive.

I. The History of Criminal Jurisdiction in Indian Country

To understand how the federal government is involved in criminal jurisdiction in Indian Country, one must first understand how the federal government is involved in Indian law at all. In 1823, the Supreme Court had before it *Johnson v. M'Intosh*, a case concerning a property

claim.[3] The chiefs of the Piankeshaw nations had conveyed a portion of their tribal land to the plaintiffs, and the court was asked to consider if this was a legitimate title.[4] However, the Court stated that, when Europeans discover a new territory, they can claim it from other Europeans, but they own the land the natives are on (called the 'doctrine of discovery').[5] When the natives were conquered, they effectively gave up the rights to the land, meaning it was the property of the United States.[6]

In 1831, the case *Cherokee Nation v. Georgia* was heard before the Court.[7] In this case, the Cherokee Nation went to the Supreme Court to request that Georgia be stopped from implementing laws that would take their land "for the use of Georgia."[8] Here, the Court stated that Indians couldn't be considered foreign nations, but were instead "domestic dependent nations" that relied on the federal government.[9] However, for the Cherokee Nation, the court decided they couldn't hear the case, as that would be an exercise of political power.[10]

One year later, the Court heard *Worcester v. Georgia*.[11] The plaintiff, Worcester, was charged with "residing within the limits of the Cherokee nation without a license."[12] However, Worcester argued that he was a resident of New Echota, a town within the Cherokee nation, and any crime that he might have committed would be under the criminal jurisdiction of the Cherokee.[13] The Court agreed with Worcester, agreeing that the Cherokee nation was a "distinct

[3] *Johnson v. M'Intosh*, 21 U.S. 543, 571 (1823)
[4] *Id.*
[5] *Id.* at 573
[6] *Id.* at 586
[7] *Cherokee Nation v. Georgia*, 30 U.S. 1 (1831)
[8] *Id.* at 15
[9] *Id.*
[10] *Id.* at 20
[11] *Worcester v. Georgia*, 31 U.S. 515 (1832)
[12] *Id.* at 537
[13] *Id.* at 538

community," and Georgia laws did not have power over them; the relationship was solely between Indian nations and the federal government due to their inherent sovereignty.[14]

Together, these three cases make up the 'Marshall Trilogy,' so-called named because all three were penned by Chief Justice John Marshall.[15] These cases create the groundwork for federal Indian law between the United States and Indian Country.[16] Following statute, Indian Country is defined as

> "(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same."[17]

The sovereign authority of Indian nations initially held exclusive power to enforce criminal laws against offenders, as seen in *Worcester*.[18] However, this jurisdictional landscape evolved due to the treaty process and historical circumstances. Congress began federalizing Indian country criminal jurisdiction as early as the passage of the first Trade and Intercourse Act in 1790, which stated that "if any citizen…shall go into any…territory belonging to any nation or tribe of Indians, and shall there commit any crime upon…any peaceable and friendly Indian or Indians, which, if committed within the jurisdiction of any state…against a citizen or white inhabitant thereof, would be punishable by the laws of such state…such offender…shall be subject to the same punishment, and shall be proceeded against in the same manner as if the

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[14] *Id.* at 561
[15] *Marshall Trilogy,* Univ. Alaska Fairbanks, Dep't. Tribal Gov't. https://www.uaf.edu/tribal/academics/112/unit-1/marshalltrilogy.php (last visited Apr. 17, 2024)
[16] *Id.*
[17] 18 U.S.C.S. § 1151
[18] *Worcester v. Georgia*, 31 U.S. 515 (1832)

offence had been committed within the jurisdiction of the state…to which he…may belong, against a citizen or white inhabitant thereof."[19] This extended federal criminal jurisdiction to crimes committed by American citizens against Indians, but already served to preemptively block a tribal court's ability to be involved.

In 1817, Congress expanded federal criminal jurisdiction to include crimes committed by Indians against non-Indians within Indian country in the General Crimes Act.[20] Notably, a provision within the Act limited federal jurisdiction over offences committed by one Indian against another within Indian boundaries, thus preserving tribal sovereignty in certain instances.[21] Under this statute, the "general laws of the United States as to the punishment of crimes committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, . . . extend to the Indian country."[22] While the jurisdiction to prosecute crimes by Indians against non-Indian victims is shared with the federal government, the federal government cannot prosecute for crimes that a Tribal court has already resolved.[23]

Additionally, the Assimilative Crimes Act allows for the application of state law in the absence of applicable federal statutes for General Crimes Act prosecutions.[24] Legislative exceptions include offences committed by one Indian against another, offences committed by an Indian in Indian country who has already been punished by tribal law, and cases where treaty provisions secure exclusive jurisdiction to Indian tribes over certain offences.[25] It's important to

[19] An Act to Regulate Trade and Intercourse With the Indian Tribes (1790), https://www.loc.gov/item/rbpe.21401300/?loclr=bloglaw
[20] 18 U.S.C.S. § 1152
[21] *Id.*
[22] *Id.*
[23] *Indian Country Investigations and Prosecutions*, U.S. Dep't of Just. (2021), https://www.justice.gov/d9/2023-08/2021_-_indian_country_investigations_and_prosecutions_report.pdf
[24] 18 U.S.C.S. § 13 ; 18 U.S.C. § 1152
[25] 18 U.S.C.S. § 13

note that these exceptions pertain specifically to laws extended to Indian country by Congress and do not exempt Indians from general federal criminal laws applicable nationwide. However, the federal government has claimed exclusive jurisdiction over felonies, which will be discussed later.[26]

However, in cases like *United States v. McBratney* in 1881, the Supreme Court acknowledged that tribes did have criminal jurisdiction, holding that even the murder of a non-Indian by another non-Indian on a reservation was still within tribal jurisdiction.[27] The Supreme Court's interpretation of precursor statutes, exemplified in *Ex parte Crow Dog* in 1883, underscored the limitations of federal jurisdiction over Indian-on-Indian crimes.[28] *Ex parte Crow Dog* involved the murder of a tribal member by another member within the boundaries of the reservation.[29] Despite the severity of the crime, the Supreme Court ruled that the federal government lacked jurisdiction to prosecute the offender due to treaty provisions granting tribal sovereignty over internal matters.[30] Additionally, the Court emphasised the significance of treaty rights in determining the scope of federal authority.[31] However, in cases like *United States v. McBratney* in 1881, in which a non-Indian killed another non-Indian in the Ute Reservation, the Court ruled that the state had exclusive jurisdiction.[32] The federal government retained criminal jurisdiction over the Ute Reservation as necessary to uphold the terms of the treaty between the tribe and the federal government.[33] However, this jurisdiction did not extend to non-Indians.[34]

