

Before and After the White Man: Indian Women, Property, Progress, and Power

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I. INTRODUCTION

Native America has been, and in many ways still is, more diverse than the entire continent of Europe. While all Indian tribes have an underlying consciousness and world view, each tribe has its own language, religion, customs, governance structure, judicial system, and history. Thus, when writing an article about the Native American experience, it is important to remember that the experience of one tribe is not necessarily the experience of another. Sweeping the brush that broadly would ignore the diverse heritage of the Indian people and fail to adequately give credit to each tribe's unique contributions to the Americas, both before and after European settlement.

In many tribes, women have played an important role in day-to-day tribal operations, tribal governance, and the practice of the tribe's religious traditions. For certain Indian tribes, the role of women remained unchanged for centuries, and it was only with the coming of European settlers that Indian perceptions of women, along with many other long held beliefs, began to change. Until recently, the idea that women could participate in society to the same degree as men was a foreign concept in Western culture.¹ Indeed, for Western women, obtaining status equal to men has happened, for the most part, in the last hundred years.

Members of Western society see themselves on the forefront of civilization, bringing the world technology, capitalism, and democracy. However, these same individuals often fail to recognize that centuries earlier, when native people presented their Western ancestors with some of these same societal notions, particularly the valuable contributions of women, Westerners were repulsed and dismissed these ideas immediately as a savage, inferior way of functioning.

This paper will compare the different roles of women in Native American and Western European societies, specifically with regard to

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¹ For the purposes of this paper, all references to Western society, culture, civilization, etc. include the countries of Europe, Canada, and the United States.

societal duties, property ownership, and community governance. The first portion of this paper will give a brief survey of Western society's historical view of women. Second, this paper will examine women's roles in American tribal culture. Third, this paper will address the impact that European law, culture, and customs have had on native women's rights and duties within their tribal communities.

This paper is by no means an exhaustive list of all the different roles Indian women have taken over the centuries; rather, it is a sampling of particular experiences of native women, intended to highlight the diversity of thought and perspective that exists in Native American culture.

II. THE ROLE OF WOMEN IN WESTERN SOCIETY

The role of women in Western civilization has changed drastically over the past century and, some would argue, in the past thirty years. In the United States, women were not allowed to vote until the passage of the Nineteenth Amendment,² which was proposed in 1919 and ratified on August 18, 1920.³ Women in America would have to wait another five decades until the women's rights movement of the 1970's brought about greater gender equality through the litigation of a series of court cases involving women's constitutional rights.⁴ Western women's struggle for the same rights as men has its roots in ancient European cultural and religious beliefs.

Although Western society has made great strides in recent decades to promote gender equality both on the national and international level, Western culture is still somewhat haunted by its past prejudice and struggles to be comfortable with, and make accommodations for, genders

² U.S. CONST. amend. XIX, § 1 states, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex."

³ U.S. CONST. amend. XIX explanatory notes (West 2006). Six states have never ratified the Nineteenth Amendment to the U.S. Constitution granting women the right to vote: Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Virginia. Carla Christofferson, Note, *Tribal Courts' Failure to Protect Native American Women: A Reevaluation of the Indian Civil Rights Act*, 101 YALE L.J. 169, 176 n.61 (1991).

⁴ Tonya Plank, *Approximating Procne: The Role of Literature in Feminist Jurisprudence and Advocacy*, 19 WOMEN'S RTS. L. REP. 213, 215 (1998). See, e.g., *Griswold v. Connecticut*, 381 U.S. 479 (1965) (holding that a Connecticut law forbidding the use of contraceptives unconstitutionally intruded upon the right to marital privacy); *Phillips v. Martin Marietta Corp.*, 400 U.S. 542 (1971) (finding that a genuine issue of material fact existed on the question of whether a woman's family obligations to her preschool-age children was more relevant to her job performance than a similarly-situated man); *Roe v. Wade*, 410 U.S. 113 (1973) (holding the Texas criminal abortion statutes unconstitutional and that prior to the end of a woman's first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician; the state may regulate abortion at any stage subsequent to viability so long as abortions are still available when necessary to protect the health and safety of mothers); *Miss. Univ. for Women v. Hogan*, 458 U.S. 718 (1982) (holding that the policy of a state supported university, which limited its enrollment to women and denying otherwise qualified males the right to enroll in nursing school violated the Equal Protection Clause of the U.S. Constitution).

functioning in the dual roles of bread-winner and care-giver. Even today, there are significant gender barriers in certain professions. For example, over 90 percent of bank tellers, pre-school and kindergarten teachers, receptionists, and registered nurses are female, while over 90 percent of firefighters, mechanics, and pest exterminators are male.⁵

A. Societal Duties

Western culture's emphases on patriarchy and the subordination of women date back to Aristotelian philosophy and the writings of Saint Paul.⁶ In Europe, men were characterized as reasonable and rational, while women acted based on their emotions and intuition. In other words, while men were capable of reasoning, women were thought to act on instinct.⁷ When a man and woman were married in Western countries, the "two became one," in accordance with Christian religious traditions.⁸ The unity of marriage resulted in the wife losing her ability to control her own property and other assets; she could not sue or be sued, enter into contracts without the consent of her spouse, pursue a profession or even have legal custody over her children.⁹ Essentially, once a woman was married, European and American legal systems placed her under the dominion and control of her husband.¹⁰

In Europe and the early centuries of the American republic, women had many duties but few corresponding rights. It was thought that the female gender had the God-given duty to tend to the home and to bear and raise children.¹¹ These perceptions about women were often used as a justification to deny women equal status, access to societal resources, and

⁵ Kingsley R. Browne, *Women in Science: Biological Factors Should Not Be Ignored*, 11 *CARDOZO WOMEN'S L.J.* 509, 522 (2005).

⁶ Patricia A. Cain, *Feminism and the Limits of Equality*, 24 *GA. L. REV.* 803, 812–13 (1990) (noting that Aristotle reasoned females were less rational than males). The first woman, Eve, was created in Adam's image for the purpose of helping him. *Genesis* 2:18, 21–23 (King James). Saint Paul theorized that although man is formed in the image of God, because woman was formed out of man, she was inferior. *See I Corinthians* 11:7–9 (King James). Judith G. Greenberg, *Criminalizing Dowry Deaths: The Indian Experience*, 11 *AM. U. J. GENDER SOC. POL'Y & L.* 801, 822 n.91 (2003) (Saint Paul asserted in his teachings that women should remain subservient to men).

⁷ Leslie Bender, *A Lawyer's Primer on Feminist Theory and Tort*, 38 *J. LEGAL EDUC.* 3, 24 (1988) (citing Western philosophers such as Hegel, Kant, and Schopenhauer who asserted that women lack the capacity to think and reason as men do).

⁸ *Ephesians* 5:21–33.

⁹ Anne-Marie Leath Storey, *An Analysis of the Doctrines and Goals of Feminist Legal Theory and Their Constitutional Implications*, 19 *VT. L. REV.* 137, 141 (1994) (citations omitted).

¹⁰ *Id.*

¹¹ *See id.* at 144. Many intellectuals, including Aristotle, Kant, Hegel and Schopenhauer believed that women were less rational than men; the beautiful sex whose members were only capable of acting on emotion. Schopenhauer, in particular, considered women to be the middle step between child and man, and that man is the true human being; women's sole reason for existence was for the propagation of the race. *Id.* at 140–41 n.31.

even rights under the law.¹² Under English common law, a husband's duty in a marriage was twofold: to act as his wife's disciplinarian and his wife's protector.¹³ In fact, during the British Parliamentary debates in 1838, it was suggested that women were too delicate to seek to enforce their rights against men, particularly in the judicial system; therefore, there was no point in extending rights in the civil and political arena which would never be exercised.¹⁴

B. Ownership of Property

For all intents and purposes, women were considered chattel; property of their fathers and husbands. During this time, people married for business purposes, and once this transaction occurred, any children that came about as a result were their father's property as well.¹⁵ The idea that women were the property of male family members originated from Biblical and Roman law, upon which both Anglo-American common law and European continental codes are based.¹⁶

A particularly frightening example of this principle in practice is the traditional Western view of rape. During Biblical times, the Roman Empire, medieval Europe, and even first century America, rape was considered a crime against a father or husband's property interest, not as a violent crime against women.¹⁷ Thus, to Western society, it would be silly to allow women to own property, since women were property themselves.

1. The Power of Dowry

In Western culture, having a dowry was an essential part of the economic functioning of society. In America and Europe, having a dowry was seen as insurance to protect a woman and ensure that she was provided for.¹⁸ Without some kind of dowry, a woman did not get married because marriage was an economic arrangement in the pre-modern era.¹⁹

¹² Danaya C. Wright, *De Manneville v. De Manneville: Rethinking the Birth of Custody Law Under Patriarchy*, 17 LAW & HIST. REV. 247, 250 (1999).

¹³ Virginia H. Murray, *A Comparative Survey of the Historic Civil, Common, and American Indian Tribal Law Responses to Domestic Violence*, 23 OKLA. CITY U. L. REV. 433, 439 (1998).

¹⁴ Danaya C. Wright, "Well-Behaved Women Don't Make History": *Rethinking English Family, Law, and History*, 19 WIS. WOMEN'S L.J. 211, 262-63 nn.248-49 (2004).

¹⁵ *Id.* at 235.

¹⁶ Michelle J. Anderson, *Marital Immunity, Intimate Relationships, and Improper Inferences: A New Law on Sexual Offenses by Intimates*, 54 HASTINGS L.J. 1465, 1478 n.23 (2003).

¹⁷ *Id.*

¹⁸ Symposium, *Marriage Law: Obsolete or Cutting Edge?*, 10 MICH. J. GENDER & L. 21, 44 (2003).

¹⁹ Joan Williams, *Is Coverture Dead? Beyond a New Theory of Alimony*, 82 GEO. L.J. 2227, 2281 (1994) ("Earlier generations recognized marriage as both an economic arrangement and a locus of intimacy, with little sense of contradiction.").

Women whose parents could not assemble an adequate dowry, even as small as providing an animal or minor property, had few options.²⁰

Many of these women, who were homely, the youngest of many daughters, or considered “unmarriageable” for one reason or another, were placed in convents or designated to care for their parents.²¹ These women became the “old maids” and spinsters of fairytales; and along with these stigmas came the unfortunate relegation of these women to the bottom of the social and economic hierarchy.²²

2. *Women’s Role in Property Ownership*

The Anglo-American legal system generally discouraged women from owning property through the legal doctrines of primogeniture and coverture.²³ Primogeniture is the right under the common-law of firstborn sons to inherit all of his family’s property, usually at the exclusion of his younger siblings.²⁴ The principle of coverture limited a married woman’s legal abilities; she could only sue and enter into contracts through the personality of her husband.²⁵

However, this same legal system routinely placed property under women’s control, albeit on a temporary basis through the common law principles of dower and jointure.²⁶ The common law principle of dower gave a wife the right, upon the death of her husband, to a life estate in a third of the land he owned in fee simple to use during her lifetime.²⁷ In lieu of dower, some women used a jointure, created through her marriage contract, to obtain property for use after her husband’s death.²⁸

Specifically, under the common law, jointure was used instead of dower to give a couple properties jointly before their marriage.²⁹ Under this contract agreement, in consideration for the marriage, a woman was given a freehold life estate in the property, which she could only exercise after the death of her spouse, and after her death, this property would revert back to any of her husband’s living heirs.³⁰

Some women in British and American societies did own real property if it was associated with economic production. For example, women often owned or ran taverns and boarding houses, but the title to the property was

²⁰ Symposium, *supra* note 18, at 44.

²¹ *Id.*

²² *Id.*

²³ Anastasia B. Crosswhite, *Women and Land: Aristocratic Ownership of Property in Early Modern England*, 77 N.Y.U. L. REV. 1119, 1124–25 (2002).

²⁴ BLACK’S LAW DICTIONARY 1210 (7th ed. 1999).

²⁵ *Id.* at 373.

²⁶ Crosswhite, *supra* note 23, at 1122.

²⁷ BLACK’S LAW DICTIONARY 507 (7th ed. 1999).

²⁸ Crosswhite, *supra* note 23, at 1126–27.

²⁹ BLACK’S LAW DICTIONARY 843 (7th ed. 1999).

³⁰ Crosswhite, *supra* note 23, at 1126–27.

generally held for her by a male trustee such as her husband.³¹ Furthermore, any income a woman made as result of managing this property was viewed as a product of her husband's industry and not her own ingenuity.³²

A woman who did not actively participate in the economic sphere because her family's property was not conducive for female involvement or because she was unable to do so for some other reason, was generally considered a detriment to her family because the property would inevitably pass outside of the woman's family control upon her marriage or the death of the patriarch.³³ Unfortunately, in Western society, women were usually seen as a means to an economic end, that is what they could bring to a marriage or contribute their family's business and lifestyle.³⁴

C. Community Governance

Civic responsibilities in Europe and early America were exclusively under the control of men.³⁵ This section will briefly review the development of democratic governance in the west and its impact on women.

1. The Magna Carta

In 1215, the Magna Carta was signed by King John of England and is hailed by modern scholars as the original document promoting the rights and liberties of all people.³⁶ In reality, King John insisted on blind obedience to laws that the populace considered unjust and morally reprehensible.³⁷ Under the influence of the Archbishop of Canterbury, barons and knights of the realm drafted the Magna Carta and placed the King in a position where he was forced to sign the document and abide by its principles.³⁸

Despite Western culture's exalted view of the Magna Carta, in reality its adoption only granted rights to the feudal lords of English society rather than the people as a whole.³⁹ These statements are not meant to undermine the ultimate impact of the Magna Carta, which began the

³¹ Wright, *supra* note 14, at 257.

³² *Id.*

³³ *Id.*

³⁴ *See id.* at 235, 310.

³⁵ *See Storey, supra* note 9, at 143.