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[26] 18 U.S.C.S. § 1153
[27] *United States v. McBratney*, 104 U.S. 621, 624 (1881)
[28] *Ex parte Crow Dog*, 109 U.S. 556 (1883)
[29] *Id.* at 557
[30] *Id.* at 572
[31] *Id.* at 559
[32] *United States v. McBratney*, 104 U.S. 621, 624 (1881)
[33] *Id.*
[34] *Id.*

The Major Crimes Act, enacted in 1885, emerged as a response to the *Crow Dog* decision, providing for federal jurisdiction in Indian country.[35] Such felonies include murder, manslaughter, sexual abuse, aggravated assault, and child sexual abuse, when committed by Indians in Indian country.[36] This Act has undergone multiple amendments to include additional offences and clarify jurisdictional boundaries. In *United States v. Antelope* in 1977, three Indians killed a non-Indian on the Coeur d'Alene Indian Reservation.[37] The respondents were prosecuted under the Major Crimes Act, and on appeal argued that because they would have been subject to Idaho law instead of federal law if they were non-Indians, they were racially disadvantaged.[38] However, the Court stated this wasn't an equal protection violation, because the Major Crimes Act was even-handed in its application.[39] The Court emphasised that federal legislation concerning Indian tribes is not based on impermissible racial classifications but rather on the unique status of tribes as separate political entities.[40] Therefore, federal regulation of Indian affairs does not violate equal protection, as Indians indicted under federal law enjoy the same procedural benefits as any other person within federal jurisdiction.[41]

In 1953, Congress passed Public Law 83-280, colloquially known as PL 280.[42] This gave criminal and civil jurisdiction over Indian affairs to the states of California, Minnesota, Nebraska, Oregon, and Wisconsin, and permitted other states to acquire jurisdiction if they so

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[35] 18 U.S.C.S. § 1153
[36] *Indian Country Investigations and Prosecutions*, U.S. Dep't of Just. (2021), https://www.justice.gov/d9/2023-08/2021_-_indian_country_investigations_and_prosecutions_report.pdf
[37] *United States v. Antelope*, 430 U.S. 641, 642 (1977)
[38] *Id.* at 644
[39] *Id.* at 648-9
[40] *Id.* at 647
[41] *Id.*
[42] 83 P.L. 280, 67 Stat. 588, 83 Cong. Ch. 505

chose.[43] This effectively removed the federal government's special custodial role in Indian affairs and handed it over to states; all of which was done without tribal consent.[44]

Moreover, it encroached upon tribal sovereignty, hindering the development of tribal criminal justice systems and engendering confusion in civil matters.[45] There was also a lack of federal funding for states assuming jurisdiction.[46] The law's practical implications, such as the erosion of tribal support and the exacerbation of lawlessness in Indian country, have far surpassed its intended objectives. Despite subsequent amendments in 1968, which introduced tribal consent and retrocession mechanisms, the underlying issues persist, with many Indian Nations still grappling with the adverse effects of PL 280.[47] The reduction, if not elimination, of federal support for tribal justice systems has created abuses of authority. "PL 280, on the one hand, eroded the powers of the local community to deal with crime and social problems and, on the other hand, provided enough ambiguity for authorities not to deal effectively with enforcement on reservations."[48]

In 1968, the U.S. government passed the Indian Civil Rights Act.[49] This extended fundamental constitutional protections to Indigenous peoples in Indian Country.[50] Initially, ICRA aimed to safeguard the rights of Native Americans by granting them certain federal rights akin to those in the Bill of Rights. These included freedom from unreasonable search and seizures, freedom from repeat prosecutions, a trial by jury of at least six people for offences that could

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[43] *Id.*
[44] Jerry Gardner & Ada Pecos Melton, *Public Law 280: Issues and Concerns for Victims of Crime in Indian Country*, Tribal Ct. Clearinghouse, https://www.tribal-institute.org/articles/gardner1.htm (last visited March 27, 2024)
[45] *Id.*
[46] *Id.*
[47] *Id.*
[48] Valentina Dimitrova-Grajzl et al., *Jurisdiction, Crime, and Development: The Impact of Public Law 280 in Indian Country*, 48 L. Soc'y Rev. 127, 137 (2014), http://www.jstor.org/stable/43670378
[49] 25 U.S.C.S. § 1302
[50] *Id.*

result in imprisonment, and a speedy and public trial.[51] Congress was concerned about Indians being deprived of their rights after *Talton v. Mayes*.[52] The appellant argued that his murder conviction by the Cherokee nation wasn't valid because his Constitutional rights were violated; he was found guilty by a jury of five and there were inaccuracies in the court transcript.[53] However, the Court found that Cherokee law wasn't bound by the Constitution.[54] While Congress was concerned about civil rights in Indian Country, American Indians were more concerned about the federal and state governments violating their rights.[55]

However, the Act imposed limitations on tribal court sentencing authority, restricting sentences to a maximum of 6 months in jail and a $5,000 fine.[56] It wasn't until 1986 that ICRA underwent an important amendment, elevating the maximum possible tribal court sentence to 1 year in jail and a $5,000 fine.[57] While this did grant tribal courts greater autonomy in adjudicating cases, it still limited the proportional sentencing for offences committed on tribal lands.[58]

The passage of the Tribal Law and Order Act of 2010[59] represented a significant milestone in the ongoing efforts to empower tribal governments with greater authority to address crime within their communities. This legislation reinstated limited felony sentencing authority to tribes, enabling them to impose sentences of up to 3 years in jail and fines of $15,000 per offence, with a cumulative maximum sentence of 9 years per criminal proceeding.[60] However,

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[51] *Id.*
[52] .*Talton v. Mayes*, 163 U.S. 376 (1896)
[53] *Id.* at 379
[54] *Id.* at 384
[55] *Indian Civil Rights Act*, Tribal Ct. Clearing House, https://www.tribal-institute.org/lists/icra.htm (last visited April 17, 2024)
[56] 25 U.S.C.S. § 1302
[57] *Id.*
[58] *Id.*
[59] 111 P.L. 211, 124 Stat, 2258
[60] *Id.*

tribes opting to utilize this sentencing authority are obligated to ensure certain fundamental rights for defendants, including the provision of law-trained and licensed defence counsel for individuals unable to afford representation.[61]