³⁶ DONALD KAGAN, ET AL., *THE WESTERN HERITAGE* 279–80 (5th ed. 1995). *See also* Marina Angel, *Criminal Law and Women: Giving the Abused Woman Who Kills a Jury of Her Peers Who Appreciate Trifles*, 33 AM. CRIM. L. REV. 229, 265 (1996).

³⁷ Michael Connelly, *Civil Rights Are for All of Us*, 47 HOUS. LAW. 6, 6 (2004).

³⁸ *Id.*

³⁹ Surya P. Subedi, *Are the Principles of Human Rights "Western" Ideas? An Analysis of the Claim of the "Asian" Concept of Human Rights from the Perspectives of Hinduism*, 30 CAL. W. INT'L L.J. 45, 64 (1999).

centuries long process of recognizing the ruling of law, promoting equal rights for all citizens and developing representative democracies.⁴⁰ Rather, these facts simply illustrate that in Western society, movement toward democracy and equality was a slow process developing over many centuries. In any event, women did not obtain equal rights in many Western countries until a few decades ago.⁴¹

2. *Women's Rights in Pre-Industrial, Western Societies*

In Anglo-Norman society, women were not able to participate in the legal system.⁴² It was only when a woman was widowed that she obtained the right to control her land, litigate on her own behalf, and make a will.⁴³ Still, a widowed woman was considered “a ward of the king or overlord,” and he could arrange another marriage for her for his own profit.⁴⁴ Thus, it was not uncommon, if a widowed woman could afford it, for her to pay the lord herself to avoid re-marriage.⁴⁵

The dialogue concerning human rights arose fairly recently in Western history, stemming from the democratic revolutions in Europe and North America near the end of the 18th century.⁴⁶ Specifically, the French Revolution legitimated the idea of human rights generally, when the *Déclaration des droits de l'homme et du citoyen* was adopted in 1789.⁴⁷ However, it did not aid in the furtherance of women's rights, particularly regarding their involvement in politics and civic life.⁴⁸

The revolutionary vision in which Western men were caught up did not go unnoticed by the women of the era.⁴⁹ In 1791 a notable Frenchwoman, Olympe de Gouges, wrote the *Déclaration des droits de la femme et de la citoyenne*, and the following year Mary Wollstonecraft, a British author, wrote *A Vindication of the Rights of Women*.⁵⁰ These writings are often

⁴⁰ See The Rt. Hon. Lord Woolf of Barnes, *The Judiciary of England and Wales and the Rule of Law*, 39 IND. L. REV. 613, 616 (2006); Angel, *supra* note 36, at 265.

⁴¹ Subedi, *supra* note 39, at 64.

⁴² See Christine G. Clark, *Women's Rights in Early England*, 1995 BYU L. REV. 207, 233 (1995).

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.* at 233–34. Even King John of England himself profited from widow payoffs and language regarding these arrangements was included in the Magna Carta: “[n]o widow shall be compelled to marry so long as she prefers to live without a husband, provided she gives security that she will not marry without her lord's consent.” *Id.*

⁴⁶ Felipe Gómez Isa, *The Optional Protocol for the Convention on the Elimination of All Forms of Discrimination Against Women: Strengthening the Protection Mechanisms of Women's Human Rights*, 20 ARIZ. J. INT'L & COMP. L. 291, 292 (2003).

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

considered the first efforts in Western society to establish legal rights for women.⁵¹ Despite these efforts, women continued to remain invisible in the Western civic arena, and the newly democratized nations of Europe and North America were dominated by the male perspective of governance.⁵²

In America, the Declaration of Independence justified representative government through the idea of equality, as opposed to the previous justification for Western governance, the divine right of kings.⁵³ The idea of equality was important because it provided the new democratic government with a source of legitimacy.⁵⁴ Essentially, the principles of democracy are justified by a social contract between the government and the people who consent to be governed, exchanging some freedoms for government protection.⁵⁵

Some Westerners thought that certain societal groups were not able to intelligently consent to the social contract and thus were not bound by it; they excluded women, Native Americans, and slaves on this basis.⁵⁶ In addition, for purposes of representation, slaves were counted as three-fifths of a person and women were counted as an entire person, though neither could vote.⁵⁷ It is important to remember that when the U.S. Constitution was adopted, women and blacks were both regarded as someone else's property.⁵⁸

3. *Women's Rights in the United States During and After the Industrial Revolution*

The United States underwent a huge transformation from an agrarian society to an industrial, urbanized culture. As people became less dependent on land as a source of income, women could afford to put off marriage, get out of bad relationships or not get married at all, although social stigmas were all still attached to these choices.⁵⁹ The choice of these women to disregard their traditional societal roles was met with hostility by society; some state legislators feared that the increasing numbers of single women would cause social instability, and eugenicists

⁵¹ *See id.*

⁵² *Cf. id.* at 293.

⁵³ Jane Rutherford, *Equality as the Primary Constitutional Value: The Case for Applying Employment Discrimination Laws to Religion*, 81 CORNELL L. REV. 1049, 1070–71 (1996).

⁵⁴ *Id.* at 1071.

⁵⁵ *See* Rodney A. Smolla, *Preserving the Bill of Rights in the Modern Administrative-Industrial State*, 31 WM. & MARY L. REV. 321, 325 (1989) (“The framers of the Constitution, following the social contract theory of the philosopher John Locke, saw government as a voluntary compact entered into by individuals to provide security for their rights.”).

⁵⁶ Rutherford, *supra* note 53, at 1071.

⁵⁷ *Id.* at 1063–64 (citations omitted).

⁵⁸ Vine Deloria, Jr., *Minorities and the Social Contract*, 20 GA. L. REV. 917, 924 (1986).

⁵⁹ Rachel F. Moran, *How Second-Wave Feminism Forgot the Single Woman*, 33 HOFSTRA L. REV. 223, 242 (2004).

even speculated this new behavior would result in low fertility and the eventual white “race suicide.”⁶⁰ In American culture, marriage was still considered the only appropriate vehicle to take care of women and maintain a stable society.⁶¹

Unfortunately, despite women’s increasing presence outside the home as members of the workforce and contributors to American society, the last rights that became available to American women were those associated with participation in the country’s governance, both at the local and national level.⁶² For years, both state and federal legislators justified denying women the right to vote by arguing that their husbands and male family members voted on their behalf.⁶³ With the passage of the Nineteenth Amendment in 1920, women did obtain the right to vote in national elections,⁶⁴ and many states subsequently ratified the amendment or passed similar legislation.⁶⁵ Although women were finally granted the right to vote, women were not allowed to serve as jurors in most states until the mid-1940s.⁶⁶

⁶⁰ *Id.* at 242–43.

⁶¹ *See id.*

⁶² Isa, *supra* note 46, at 291–92.

⁶³ See Ariela R. Dubler, “Exceptions to the General Rule:” *Unmarried Women and the Constitution of the Family*, 4 THEORETICAL INQUIRIES L. 797, 797 (2003).

⁶⁴ U.S. CONST. amend. XIX.

⁶⁵ The Nineteenth Amendment to the Constitution of the United States was proposed to the legislatures of the several States by the Sixty-sixth Congress, on June 4, 1919, and was declared, in a proclamation of the Secretary of State, dated August 26, 1920, to have been ratified by the legislatures of thirty-six of the forty-eight states. The dates of ratification were: Illinois, June 10, 1919; Michigan, June 10, 1919; Wisconsin, June 10, 1919; Kansas, June 16, 1919; New York, June 16, 1919; Ohio, June 16, 1919; Pennsylvania, June 24, 1919; Massachusetts, June 25, 1919; Texas, June 28, 1919; Iowa, July 2, 1919; Missouri, July 3, 1919; Arkansas, July 28, 1919; Montana, August 2, 1919; Nebraska, August 2, 1919; Minnesota, September 8, 1919; New Hampshire, September 10, 1919; Utah, October 2, 1919; California, November 1, 1919; Maine, November 5, 1919; North Dakota, December 1, 1919; South Dakota, December 4, 1919; Colorado, December 15, 1919; Kentucky, January 6, 1920; Rhode Island, January 6, 1920; Oregon, January 13, 1920; Indiana, January 16, 1920; Wyoming, January 27, 1920; Nevada, February 7, 1920; New Jersey, February 9, 1920; Idaho, February 11, 1920; Arizona, February 12, 1920; New Mexico, February 21, 1920; Oklahoma, February 28, 1920; West Virginia, March 10, 1920; Washington, March 22, 1920; Tennessee, August 18, 1920. Ratification was completed on August 18, 1920. The amendment was subsequently ratified by Connecticut on September 14, 1920; Vermont, February 8, 1921; Delaware, March 6, 1923 (after rejecting it on June 2, 1920); Maryland, March 29, 1941 (after rejecting it on February 24, 1920); Virginia, February 21, 1952 (after rejecting it on February 12, 1920); Alabama, September 8, 1953 (after rejecting it on September 22, 1919); Florida, May 13, 1969; South Carolina, July 1, 1969 (after rejecting it on January 28, 1920); Georgia, February 20, 1970 (after rejecting it on July 24, 1919); Louisiana, June 11, 1970 (after rejecting it on July 1, 1920); North Carolina, May 6, 1971; Mississippi, March 22, 1984 (after rejecting it on March 29, 1920). U.S. CONST. amend. XIX explanatory notes (West 2007).

⁶⁶ See M. L. Cross, Annotation, *Eligibility of Women as Jurors*, 157 A.L.R. 461, 461 (1945) (twenty-eight states allowed women to serve as jurors, but in fifteen, service was voluntary).

III. THE ROLE OF WOMEN IN NATIVE AMERICAN SOCIETY

The role of women in native culture is as varied as the tribes in which they are members. Obviously, the roles of tribal members depended greatly on the location of their tribe, whether the tribe maintained fishing villages in the Northwest, followed buffalo herds in the Great Plains, or inhabited the desert regions in the South. Because there are many different Indian cultural contexts, it is difficult, although not impossible to make some general conclusions about the roles of women in traditional tribal societies. Currently, there are 560 federally recognized tribes in the United States.⁶⁷ While gender did play a significant role in determining what daily duties a tribal member had, a person's gender did not limit an individual's rights or their ability to obtain power in Native American societies.⁶⁸

A. Societal Duties

1. Duties and Responsibilities

Tribal cultures were subsistence based, meaning everyone in the community worked to maintain the tribe's well-being and stability. Like European cultures, women and men had defined roles.⁶⁹ The primary responsibilities of male tribal members involved hunting, fishing, and warfare; they were also responsible for home construction and clearing forests to make way for new fields.⁷⁰ Native women were not only responsible for the children and households, like their European counterparts, but controlled agricultural production as well.⁷¹

Women also exercised exclusive dominion over other production activities including homes, clothing, and tools.⁷² An Indian woman's task-based responsibilities gave her property rights.⁷³ Unlike European women, whose property became her husband's upon marriage, "it was a 'maxim'

⁶⁷ Indian Entities Recognized and Eligible to Receive Services from the United States Bureau of Indian Affairs, 70 Fed. Reg. 71,194-98 (Nov. 25, 2005).

⁶⁸ WALTER FLEMING, THE COMPLETE IDIOT'S GUIDE TO NATIVE AMERICAN HISTORY 43 (Jennifer Chisholm ed., Alpha Books 2003); LUTHER STANDING BEAR, LAND OF THE SPOTTED EAGLE 93 (Albert Cole ed., Bison Books 1978) (1933).

⁶⁹ Karen Morin, *Political Culture and Suffrage in an Anglo-American Women's West*, 19 WOMEN'S RTS. L. REP. 17, 21, 24 (In the late 1890's and early 1900's, states and local governments allowed women to vote and run for office in local elections.). See also George Edwards, *Women and the Law: From Abigail to Sandra*, 52 U. CIN. L. REV. 967, 973 n.25 (noting that Jeanette Rankin of Montana was the first woman elected to Congress in 1916).

⁷⁰ Robert A. Williams, Jr., *Gendered Checks and Balances: Understanding the Legacy of White Patriarchy in an American Indian Cultural Context*, 24 GA. L. REV. 1019, 1041 (1990).

⁷¹ *Id.* at 1030.

⁷² *Id.* at 1034.

⁷³ See Bethany Ruth Berger, *After Pocahontas: Indian Women and the Law, 1830 to 1934*, 21 AM. INDIAN L. REV. 1, 18 (1997).

that among the Indians, everything belonged to the women," except hunting and war implements; even the game her husband brought home was her property.⁷⁴

The matrilineal culture of many tribes allowed women to take on additional community responsibilities.⁷⁵ Native women could become shamans, the Indian equivalent of doctors, although they could not do so until after menopause.⁷⁶ Additionally, Indian women could be active in the political life of the tribe and in some cases, become warriors.⁷⁷ Most importantly, some native women were able to obtain the title of chief, either because of their achievement on the battlefield or as a result of their husband's death.⁷⁸ Tribal culture allowed Indian women to pursue the calling of their choice; whether it was to be a mother, a farmer, a physician, a warrior, a political leader, or some combination of those roles, the decision was hers.

2. *Marriage and Family*

The formality of marriage also varied from tribe to tribe; while some tribes had formalities for entering into a marriage contract, for other tribes, rules regulating intimate relationships were non-existent.⁷⁹ Before European influence, some tribes practiced polygamy. In fact, it was not uncommon for sisters to share the same husband.⁸⁰ Some Indian tribes, similar to European cultures, had formal, traditional ceremonies for celebrating marriage.⁸¹ However, some tribes considered a couple married when they started living together.⁸² In matriarchal tribes, a marriage occurred when a man went to live with a woman's family.⁸³ Finally, if the marriage was not working out, in many tribal traditions, the man could only leave with the property he had when he entered into the relationship; children belonged exclusively to their mother and women had complete ownership of the anything the couple had acquired during the marriage.⁸⁴

Also, in many tribes, women had greater control over their bodies due

⁷⁴ *Id.*

⁷⁵ Valerie Shirer Mathes, *A New Look at the Role of Women in Indian Society*, 2 AM. INDIAN Q. 131, 134 (1975).