The TLOA also established accountability measures for federal prosecutors in Indian country. The Attorney General has to submit yearly reports to Congress about prosecutions in Indian country and specifically needs to include "1. The type of crime(s) alleged; 2. The status of the accused as Indian or non-Indian; 3. The status of the victim(s) as Indian or non-Indian; and 4. The reason for deciding against referring the investigation for prosecution (FBI) or the reason for deciding to decline or terminate the prosecution (USAOs)."[62] The FBI must investigate reports of crimes in Indian country, but the US Attorney's Office is responsible for prosecution.[63] However, USAO was found to decline to prosecute 63% of matters referred to them by the Bureau of Indian Affairs.[64]

Apart from the FBI, the Bureau of Indian Affairs Office of Justice Services (BIA-OJS) within the Department of the Interior also holds a significant role in enforcing federal law, including the investigation of violations outlined in the General Crimes Act and the Major Crimes Act.[65] The FBI and the BIA-OJS coordinate with each U.S Attorney that oversees criminal jurisdiction in Indian country to devise guidelines detailing the respective investigative responsibilities of the FBI, the BIA-OJS, and Tribal criminal investigators.[66] In simple terms, to administer criminal justice within Indian country, there needs to be coordination between

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[61] *Id.*
[62] *Indian Country Investigations and Prosecutions*, U.S. Dep't of Just. (2021), https://www.justice.gov/d9/2023-08/2021_-_indian_country_investigations_and_prosecutions_report.pdf
[63] *Id.*
[64] *U.S. Dep't of Justice Declinations of Indian Country Criminal Matters*, U.S. Gov't Accountability Office GAO-11-167R, (Dec. 13, 2010), https://www.gao.gov/assets/gao-11-167r.pdf
[65] *Indian Country Investigations and Prosecutions*, U.S. Dep't of Just. (2021), https://www.justice.gov/d9/2023-08/2021_-_indian_country_investigations_and_prosecutions_report.pdf
[66] *Id.*

multiple federal and Tribal law enforcement authorities. Which agency, federal or Tribal, has the primary responsibility for investigating a specific crime will hinge on the nature of the offence and relevant local directives.[67]

As mentioned previously, which governing body has jurisdiction (federal, state, or tribal) depends on, among other factors such as the specific crime and whether the victim or perpetrator was Indian. The federal government doesn't necessarily need to consider if the parties themselves identify as Indian; in one case, *Ex parte Pero*, in which the defendant wasn't enrolled with any Indian tribe or any reservation, but his parents were enrolled and he residing on a reservation, was enough for him to be considered Indian by the courts.[68] For the federal government to prosecute under the Indian Major Crimes Act,

> "the government must prove that the defendant (1) has some quantum of Indian blood and (2) is a member of, or is affiliated with, a federally recognized tribe…under the IMCA, a defendant must have been an Indian at the time of the charged conduct, and…a tribe's federally recognized status is a question of law to be determined by the trial judge."[69] However, this test has faced criticism, with dissenting opinions arguing that it perpetuates racial classifications in violation of the Fifth Amendment's equal protection component.[70]

Determining the status of the defendant will determine if a tribal court has jurisdiction over the case. The case of *Oliphant v. Suquamish Indian Tribe*[71] addressed the authority of Indian tribal courts to try non-Indians. The Supreme Court's decision in this case firmly established that Indian tribal courts lack inherent jurisdiction over non-Indians unless explicitly delegated such power by Congress.[72] Petitioners in the case were arrested by the Suquamish tribal authorities; one petitioner assaulted a tribal officer and resisted arrest, while the other had a

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[67] *Id.*
[68] *Ex parte Pero*, 99 F.2d 28, 30 (7th Cir. 1938)
[69] *United States v. Zepeda*, 792 F.3d 1103, 1106-7 (9th Cir. 2015)
[70] *Id.* at 1119
[71] 435 U.S. 191, 193-94 (1978)
[72] *Id.* at 212

high-speed race on Reservation highways and collided with a tribal police vehicle.[73] The Suquamish Indian Provisional Court attempted to assert jurisdiction over the defendants, as they could do under the Suquamish Law and Order Code, but the petitioners argued that the tribal court didn't have criminal jurisdiction.[74] The Court, in its majority decision, ruled in favour of the petitioners, stating unequivocally that Indian tribal courts do not possess inherent authority to prosecute non-Indians for crimes committed within Indian Country.[75] The court examined past treaties and congressional actions that implied that tribal courts lacked jurisdiction over non-Indians absent explicit congressional authorization.[76] Despite the Suquamish Indian Tribe's assertion of criminal jurisdiction over non-Indians, the Court emphasized the interest demonstrated in these Congressional actions of protecting non-Indians from potential injustices within tribal court systems.[77]

Relying on *Oliphant*'s holding, this Congressional interest was again repeated by the Supreme Court in *Montana v. United States*.[78] Here, the Court held that civil jurisdiction for tribes was available by either enforcing penalties like taxations or licenses to nonmembers that enter into consensual relationships with the tribe, or when their conduct "has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[79]

II. Criminal Jurisdiction in Indian Country Today

[73] *Id.* at 194
[74] *Id.* at 193-4
[75] *Id.* at 212
[76] *Id.* at 199-201
[77] *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 211 (1978) ; *Montana v. United States*, 450 U.S. 544 (1981)
[78] *Id.* at 550
[79] *Id.* at 566

Today, there are over 570 federally recognized Tribal Nations in the United States, with approximately 400 Tribal justice systems between them.[80] Tribes that do not have their own Tribal justice system have their justice systems provided by the Court of Indian Offences (CFR Courts).[81] Under 18 U.S.C.S. § 1162, each State or Territory is granted jurisdiction over offences committed by or against Indians within specific areas of Indian country, mirroring its jurisdictional reach elsewhere within the state.[82] For instance, in Alaska, all Indian country falls under state jurisdiction, with an exception for the Metlakatla Indian community on Annette Islands, where tribal jurisdiction holds sway.[83] Similarly, California, Minnesota (excluding the Red Lake Reservation), Nebraska, and Oregon (excluding the Warm Springs Reservation), exercise jurisdiction over all Indian country within their respective states.[84]