⁷⁶ *Id.*

⁷⁷ *Id.* at 134–35.

⁷⁸ *Id.* at 136.

⁷⁹ Brenda Oppermann, *The Impact of Legal Pluralism on Women's Status: An Examination of Marriage Laws in Egypt, South Africa and the United States*, 17 HASTINGS WOMEN'S L.J. 65, 86 (2006).

⁸⁰ Bethany R. Berger, *Indian Policy and the Imagined Indian Woman*, 14 KAN. J.L. & PUB. POL'Y 103, 110 (2004).

⁸¹ Oppermann, *supra* note 79, at 86.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ Lisa J. Udel, *Revision and Resistance: The Politics of Native Women's Motherwork*, 22 FRONTIERS No. 2 43, 45 (2001); STANDING BEAR, *supra* note 68, 83–119.

to a variety of societal practices and native religious beliefs. Primarily, Indian tribes oftentimes had separate quarters for women to live in during menstruation.⁸⁵ In fact, most tribes allowed women to choose not to have, or forbid them from having intercourse during their menstrual cycles.⁸⁶ Tribal customs also allowed native women to invoke abstinence at will.⁸⁷ Some tribes would not allow a couple to have sex until their child started to crawl or finish nursing.⁸⁸ It was common practice for a Cheyenne woman to abstain from sex until her child turned ten.⁸⁹ As a consequence, Native American families were much smaller than White families; during a time when European women were having thirteen or fourteen children, Indian women were having two or three.⁹⁰

B. *Ownership of Property*

1. *Matriarchal Property Ownership in Native America*

In many tribes across the Americas, property descended through the female line.⁹¹ It was not uncommon for tribes to be completely matrilineal or matrifocal as well.⁹² Some scholars opine that up to one-fourth of Indian tribes in the United States were matrilineal.⁹³ Some of the more well-known matrilineal tribes of North America include: Acoma, Caddoan, Chickasaw, Chotaw, Creek, Crow, Delaware, Hidatsa, Hopi, Iroquois, Laguna, Mandan, Missouri, Mohegan, Navajo, Oto, Pawnee, Powhatan, Seminole, Sioux, and Zuni.⁹⁴ Also, it is important to note that the very notion of ownership was different in tribal culture; in Native America an individual owned what he or she used.⁹⁵

2. *Variations of Property Ownership in Native American Tribal Culture*

The importance a tribe placed on specific types of property depended on where the tribe lived and what natural resources the tribe used to sustain itself. Some Indian tribes, like members of Western culture, placed emphasis on actual land ownership. However, other tribes considered the control of fixtures and personal property to be more important.

⁸⁵ Mathes, *supra* note 75, at 133.

⁸⁶ *Id.*

⁸⁷ *Id.* at 134.

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.* at 133.

⁹¹ Christofferson, *supra* note 3, at 178.

⁹² *Id.*

⁹³ Mathes, *supra* note 75, at 134.

⁹⁴ Christofferson, *supra* note 3, at 178 n.69.

⁹⁵ Williams, *supra* note 70, at 1042.

a. Real Property

“You ought to hear and listen to what we women shall speak . . . for we are the owners of this land and it is ours.”⁹⁶ On the land east of the Mississippi River, Native Americans had engaged in agricultural activity for generations. Indian women not only oversaw this activity, they also held the property rights in the land and in their homes under tribal custom.⁹⁷ Tribes based property rights to land on continuous use, rather than transferability of ownership, which was central to Western notions of property descent.⁹⁸

Real property is commonly understood to include land and anything attached to, growing or erected on it, but excludes anything that can be removed without damaging the land.⁹⁹ In the Iroquois tribe, women owned the fields they worked, the longhouses, and everything in them.¹⁰⁰ The Hopi tribe used a matrilineal system as well: women were considered to be the owners of the pueblos and the land, and the rights associated with this property descended matrilineally.¹⁰¹

While tribes like the Iroquois and Hopi had complex systems for real property descent and transfer, such was not always the case in Indian country. For other agriculturally-dependant tribes, such as the Arikara, Hidatsa, Mandan, and Omaha, simple occupancy constituted ownership; any abandoned land was available for use.¹⁰² Importantly, when there was an ownership dispute, the women who claimed ownership of the property were responsible for negotiation and settlement.¹⁰³

b. Fixtures

A fixture is personal property that is attached to a building or land and is an immovable part of the real property.¹⁰⁴ In the Pacific Northwest, trees were considered to be valuable property because acorns were a staple in

⁹⁶ George S. Snyderman, *Concepts of Land Ownership Among the Iroquois and Their Neighbors*, 149 SMITHSONIAN INST. BUREAU AM. ETHNOLOGY BULL. 15, 20 (1951) (quoting statement made by an Iroquois woman).

⁹⁷ Allison M. Dussias, *Squaw Drudges, Farm Wives, and the Dann Sisters' Last Stand: American Indian Women's Resistance to Domestication and the Denial of Their Property Rights*, 77 N.C. L. REV. 637, 656 (1999).

⁹⁸ *Id.* at 660.

⁹⁹ BLACK'S LAW DICTIONARY 1234 (7th ed. 1999).

¹⁰⁰ Williams, *supra* note 70, at 1042. See also Kenneth H. Bobroff, *Retelling Allotment: Indian Property Rights and the Myth of Common Ownership*, 54 VAND. L. REV. 1557, 1578 (2001). As an aside, Iroquois men owned very little, apart from their personal possessions such as knives and later guns. Williams, *supra* note 70, at 1042.

¹⁰¹ Bobroff, *supra* note 100, at 1578.

¹⁰² *Id.* at 1593.

¹⁰³ See *id.*

¹⁰⁴ BLACK'S LAW DICTIONARY 652 (7th ed. 1999).

the regional diet, and a woman had the right to devise particular oak trees to her daughters.¹⁰⁵

Other tribes shared the Western view of fixtures. The Alogonquian and other North Central tribes¹⁰⁶ used fixtures just like Europeans, as boundary markers, signifying where one family's property ended and another's began.¹⁰⁷

c. Personal Property

Most societies understand personal property to be any moveable or intangible thing that is not classified as real property and not subject to ownership.¹⁰⁸ The tribes of the Great Plains, who followed buffalo herds across the prairie, had little use for real property rights until the United States government reduced their territories to a shadow of their former size.¹⁰⁹ These tribes always had significant laws protecting individual property rights in moveable goods.¹¹⁰ Once Indians of the Great Plains obtained horses, these animals became the predominant source of wealth in the tribal cultures of the Great Plains; men, women, and even children could own horses.¹¹¹

Aside from owning horses, most Native Americans did not want to own livestock because owning domesticated animals was inconsistent with most aspects of tribal lifestyle.¹¹² While Europeans had practiced animal husbandry for centuries, dependent animals were considered a burden by tribes for several reasons.¹¹³ Primarily, Indians struggled with the very idea of considering animals, which were eventually to be used as food, as individual property, because in their understanding, all animals were inherently free creatures, incapable of being owned; thus, in the Indian way, the only animal a person could logically own was a dead one and a successful hunter would share his capture with his family.¹¹⁴ In addition, these animals would compete with their owners for the tribe's more traditional forms of sustenance, such as berries, nuts, and roots, and drove away deer.¹¹⁵

Animal husbandry also threatened the traditional gender-based division of labor in tribes because caring for these animals did not fit within the

¹⁰⁵ Bobroff, *supra* note 100, at 1589.