The operation of Tribal Courts is typically overseen by a full-time chief judge and complemented by part-time associate judges, with jurisdictional boundaries delineated by Tribal law.[85] Additionally, many Tribes facilitate appellate review of trial court decisions through stand-alone appeals courts or participation in appellate court consortia, such as the Northern Plains Intertribal Court of Appeals in South Dakota.[86] Amidst this legal landscape separate from the federal courts, the National American Indian Court Judges Association (NAICJA) stands as a vital resource, offering training, conferences, and technical assistance to Tribal Court judges

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[80] *Tribal Court Systems,* U.S. Dep't of the Interior Indian Affs., https://www.bia.gov/CFRCourts/tribal-justice-support-directorate (last visited March 27, 2024)
[81] *Id.*
[82] 18 U.S.C.S. § 1162
[83] *Id.*
[84] *Id.*
[85] *Confedertated Tribes of the Chehalis Reservation, Jamestown S'Kallam Tribe, Muckleshoot Tribe, Port Gamble S'Klallam Tribe, Sauk-Suiattle Tribe, Shoalwater Bay Tribe, Skokomish Tribe, Stillaguamish Tribe, Tulalip Tribes*, *in* Tribal Justice Systems 67, 83, https://turtletalk.files.wordpress.com/2019/04/aitl_chapter_02.pdf (last visited March 28, 2024)
[86] Frank Pommersheim, *South Dakota Tribal Court Handbook*, (2006) https://ujs.sd.gov/uploads/docs/IndianLaw%20Handbook.pdf

across the nation.[87] Moreover, the NAICJA serves as a crucial resource for Tribal Court judges nationwide, providing essential training, organizing conferences, and offering technical assistance to navigate the intricacies of tribal law and jurisdictional challenges.[88]

While there is support for tribal courts at higher levels, it is often difficult to get support to law enforcement officers on the ground. The recent U.S. Supreme Court decision in *United States. v. Cooley* (2021) addressed some of the concerns that tribal police have been facing.[89] In the case, a tribal police officer pulled over someone who had semi-automatic weapons and methamphetamine in their car.[90] However, the defendant tried to argue that the officer, as a tribal officer, "lacked the authority to investigate nonapparent violations of state or federal law by a non-Indian on a public right-of-way crossing the reservation."[91] This argument was rejected by the Court, who said that tribal authorities do retain "inherent sovereign authority to address 'conduct [that] threatens or has some direct effect on…the health or welfare of the tribe.'"[92]

However, there is only so much that tribal police can do when there are limited members of the force. The Navajo Nation in rural Arizona was forced to cut the recruitment age for police officers from 21 to 18 in the hopes of having more members.[93] In addressing the challenges faced by tribal law enforcement, Chief Nathan Hubregtse of the Yavapai-Apache Police underscores the urgent need for increased federal funding to support rural tribal departments.[94] This sentiment resonates across many rural tribal communities, as highlighted in discussions at

[87] Nat'l Am. Indian Ct. Judges Ass'n, https://www.naicja.org/ (last visited March 28. 2024)
[88] *Id.*
[89] *United States v. Cooley*, 141 S. Ct. 1638 (2021)
[90] *Id.* at 1642
[91] *Id.*
[92] *Id.* at 641
[93] Tracy Abiaka, *Tribal police agencies struggle to attract, maintain officers, panel told*, Cronkite News (May 19, 2022), https://cronkitenews.azpbs.org/2022/05/19/tribal-police-agencies-struggle-to-attract-maintain-officers-panel-told/
[94] *Id.*

the United States Senate Committee on Indian Affairs, where proposals for sign-on and retention bonuses for tribal police officers have been considered vital measures to bolster public safety in Indian country.[95]

Navajo Council Delegate Eugenia Charles-Newton believes that the problem isn't necessarily the funding, but the prosecutions, saying that the FBI and Justice Department have "consistently declined to investigate and prosecute crimes on Native land, and have allowed investigations to fall through the cracks without explanation."[96] This can be problematic, considering that the FBI investigates crimes on over 200 reservations nationwide.[97] Addressing this issue requires a concerted effort to ensure that federal law enforcement agencies fulfil their responsibilities to investigate and prosecute crimes effectively within Native American communities.

In addition to the challenges posed by federal authorities' reluctance to prosecute crimes on Native land, tribal courts face significant obstacles stemming from ICRA and the TLOA. While these were passed to extend rights to natives living on reservations, it has imposed constraints on tribal court jurisdiction and sentencing authority, limiting their capacity to effectively address criminal offences within their communities. Under ICRA, tribal courts are required to provide defendants with certain due process protections, mirroring those afforded in federal and state courts.[98] While intended to safeguard criminal defendants, these requirements

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[95] *Business Meeting to consider S. 3381, S. 3373 & S. 3789 and Roundtable discussion on "Public Safety in Native Communities,"* U.S. S. Comm. on Indian Affs. (May 18, 2022, 3:00 PM), https://www.indian.senate.gov/hearings/business-meeting-consider-s-3381-s-3773-s-3789-and-roundtable-discussion-public-safety/

[96] Tracy Abiaka, *Tribal police agencies struggle to attract, maintain officers, panel told*, Cronkite News (May 19, 2022), https://cronkitenews.azpbs.org/2022/05/19/tribal-police-agencies-struggle-to-attract-maintain-officers-panel-told/

[97] *Indian Country Crime,* F.B.I., https://www.fbi.gov/investigate/violent-crime/indian-country-crime (last visited March 28, 2024)

[98] 25 U.S.C.S. § 1302

often strain the resources and capacities of tribal court systems, particularly in rural and underfunded communities. For example, "until recently, tribes in Alaska and other Public Law 83-280 (P.L. 280) states were ineligible for BIA funding for tribal law enforcement and courts. Although the funding stream is now available, it is insufficient to meet tribal needs."[99] Tribes are forced to fight amongst each other for the limited resources available from the federal government, and "only tribes with grant writers can successfully apply for funding, while under-resourced tribes go without…many successful tribal programs fail after the grant cycle ends."[100] Moreover, ICRA restricts the sentencing authority of tribal courts, imposing limitations on the duration and severity of punishments they can impose.[101] Consequently, tribal courts are left grappling with a legal framework that hampers their ability to uphold justice and ensure the safety of their communities.