¹⁰⁶ These tribes were mostly located in the Great Lakes region and parts of Canada.

¹⁰⁷ Bobroff, *supra* note 100, at 1575.

¹⁰⁸ BLACK'S LAW DICTIONARY 1233 (7th ed. 1999).

¹⁰⁹ Bobroff, *supra* note 100, at 1592.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² See Virginia DeJohn Anderson, *King Philip's Herds: Indians, Colonists, and the Problem of Livestock in Early New England*, 51 WM. & MARY Q. 601, 606 (1994).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

traditional distribution of responsibilities.¹¹⁶ Men spent their days away from the tribe hunting, and women focused on agriculture; no one had the desire to forfeit their traditional duties to watch these animals.¹¹⁷ Finally, raising animals like Europeans was inconsistent with Indian spirituality which viewed animals as spirits equal to humans, not as inferior creatures.¹¹⁸

d. Intellectual Property

Intellectual property is generally defined as a set of intangible rights protecting valuable products of the human intellect.¹¹⁹ The tribes on America's northwestern coast placed particular importance on intellectual property.¹²⁰ A family would hold the equivalent of a copyright to exclusively use specific carvings, crests, names, and paintings that were linked to the family's heritage.¹²¹ These rights were so fiercely defended that a violation could result in violence.¹²²

3. *Communal Property Ownership in Native America*

In other tribes, there was no individual ownership of property per se; all tribal lands were held in common, controlled by tribal leaders, and used to benefit the tribe as a whole.¹²³ In the case of some tribes, individuals had private gardens close to their family's home which were controlled by the women, and fields on the outskirts of the village that were tended communally.¹²⁴ Specifically, the Pawnee, who had a hybrid hunting and agrarian economy, recognized that individual women had property rights in garden plots and retained them even when the tribe decamped for the summer; but these rights reverted to the tribe for reassignment upon a woman's death.¹²⁵ Other tribes only had communal property for hunting purposes; all of the agricultural fields, crops, and houses were individually owned, usually by women.¹²⁶ Sacred lands were also considered property of the entire tribe; however, they were under the authority of tribal leaders and sometimes only shamans had access to these religious sites.¹²⁷

¹¹⁶ *Id.* at 607.

¹¹⁷ *See id.*

¹¹⁸ *Id.*

¹¹⁹ BLACK'S LAW DICTIONARY 813 (7th ed. 1999).

¹²⁰ Bobroff, *supra* note 100, at 1591.

¹²¹ *Id.*

¹²² *Id.*

¹²³ Stacy L. Leeds, *Borrowing from Blackacre: Expanding Tribal Land Bases Through the Creation of Future Interest and Joint Tenancies*, 80 N.D. L. REV. 827, 832 n.26 (2004) (citation omitted).

¹²⁴ *See* Bobroff, *supra* note 100, at 1578, 1582.

¹²⁵ *Id.* at 1593.

¹²⁶ *Id.* at 1583.

¹²⁷ *Id.* at 1590.

C. Community Governance

1. Traditionally

The Indian approach to governance and community is very different from Western notions of how a society should properly function. This is not to say that either is bad or good, or that one is inferior to the other, only that they are markedly different.

In Native American culture, Indians believed the cohesiveness and functioning of the tribe was of the utmost importance, and its needs came first.¹²⁸ Of course, women's power in a tribe varied as greatly as religion, customs, and language did amongst the hundreds of tribes that inhabited North America.¹²⁹ Still, it seems that Native American women, as a general rule, had more rights and garnered more respect in their communities than the women of Europe.¹³⁰

A number of Indian tribes were, and in many cases still are organized under a matrilineal clan system. Traditionally, it was the women of the tribe who selected, and had the corresponding authority to remove the tribe's chief.¹³¹ For example, in the Iroquois tribe, if the women were dissatisfied with their chief's leadership, they impeached him and the clan mother formally removed his headdress.¹³² Also, in many tribes women held the power to initiate or end warfare and, even more importantly, had the ability to name tribal council members.¹³³

2. Today

In Indian culture there has always existed an undercurrent of matriarchal influence and power. Women have always played an active role in tribal governance. Even today, after centuries of Europe's

¹²⁸ Williams, *supra* note 70, at 1024.

¹²⁹ *Id.* at 1037.

There are, of course, many Indian tribes and communities, and therefore many different Indian cultural contexts. Gender roles differ radically among various Indian tribes; even within a particular tribe, the position of women may be perceived differently by different tribal members. Such variability across the broad spectrum of traditional and contemporary American Indian cultural patterns makes any effort at generalizations about the positions of women in Indian societies difficult, if not impossible, to sustain beyond just a few instances.

Id. See also Gloria Valencia-Weber & Christine P. Zuni, *Domestic Violence and Tribal Protection of Indigenous Women in the United States*, 69 ST. JOHN'S L. REV. 69, 71 (1995) (The authors acknowledge they are making general statements about the traditional values and beliefs of tribal people. They assert, however, that although there are differences among the tribes, respect for the physical integrity of women is not an area where cultural values among tribes differ significantly.).

¹³⁰ Williams, *supra* note 70, at 1036 n.21.

¹³¹ *Id.* at 1034.

¹³² *Id.* at 1040.

¹³³ *Id.* at 1034.

patriarchal influence, Indian women hold positions of power in many tribal governments, both as elected officials and in important appointed positions.¹³⁴ For example, the Cherokee Nation, one of the largest tribes in the United States, elected a popular leader in the Native American community, Wilma Mankiller, as chief; she held the tribe's highest and most respected office for many years.¹³⁵

IV. A REVIEW OF WESTERN SOCIETY'S IMPACT ON THE RIGHTS AND PRIVILEGES OF NATIVE WOMEN

A. *The European View of Native Culture*

“The first imagined Indian woman in [the European experience] was the North American continent itself.”¹³⁶ Artists in the sixteenth century depicted native women and the continent as “voluptuous, naked, and reclining,” representing sexual rewards for anyone who could conquer the virgin soil to her caretakers, and implying that there was a need to clothe them in superior European civilization.¹³⁷ Because American Indian tribes' views regarding gender did not mirror the white patriarchal values held by the people from the West, native cultures were deemed inferior and deficient.¹³⁸

Prominent members of American society, including U.S. government officials, believed agricultural labor was inappropriate work for women, and the fact that Indian women oversaw agrarian production was evidence of the inferior functioning of tribal culture.¹³⁹ Furthermore, Westerners perceived agricultural production as real work, and because tribal women were charged with crop production, Europeans thought native men were lazy and native women were enslaved, degrading themselves by doing men's work.¹⁴⁰ These stereotypes were perpetuated by the fact that Indian men's primary duties of fishing and hunting were sport in Western culture, and Europeans thought native male tribal members were not doing anything of real value for the tribe.¹⁴¹

¹³⁴ *Id.*

¹³⁵ *Id.* at 1036; see also Starla Kay Roels, *HIPAA and Patient Privacy: Tribal Policies as Added Means for Addressing Indian Health Disparities*, 31 AM. INDIAN L. REV. 1, 38–39 (2006) (noting Wilma Mankiller served as the Cherokee Nation's Principal Chief who was consulted on public policy matters regarding Indian health issues and privacy rights).