Similarly, TLOA imposes additional mandates on tribal courts, including requirements for data collection, reporting, and coordination with federal law enforcement agencies.[102] While aimed at enhancing public safety and accountability, these provisions can impose administrative burdens on tribal courts, diverting resources away from core judicial functions. Furthermore, TLOA's emphasis on collaboration with federal authorities may inadvertently reinforce dependency on external law enforcement agencies, undermining tribal sovereignty and self-determination. Collectively, these statutory frameworks complicate efforts to strengthen tribal justice systems and ensure equitable access to justice for Native American communities. By constraining the jurisdictional authority and sentencing discretion of tribal courts, ICRA and

[99] *2019 Tribal Consulation Report*, U.S. Dep't Just. (2019), https://www.justice.gov/ovw/page/file/1271686/dl
[100] *Id.*
[101] 25 U.S.C.S. § 1302
[102] 111 P.L. 211, 124 Stat, 2258

TLOA perpetuate a dual system of justice that undermines tribal sovereignty and perpetuates disparities in legal representation and enforcement.

Janelle F. Doughtry, the Director of the Department of Justice and Regulatory for the Southern Ute Indian Tribe in Colorado, spoke about these concerns at a Senate hearing.

> "Our tribal courts protect criminal defendants' rights. We should be permitted to take the next step further. It is wrong for Indian people living on Indian reservations to be totally at the mercy of chief Federal prosecutors far from our reservations. It is absolutely deplorable for Indian people to be denied equal access to justice. We need to have a meaningful voice in their selection. It is also totally unacceptable that the nearest U.S. District Court Judge in Colorado is 350 miles away from the Southern Ute Reservation and even farther from our sister tribe to the west, the Ute Mountain Ute Tribe."[103]

Recognizing the urgency of addressing these systemic disparities, one must consider the methods through which crime data within Native American communities is collected and analyzed. The FBI collects crime data within Native American communities primarily through victimization surveys.[104] Before the adoption of victimization surveys, reliance on law enforcement reports provided a limited perspective, failing to capture the full scope of crimes, notably sexual assaults, which often went unreported.[105] The advent of victimization surveys marked a significant advancement, employing random sampling techniques to engage the population and gather comprehensive data on crime experiences.[106] Victim surveys have

[103] Janelle F. Doughtry, *Examining Federal Declinations to Prosecute Crimes in Indian Country*, S. Hrg. 110-683 (Sept. 18, 2008), https://www.indian.senate.gov/wp-content/uploads/documents/CHRG-110shrg46198.pdf
[104] Jennifer L. Truman & Michael Planty, *Criminal Victimization, 2011*, Bureau of Justice Statistics (Oct. 2012), https://bjs.ojp.gov/content/pub/pdf/cv11.pdf
[105] Hilary N. Weaver, T*he Colonial Context of Violence: Reflections on Violence in the Lives of Native American Women*, 24 J. Interpersonal Violence 1552, 1557 (2009)
[106] *Survey Methodology for Criminal Victimization in the United States,* Bureau of Just. Statistics, https://bjs.ojp.gov/sites/g/files/xyckuh236/files/media/document/ncvs_methodology.pdf (last visited March 28, 2024)

revealed disproportionately high victimization rates among Native Americans, as evidenced by statistically significant sample sizes that underscore the severity of the issue.[107].

However, a notable limitation persists in victimization surveys, as they typically do not specify whether reported crimes occurred within reservation boundaries, thereby complicating jurisdictional considerations and hindering targeted interventions.[108] Moreover, the reluctance of victims, particularly in cases of sexual assault, to disclose their experiences due to concerns about survey anonymity poses a significant challenge, likely skewing the accuracy of the data and obscuring the true extent of the problem. Despite these challenges, victimization surveys remain one of the only tools for understanding and addressing crime within Native American communities, due to the lack of reporting within the communities themselves.

A striking trend observed in the data is the disproportionate number of perpetrators of violence against Native women who are non-Native—a departure from the intraracial pattern seen in most violent crimes in the United States.[109] "Federal agencies entrusted with providing safety and support to Native people in the United States continue to hire persons with a history of violence, sex offenses, and child endangerment."[110] Just a few examples of those include non-Indian Burea of Affairs teachers committing widespread sexual abuse against Native children in the 90s, a nurse hired by the Oklahoma City Indian Health Service who was convicted of a sex crime in the Marine Corps that was later found to have assaulted a female patient, and a family practice physician at the Navajo Area Indian Health Service Agency who was found distributing

[107] Sarah Deer, *Criminal Justice in Indian Country*, 2013, https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1259&context=facsch
[108] Patricia Tjaden & Nancy Thoennes, *Stalking in America: Findings From the National Violence Against Women Survey,* National Institute of Justice (2000), https://www.ojp.gov/pdffiles1/nij/183781.pdf
[109] Lawrence Greenfeld & Steven Smith, *American Indians and Crime*, 4 (U.S. Dep't of Just., Office of Just. Programs, Bureau of Just. Statistics 1999).

[110] Sarah Deer, *Federal Indian Law and Violent Crime: Native Women and Children at the Mercy of the State*, 31 Soc. Just. 17 (2004), https://www-jstor-org.ezproxy.shu.edu/stable/29768271?seq=9

child pornography.[111] Given the continuous legal precedent established by the *Oliphant* decision, which denies tribes inherent criminal jurisdiction over non-Indians, tribal courts find themselves with few avenues to address non-Indian perpetrators.

The Violence Against Women Reauthorization Act of 2022 (VAWA 2022) marked a milestone by extending the authority of voluntarily-participating Tribes to exercise "special Tribal criminal jurisdiction" (STCJ) over a broader spectrum of offences committed within Indian country.[112] This provision empowers Tribes to not only investigate but also prosecute, convict, and sentence both Indian and non-Indian offenders for an expanded list of crimes, including assault of Tribal justice personnel, child violence, dating violence, domestic violence, obstruction of justice, sexual violence, sex trafficking, stalking, and criminal violations of protection orders.[113] However, tribes electing to prosecute under STJC must afford defendants the opportunity for a jury trial, ensuring the jury pool reflects a diverse cross-section of the community without systematic exclusion of any demographic group.[114] As mentioned earlier, this can cause strain on tribal courts. Some tribal courts might not want non-tribal members to affect their legal system and decisions, while others may simply be in too rural an area to have a diverse jury pool.

While this sounds like an incredible milestone in reducing federal criminal jurisdiction and increasing tribal criminal jurisdiction, the implementation has hindered tribes. It can be very difficult for tribes to meet the requirements to be allowed to prosecute, such as providing public

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[111] *Id.*
[112] *2013 and 2022 Reauthorizations of the Violence Against Women Act (VAWA)*, U.S. Dep't of Just., (Apr. 7, 2023) https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-vawa#:~:text=In%202022%2C%20Congress%20amended%20this,%2C%20sex%20trafficking%2C%20and%20stalking.
[113] *Id.*
[114] *Id.*

defenders and finding Tribal judges who are also authorised to practice law. These problems have been realised for decades, but the law hasn't changed. Carole Goldberg, who served on the 2010 Indian Law and Order Commission, noticed back in 2014 that there "is a considerable disparity of funding…If you're going to have criminal jurisdiction, you need resources. So until we have the resources and criminal jurisdiction exercised over anyone, we can't begin talking about making use of VAWA 2013."[115] Having these federal requirements within tribal courts restricts their abilities to implement tribal law; something that, if one is to respect tribal sovereignty, should be treated as distinct from federal law.

Kathy Gibson, the rural project coordinator for the Napuha Kha Nii Programs at the Shoshone-Paiute Tribes on the Duck Valley Indian Reservation, has seen firsthand how jurisdictional limitations hinder tribes' ability to hold non-Native Americans accountable for crimes committed on tribal lands.[116] She emphasized the challenges tribes face in arresting and detaining non-Natives, which often result in delays and barriers to prosecution, leaving victims vulnerable to further harm.[117] Recalling a troubling incident involving a Native woman and her non-Native boyfriend, Gibson, alongside Madalyn Porath, the only other employee at the domestic violence center, explained how little power the tribal authorities have.[118]

A neighbor reported an assault between the couple to the federal Bureau of Indian Affairs (BIA), which lacks the authority to arrest non-Natives.[119] The BIA does have the authority to

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[115] Leah Bartos, *Native American Tribes Have the Right, but Not the Resources, to Prosecute Abusers,* Cal. Health Report (Oct. 22, 2014), https://www.calhealthreport.org/2014/10/22/native-american-tribes-have-the-right-but-not-the-resources-to-prosecute-abusers/

[116] Camalot Todd, *For Tribes in frontier Nevada, domestic violence brings a messy web of legal jurisdiction issues,* Nev. Current, (Oct. 5, 2023, 5:15) AM), https://nevadacurrent.com/2023/10/05/for-tribes-in-frontier-nevada-domestic-violence-brings-a-messy-web-of-legal-jurisdiction-issues/

[117] *Id.*

[118] *Id.*

[119] *Id.*

temporarily hold an offender but needs to transfer them to federal or state authorities.[120] For the residents of the Duck Valley Indian Reservation, the nearest authority was the Elko Police Department.[121] When called, the Elko Police Department said they had no jurisdiction at all in the reservation and needed to have Public Law 280 explained to them by Gibson.[122] "I had to call all the way up to the District Attorney's office, the FBI, the Attorney General to say, 'Hey, we've got a case here and we need to make sure this person is prosecuted or held and does not come back,'" Gibson recounted.[123]

Porath underscored the pivotal role of individuals like Gibson in advocating for the safety of Native communities amidst jurisdictional challenges, questioning the potential consequences if such advocacy were absent. "What would happen if Kathy wasn't on the phone? You don't want to think about if this non-Native perpetrator would get away with it, but really what would happen if she didn't push through?" she asked.[124] As the case remains ongoing, it serves as a stark reminder of the pervasive jurisdictional issues that continue to impact the safety and well-being of Native individuals on tribal reservations.

The fact that the police department themselves needed to be told that they were responsible for arresting this abuser is a concerning pattern that takes place on many Tribal lands. The implications of this become alarming in light of two recent Supreme Court cases; *McGirt v. Oklahoma* and *Oklahoma v. Castro-Huerta*. The rulings in *McGirt* established two key points.[125] Firstly, the State of Oklahoma did not have the authority to prosecute a member of the

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[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020)

Seminole Nation for crimes committed on the Creek Reservation.[126] This was due to the legal classification of the land as Indian country under the Major Crimes Act, meaning that only the federal government had jurisdiction to prosecute major crimes committed by Indians in such areas.[127] Secondly, the court emphasized that the establishment of a reservation retained its status unless explicitly revoked by Congress, meaning that approximately 43% of Oklahoma, including Tulsa, is considered Indian country due to the unresolved status of tribal reservations.[128] In *Oklahoma v. Castro-Huerta*, the Supreme Court determined that both the Federal Government and the State of Oklahoma have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country.[129]

These overlapping jurisdictions have greatly complicated law enforcement's ability to prosecute crimes, leading to even more confusion between law enforcement officers on the federal, state, and tribal levels. Oklahoma, Muscogee Creek Nation, Cherokee Nation, Chickasaw Nation, Choctaw Nation, and Seminole Nation all vowed to work together to resolve any jurisdictional issues.[130] This is in addition to the passage of the Not Invisible Act of 2019, which was passed to increase coordination and collaboration between the Department of the Interior and the Department of Justice to combat violent crime within Indian lands and against Indians.[131] Specifically, the Act requires the designation of an official within the Bureau of Indian Affairs to coordinate prevention efforts and grants related to missing Indians, murder, and

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[126] *Id.* at 2456
[127] *Id.*
[128] *Oklahoma v. Castro-Huerta*, 142 S. Ct. 2486, 2491-92 (2022)
[129] *Id.*
[130] Sean Murphy & Jessica Gresko, *Justices rule swath of Oklahoma remains tribal reservation,* AP News, (July 9, 2020 3:21 PM), https://apnews.com/article/ap-top-news-courts-supreme-courts-oklahoma-virus-outbreak-c90c395f1e156d37a85e59e0a21cb52a
[131] Not Invisible Act of 2019, Pub. L. No. 116-166, 134 Stat. 758 (2020)

human trafficking.[132] Furthermore, it establishes a joint commission tasked with developing recommendations to enhance law enforcement responses to instances of missing persons, murder, and human trafficking within Indian lands.[133]