¹³⁶ Berger, *supra* note 80, at 103.

¹³⁷ *Id.*

¹³⁸ Williams, *supra* note 70, at 1038.

¹³⁹ See Dussias, *supra* note 97, at 672.

¹⁴⁰ *Id.*; Williams, *supra* note 70, at 1029–31.

¹⁴¹ Williams, *supra* note 70, at 1030.

B. *The Role of Religion*

1. *The Religions of Abraham: Father of Three Faith Traditions*¹⁴²

When Europeans came to the shores of America, their culture was structured on Judeo-Christian values, which traditionally emphasized the importance of a patriarchal family and community.¹⁴³ They used the Bible as justification for the second-class status and treatment of women; this status was based on Eve's formation from Adam's rib and Eve's temptation by the tree of the knowledge of good and evil leading to humanity's subsequent fall from grace.¹⁴⁴ Europeans believed God had intentionally created woman for the sole purpose of being man's companion, not his equal.¹⁴⁵ It is no wonder that the White settlers of America had no framework to understand the alternative approach to gender to which many Indian tribes ascribed.

2. *Native Religions*

The tribes of America have diverse and complex religious beliefs. Indeed, entire books have been devoted solely to this topic.¹⁴⁶ The intention of this section is merely to note the importance that both women and land play in tribal religions.

a. A Brief Note on Female Spirituality

Women play a central role in many tribal religious traditions. Native American religions envision the planet Earth as a woman who provides for her children.¹⁴⁷ Indian women were traditionally taught to look at themselves as the Earth, as a giver and sustainer of life.¹⁴⁸ Thus, tribal culture considers women sacred because they bring life into the world and are consequently respected as the center of their nation and essential to the continued prosperity of their people.¹⁴⁹

¹⁴² Abraham is considered the father of three major world religions: Christianity, Islam, and Judaism. Thomas Graham, Jr., *Nuclear Nonproliferation and Nuclear Terrorism*, 17 *TRANSNAT'L LAW.*, 89, 92 (2004) (noting these monotheistic religions are referred to collectively as the "Three Great Faiths of Abraham").

¹⁴³ Virginia H. Murray, *A Comparative Survey of the Historical Civil, Common, and American Indian Tribal Law Responses to Domestic Violence*, 23 *OKLA. CITY U. L. REV.* 433, 435 (1998).

¹⁴⁴ See *Genesis* 2:20–24; 3:1–24 (King James).

¹⁴⁵ 15 *TEX. J. WOMEN & L.* 43, 49. According to the Bible, God created Eve out of Adam's rib, making her his subordinate. This can serve as an explanation as to why upon first seeing Eve, Adam says, "This is now bone of my bones and flesh of my flesh." *Genesis* 2:23 (King James).

¹⁴⁶ See, e.g., VINE DELORIA, JR., *GOD IS RED: A NATIVE VIEW OF RELIGION* (Fulcrum Publ'g 2003).

¹⁴⁷ See, e.g., Udel, *supra* note 84, at 44.

¹⁴⁸ See, e.g., *id.*

¹⁴⁹ *Id.* at 43; see also Winnifred Sullivan, *Advocating Religion on Public Lands: Native American Practice or Buddhist Sermon?*, 39 *LAW & SOC'Y REV.* 689, 694 (2005) (Indian women see themselves as the guardians of native spiritual traditions); Matthew L.M. Fletcher, *The Drug*

b. A Brief Note on the Importance of Land in Tribal Religious Traditions

For many Indians, the land was at the core of their spiritual identity. Most American Indian religions maintain that creation began in the primordial mists when mankind gathered together but did not yet see themselves as a distinct people.¹⁵⁰ They believe their people were instructed to find a home through a vision of a holy man in which a divine presence revealed itself; prophecies told them to migrate until a special place for them was revealed, and they were given ceremonies and rituals to aid them on their journey.¹⁵¹ Once the land was revealed to the people, it was consecrated with spiritual meaning and became synonymous with the tribe's identity.¹⁵² Because Indians considered the land a divine gift, many felt a strong religious duty to protect their land in honor of their ancestors and to preserve it for future generations.¹⁵³

C. "Westernizing" the Natives

The settlement of Whites on American shores brought great changes to many aspects of tribal culture, including the roles of native women. Tribes were forced onto reservations, required to abandon their "heathen" societal and religious customs, and function in the European culture that was transplanted to their continent.

1. *The Loss of Tribal Traditions*

Beginning in the 1880s, the federal government of the United States adopted a policy of assimilating the American Indians into White culture.¹⁵⁴ The first step in the process of "Americanization" was to convert tribal property from communal ownership to individual ownership

War on Tribal Government Employees: Adopting the Ways of the Conqueror, 35 COLUM. HUM. RTS. L. REV. 1, 30 (2003) ("In many Indian tribal cultures . . . monthly menstruation is a critical time for a woman and her family, a time of great power and spirituality."); and Francine R. Skenandore, *Revisiting Santa Clara Pueblo v. Martinez: Feminist Perspectives on Tribal Sovereignty*, 17 WIS. WOMEN'S L.J. 347, 355 (2002).

The Indian women's movement seeks equality in two ways that do not concern mainstream women: (1) on the individual level, the Indian woman struggles to promote the survival of a societal structure whose organizational principles represent notions of family different from those of the mainstream; and (2) on the societal level, the People seek sovereignty as a people in order to maintain a vital legal and spiritual connection to the land, in order to survive as a people.

Skenandore, *supra* note 149, at 355.

¹⁵⁰ VINE DELORIA, JR. & CLIFFORD M. LYTLE, *THE NATIONS WITHIN: THE PAST AND FUTURE OF AMERICAN INDIAN SOVEREIGNTY* 8 (1984).

¹⁵¹ *Id.*

¹⁵² Bobroff, *supra* note 100, at 1601.