The recent clash in December of last year between Muscogee Nation law enforcement and Okmulgee County jailers underscores the persistent challenges surrounding tribal sovereignty and jurisdictional disputes.[134] The incident unfolded when tribal officers sought to transfer a suspect to county custody, only to be met with resistance and refusal from jail staff, resulting in a physical altercation between a jailer and a tribal officer.[135] The jailer was charged in tribal court for battery, and a warrant was put out for his arrest; however, Okmulgee County jail staff refused to cooperate with three tribal officers attempting to serve the arrest warrant and did not allow them to take the jailer.[136]

"We understand that the Okmulgee County officials dislike federal laws that grant tribal law enforcement jurisdiction," said Muscogee Nation Attorney General Geri Wisner.[137] "But those political opinions do not give Okmulgee County the right to disregard and violate laws. It certainly does not give them license to assault another police officer."[138] Kevin Stitt, the Governor of Oklahoma (who had previously issued the joint statement of cooperatively resolving jurisdictional problems alongside the Tribal Nations), said that "the altercation was a direct result of the U.S. Supreme Court's decision on criminal jurisdiction."[139] In a statement, the Governor

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[132] *Id.*
[133] *Id.*
[134] Sean Murphy, *Dispute over criminal jurisdiction flares in Oklahoma between tribal police, jailers,* AP News, (Dec. 21, 2023 6:49 PM), https://apnews.com/article/oklahoma-muscogee-nation-tribal-sovereignty-9cfa969d2596382a4fc13e1d542064ba
[135] *Id.*
[136] *Id.*
[137] *Id.*
[138] *Id.*
[139] *Id.*

said that "[w]ithout jurisdictional clarity, we are left with a patchwork system and heightened tensions. I am glad cooler heads prevailed and prevented the situation from escalating to a dangerous level, but this demonstrates the need for collective action."[140]

This is the current state of affairs in Indian country. With tribal courts being left with limited criminal jurisdiction, crime is allowed to run free with limited checks. Attempts by tribal police to bring law and order to their communities are met with barriers put in place by the federal government, or even worse, by hostility from fellow law enforcement officers. By forcing Indian country to remain under federal criminal jurisdiction, natives are perpetually vulnerable to unchecked crime and injustices from government agents.

III. Extradition from American Indian Jurisdiction to United States Jurisdiction

The current legal system in place is failing tribes and resulting in harm. But, in a complex centuries-long legal web of jurisdiction, how can tribes assert themselves and create respect for the rule of law within their communities, while still opening the door for cooperation with the federal government on certain cases? Perhaps this can be done the same way that other countries work alongside the United States in matters of criminal jurisdiction; through extradition treaties. In an extradition treaty, a country will have the option to approve or deny a request to send

[140] *Id.*

another country's citizens back to their home country after they committed a crime.[141] This maintains and promotes respect for the sovereignty of the separate countries.[142]

The Treaty of Extradition between Canada and the United States is a clear example of what a cooperative legal framework could look like and offers insights for resolving similar challenges between Tribal Nations and the United States.[143] The current extradition treaty, which came into force in 1976, embodies the spirit of collaboration in combating crime by facilitating the reciprocal extradition of offenders between the two nations.[144] Its foundational principles emphasize clarity, cooperation, and respect for sovereignty, setting clear criteria for extradition and promoting consistency and predictability in the process. Considering that Canada and the United States view each other as "closest allies, most important trading partners, and oldest friends," the friendly spirit in this extradition treaty is what should be replicated in an extradition treaty between the United States and Indian country.[145]

One of the key provisions of the treaty is Article 1, which outlines the scope of extradition by requiring extradition with offences punishable by imprisonment exceeding one year.[146] This provision ensures that extradition is reserved for more serious crimes, which would all U.S. District Attorneys to still prosecute and punish non-Indian felons under the standards in

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[141] Melissa Bender, *International Extradition Laws and Process,* FindLaw, https://www.findlaw.com/criminal/criminal-procedure/extradition.html#:~:text=In%20an%20extradition%20treaty%2C%20two,with%20more%20than%20100%20countries (Sept. 18, 2023)

[142] *Revised Manuals on the Model Treaty on Extradition and on the Model Treaty on Mutual Assistance in Criminal Matters*, U.N. Office on Drugs & Crime (2004) https://www.unodc.org/pdf/model_treaty_extradition_revised_manual.pdf.

[143] *Treaty on Extradition Between the Government of Canada and the Government of the United States of America*, E101323 - CTS 1976 No. 3, https://www.treaty-accord.gc.ca/text-texte.aspx?id=101323

[144] *Id.*

[145] *Remarks by President Biden and Prime Minister Trudeau of Canada in Joint Press Statements*, White House, (Feb. 23, 2021, 6:22 PM EST), https://www.whitehouse.gov/briefing-room/speeches-remarks/2021/02/23/remarks-by-president-biden-and-prime-minister-trudeau-of-canada-in-joint-press-statements/.

[146] *Treaty on Extradition Between the Government of Canada and the Government of the United States of America*, E101323 - CTS 1976 No. 3, https://www.treaty-accord.gc.ca/text-texte.aspx?id=101323

the Bill of Rights, without imposing these standards constantly on tribal courts. Tribal courts would be given the freedom to administer justice according to tribal laws and customs instead of American laws and customs. While these are the concerns that Congress has been trying to avoid, as seen in the aftermath of *Talton v. Mayes* discussed earlier, these are not concerns shared by most American Indians, who instead feel the federal and state governments, not tribal authorities, who are violating their rights.[147] These concerns should be respected and taken seriously.

Moreover, the treaty delineates the types of offences for which extradition may be granted, including but not limited to murder, robbery, and drug trafficking. By specifying the categories of crimes eligible for extradition, the treaty provides clarity and predictability in the extradition process. This also opens the door for tribal courts to be allowed to prosecute a much greater scope of crimes than the limited number they are allowed to bring against non-Indians under VAWA.[148]

Applying the principles of the extradition treaty to Tribal Nations and the United States, cooperative extradition agreements could offer a structured approach to address jurisdictional conflicts in Indian country. Drawing inspiration from the treaty's emphasis on clarity, cooperation, and respect for sovereignty, such agreements would provide a roadmap for navigating complex jurisdictional issues while preserving tribal sovereignty.