¹⁵³ *Id.*

¹⁵⁴ Berger, *supra* note 73, at 7.

by male heads of native families.¹⁵⁵ The second step was cultural education; Indian children were separated from their parents and tribes in order to purge them of harmful Indian languages and religious beliefs and to educate Indian children in a way that would allow them to disappear into Western culture.¹⁵⁶ These two practices had a devastating effect on Indian society—allotment of land to individual Native Americans devastated Indian land wealth and separating Indian children from tribal culture caused irreparable damage to countless native families and tribal communities.¹⁵⁷

Christian missionaries were appalled by the sexual freedom of unmarried Native women; in some tribes marriage was not a requirement for a woman to bear children.¹⁵⁸ Furthermore, as Judeo-Christian values took over in many tribal communities, Indian women's traditional practices of birth control and population control were lost.¹⁵⁹

Native American women were expected to conform to Western society's notions about women and their roles. Given their traditions and upbringing, tribal women were ill-suited to conform to the European ideals of women as passive creatures, content with domestic responsibilities.¹⁶⁰ However, as Indian families began to adopt Western value systems, disagreements within tribes began to occur regarding who was most qualified to lead in native society.¹⁶¹

Native Americans with high levels of acculturation were wealthier, well-educated, usually mixed-blood,¹⁶² and saw themselves as enlightened, progressive, and morally superior to the uneducated, non-Christian traditionalists.¹⁶³ Tribal families that remained full-blooded clung to traditional values and religious traditions and asserted that their resistance to acculturation made them "more Indian" than their sell-out counterparts.¹⁶⁴ These Indians did not envy the possession of more money and education because these things were status symbols in White, not native, culture.¹⁶⁵

¹⁵⁵ *Id.* at 8.

¹⁵⁶ *Id.*

¹⁵⁷ *Id.*

¹⁵⁸ Udel, *supra* note 84, at 45–46.

¹⁵⁹ *Id.* at 46.

¹⁶⁰ Berger, *supra* note 73, at 9.

¹⁶¹ See Devon A. Mihesuah, *Commonality of Difference: American Indian Women and History*, 20 AM. INDIAN Q. 15, 17–20 (1996).

¹⁶² That is they had ancestors that were from other tribes or were White.

¹⁶³ Mihesuah, *supra* note 161, at 16–17.

¹⁶⁴ *Id.* at 17.

¹⁶⁵ *Id.*

2. *Selective Memory*

Western culture has chosen only to venerate Native women who successfully interacted or integrated into White, European society, such as Pocahontas, Sacagawea, and Susan La Fleche.¹⁶⁶ While one should not minimize the contributions of these Indian women to greater American culture, it is important to remember that there were likely countless other tribal women making equally important contributions within their own tribes.¹⁶⁷

Native women lost the power and respect tribal traditions had afforded them for generations. American courts construed the informal process of tribal divorce to mean that husbands (Indian or White) could terminate their marriages by simply leaving their native wives and children, and thereafter had no legal obligation to provide for their families.¹⁶⁸ Additionally, the U.S. government did not recognize Indian women as property owners, so a native woman's husband (he could be Indian or not) could use the property as he saw fit or even dispose of her share of tribal property.¹⁶⁹ These policies had a devastating effect not only on Indian women, but also on tribal cultures whose ways of functioning up to this point had remained unchanged.

Tribal leaders resisted these forced cultural alterations, but their pleas unfortunately fell on deaf ears. The powerful Sioux Chief, Sitting Bull, said, "take pity on my women The young men can be like the white men, can till the soil, supply the food and clothing. They will take the work out of the hands of women. And the women . . . will be stripped of all which gave them power."¹⁷⁰ Sitting Bull's statements reflected the attitude of many Indians that by adopting Western values and customs power was being taken away from native women, and they were being sentenced to a life of persecution and abuse.

3. *A Brief Note on Recent History*

There is a popular misconception in American culture that while there was certainly discrimination against Indian people in the distant past, modern Western culture has tried its best to make reparations for its past indiscretions and has embraced and promoted Native American culture.¹⁷¹

¹⁶⁶ *Id.* at 21.

¹⁶⁷ *Id.*

¹⁶⁸ Berger, *supra* note 73, at 60–61.

¹⁶⁹ Berger, *supra* note 73, at 61.

¹⁷⁰ Sara Deutsch, *Coming Together, Coming Apart—Women's History and the West*, 41 MONT. MAG. W. HIST., Summer 1991, at 59–60.

¹⁷¹ See, e.g., About the National Museum of the American Indian, <http://www.nmai.si.edu/subpage.cfm?subpage=visitor&second=about&third=about> (last visited Feb. 13, 2007). The National Museum of the American Indian is part of the Smithsonian Institution in

However, a 1976 federal investigation reveals systematic discrimination against native people, and Indian women specifically, has continued into the present day.¹⁷² This investigation revealed that from 1973 to 1976, over 3,000 Indian women were involuntarily sterilized, many of whom were minors. Also, these procedures were sometimes performed coercively or without a woman's knowledge.¹⁷³ The frightening reality is that although Western culture has made progress in attempting to appreciate and understand the traditions of Native Americans, there is much work left to be done.

V. CONCLUSION

Historically, Native American women exercised rights and responsibilities of great importance in their tribes. These rights included societal duties, property ownership, and community governance. In tribal society it was not uncommon for women, in addition to being wives and mothers, to also be healers, warriors, or political leaders. It was only with the coming of White settlers to America's shores that the traditional ways of Indian life, including the important contributions of women, slowly crumbled under European domination. Yet, despite years of Western influence, many tribal traditions, such as matriarchal influences, have remained intact to the present day. Historians, anthropologists, and a variety of feminist scholars have recently emphasized that tribal cultures embraced females as important societal contributors' centuries earlier than Western societies.

The goal of this analysis was threefold. Primarily, it was the intention of this paper to examine the roles of women in Western and Native American cultures. Additionally, this paper examined how European influences on tribal culture affected women's status in Indian society. Finally, the underlying objective of this paper was to demonstrate that Western culture failed to appreciate the complex and unique tribal societies they stumbled upon when they settled in the Americas.

There is no denying that Western culture has given the world so much: fine art, technology, philosophy, and democracy, to name a few. However, members of Western society often fail to recognize the equally innovative – although less visible – contributions of other societies. Members of European and American cultures often feel their contributions to the world are unappreciated, and their actions are only noticed when they have a negative impact.

Washington D.C. Its mission states that the museum is, "dedicated to the preservation, study, and exhibition of the life, languages, literature, history, and arts of Native Americas." *Id.*

¹⁷² Udel, *supra* note 84, at 46.

¹⁷³ *Id.*

However, what Whites fail to recognize is that, although they are willing to give, traditionally they have been very unwilling to receive or value the contributions of other societies as equal to their own. Western culture has as much to receive from Native American cultures as it has given. Indian tribes' traditional methods of healing, their concern for the environment, and their appreciation of all people regardless of their gender are important aspects of tribal culture from which modern-Western society could benefit.

In the end, there is evidence that both White and Native American women have struggled in some capacity, whether it was to obtain voting rights or to maintain their traditional ways of life. Women of all generations and races have made contributions large and small to make life in America better. However, it is the enduring spirit of the Native American woman that is said to be present in the great land, protecting all things, and she is the most powerful American woman of all.