Under these agreements, tribal courts would have complete criminal jurisdiction over anyone on their land, regardless of whether or not the individual is Indian or a non-Indian. This

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[147] *Indian Civil Rights Act*, Tribal Ct. Clearing House, https://www.tribal-institute.org/lists/icra.htm (last visited April 17, 2024)

[148] *2013 and 2022 Reauthorizations of the Violence Against Women Act (VAWA)*, U.S. Dep't of Just., (Apr. 7, 2023) https://www.justice.gov/tribal/2013-and-2022-reauthorizations-violence-against-women-act-vawa#:~:text=In%202022%2C%20Congress%20amended%20this,%2C%20sex%20trafficking%2C%20and%20stalking.

distinction was created by Congress in the General Crimes Act, but it is important to remember that tribal courts used to have complete criminal jurisdiction over their territory before European or American influence.[149] The proposed approach would shift the focus of jurisdictional disputes away from the ethnic or tribal identity of the individuals involved and towards the nature and severity of the crime committed. By deprioritizing tribal affiliation in adjudicating criminal cases, the extradition agreements would streamline the legal process, minimizing misunderstandings and conflicts between law enforcement agencies.

In practical terms, this approach simplifies the adjudication process by removing the need to navigate complex jurisdictional questions based on the racial or ethnic identity of the parties. Tribal courts would retain jurisdiction over certain offences within their inherent sovereignty, while federal prosecutors would handle cases involving serious crimes that meet the extradition criteria outlined in the treaty. Furthermore, by deprioritizing the consideration of tribal affiliation in jurisdictional matters, cooperative extradition agreements based on this framework would help minimize misunderstandings and conflicts between tribal, state, and federal authorities. It would establish a uniform set of rules and procedures for determining jurisdiction, thereby reducing the potential for jurisdictional disputes and enhancing cooperation among law enforcement agencies. Considering that the Court used to believe that Indian nations had inherent sovereignty and their relationship should be solely between the federal government, this proposed extradition treaty should be primarily between the federal government and tribal authorities.[150] Given the unique position of the United States having a domestic nation within its borders, there might need to be some state involvement, but to promote respect for tribal sovereignty, the federal government

[149] 18 U.S.C.S. § 1152 ; Sarah Deer, *Federal Indian Law and Violent Crime: Native Women and Children at the Mercy of the State*, 31 Soc. Just. 17 (2004), https://www-jstor-org.ezproxy.shu.edu/stable/29768271?seq=9
[150] *Worcester v. Georgia*, 31 U.S. 515, 561 (1832)

should be mostly involved. Ultimately, adopting a treaty model that prioritizes the nature of the offence over the identity of the individuals involved would contribute to a more equitable and efficient criminal justice system in Indian Country.

Establishing clear jurisdictional boundaries through cooperative agreements could also serve as a deterrent to non-Indian offenders who currently perceive Indian Country as a jurisdictional grey area where they can evade accountability. Already, there is a dangerously high likelihood that Native Americans must face being murdered, sexually assaulted, or sex trafficked, there is a dire need for cooperation across all areas of law enforcement.[151] Considering that prison personnel go unpunished for attacking tribal police officers, the message is clear;[152] "on Indian Land, criminals can get away with anything."[153] By clarifying jurisdictional boundaries and ensuring that all crimes are subject to prosecution under either tribal or federal law, regardless of the perpetrator's ethnicity, such agreements would send a strong message that criminal behaviour in Indian Country will not go unpunished.

Moreover, by holding non-Indian offenders accountable for their actions in Indian Country, cooperative agreements would help restore trust and confidence in the criminal justice system among Native American communities. By empowering Tribal Nations to exercise their inherent sovereignty and collaborate with federal authorities in prosecuting crimes, these agreements have the potential to create safer and more secure communities for all residents of Indian Country.

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[151] *Violence Against Native Peoples,* Ass'n on Am. Indian Affs., https://www.indian-affairs.org/violenceagainstnatives.html#:~:text=American%20Indians%20and%20Alaska%20Natives,experienced%20violence%20in%20their%20lifetime (last visited March 28, 2024)

[152] Sean Murphy, *Dispute over criminal jurisdiction flares in Oklahoma between tribal police, jailers,* AP News (December 21, 2023 6:49 PM), https://apnews.com/article/oklahoma-muscogee-nation-tribal-sovereignty-9cfa969d2596382a4fc13e1d542064ba

[153] Sierra Crane-Murdoch, *On Indian Land, Criminals Can Get Away With Almost Anything,* The Atlantic (February 22, 2013) https://www.theatlantic.com/national/archive/2013/02/on-indian-land-criminals-can-get-away-with-almost-anything/273391/

IV. Conclusion

As seen in just the past few years, conflicts and tensions between tribal authorities and government agents are only growing, and recent Supreme Court decisions haven't alleviated any of the confusion in this area. The current system regulating criminal jurisdiction in Indian Country, characterized by jurisdictional ambiguity and inadequate law enforcement cooperation, perpetuates a cycle of injustice that undermines the safety, well-being, and autonomy of indigenous peoples.

From the shores of Alaska to the plains of Oklahoma, tribal courts grapple with constrained authority and sentencing discretion imposed by statutes like ICRA and TLOA.[154] These legislative frameworks, while ostensibly designed to extend rights to Native Americans, have instead shackled tribal courts, limiting their capacity to administer justice within their communities. The time has come to dismantle these barriers and empower tribal nations to assert control over their destinies.

By fostering clarity, cooperation, and respect for tribal sovereignty, extradition treaties offer a framework within which tribal, state, and federal authorities can collaborate to address jurisdictional conflicts and combat crime in Indian Country. Yet, while extradition agreements represent a crucial step forward, they must be accompanied by a fundamental shift in our approach to tribal sovereignty.

The promises of sovereignty and justice made to Native American tribes have been mere platitudes for too long, but they must be seen as commitments that demand unwavering

[154] 25 U.S.C.S. § 1302 ; 111 P.L. 211, 124 Stat, 2258

dedication. It is incumbent upon the United States to honor these commitments by empowering tribal courts with complete jurisdiction over all misdemeanors automatically, and by requiring federal authorities to submit formal extradition requests for felonies in tribal jurisdictions. Anything less perpetuates a system of oppression and injustice that has plagued Native American communities for far too long.

As we look towards the future, let us heed the words of tribal leaders, advocates, and community members who have long fought for justice within Indian Country. Let us forge a path that respects the inherent rights and dignity of indigenous peoples, ensuring that they can govern themselves and administer justice according to their laws and customs. All residents of Indian Country should be able to live in safety and security, free from the shackles of colonial oppression and the imposition of external authority.