

Retribution for tribal sovereignty: Settler colonial policing and civil justice impacts

Punishment & Society
2024, Vol. 26(4) 693–710

© The Author(s) 2024

Article reuse guidelines:

sagepub.com/journals-permissions

DOI: 10.1177/14624745241232242

journals.sagepub.com/home/pun



Brianna Marie Watters 

University of Minnesota-Twin Cities, USA

Robert Stewart

University of Maryland-College Park, USA

Michele Statz

University of Minnesota-Duluth, USA

Abstract

Unique among marginalized groups, American Indians are both citizens of the United States and citizens of sovereign tribal nations, as recognized (but not granted) by federal Indian law. However, even as tribal nations exert increasing economic and political power, criminal legal outcomes for tribal members—who interface with an array of tribal, local, state, and federal law enforcement and justice systems—remain detrimental or are worsened. These outcomes also include increased contact with state courts and the delegitimization of tribal courts, which uniquely implicate the civil justice context. We use the settler colonial framework to investigate how tools of state criminal law, such as heavy policing and disparate punishment, may impact the civil justice needs of Indigenous people, and more broadly, the very sovereignty these policies aim to protect. Drawing on interviews and observations in tribal and county-level courts, we examine the experiences of American Indians and other stakeholders in Indian country. We identify how enforcement practices, surveillance of space, and the complexities of layered policing within a “jurisdictional maze” contribute to the deterioration of tribal sovereignty. We contextualize our findings by considering the historical, cultural, and

Corresponding author:

Brianna Marie Watters, Department of Sociology, University of Minnesota-Twin Cities, 267 19th Ave S, Minneapolis, Cloquet, MN 55720, USA.

Email: watt0122@umn.edu

socio-economic factors that influence the experiences of American Indians in the criminal justice system, and by examining the civil justice implications.

Keywords

Policing, rurality, tribal sovereignty, Indian law, American Indians, criminal legal disparities, settler colonialism, civil-criminal nexus, access to justice

American Indians and Alaska Natives inhabit a unique position as citizens of the United States and as citizens of sovereign tribal nations as recognized—but not granted—by federal civil Indian law. This intersection shapes the American Indian experience, agency, and power in distinct ways. Indeed, criminal legal punishment outcomes for American Indians continue to deteriorate even as tribal nations increasingly reclaim their economic and political power (Ulmer and Bradley, 2019; Nagel, 1996). One catalyst of these disproportionate punishment outcomes is the persistence of law enforcement practices embedded in settler colonial dynamics in which policing is not just a matter of enforcing laws, but also an instrument of maintaining settler colonial dominance over Indigenous populations (Perry, 2009). These “settler policing practices” are particularly pronounced in rural areas characterized by entrenched poverty, spatial isolation, and segregation from “border towns” (white settler communities proximal to reservation lands). Perhaps unsurprisingly, these same spatial phenomena contribute to and often exacerbate the civil legal needs of rural Indigenous people, as well as individuals’ ability to access appropriate legal remedies (Statz, 2022).

This study investigates how white non-Indigenous communities use the tools of criminal law to dismantle tribal sovereignty, and how these tools further provoke jurisdictional uncertainties and institutional avoidance in the civil justice setting. Consistent with a growing emphasis on settler colonialism as a framework for understanding the ongoing modes of domination that American Indians experience (e.g. Glenn, 2015; Steinman, 2012; Fenelon and Trafzer, 2014), this article focuses on the state and local police as settler colonial-state actors with coercive capabilities who are charged with defending and maintaining the settler state. We contribute to Beardall’s (2021) conception of “sovereignty threat” by expanding this concept beyond police violence to include everyday encounters between police and American Indians in border towns.

Leveraging interviews and observations in tribal and county-level courts, we examine the experiences and perceptions of American Indians and other stakeholders in Indian Country and identify how targeted enforcement practices, surveillance of space and patrolling borders, and the complexities of layered policing within a “jurisdictional maze” (Clinton, 1976) impact the civil justice needs of Native people. For instance, complex or overlapping jurisdictions can cause confusion among tribal members needing to resolve civil matters like child custody or access to public benefits. We contextualize our findings by considering the historical, cultural, and socio-economic factors that influence the experiences of American Indians in the criminal justice system, and by

examining the broader implications for Indian law, tribal sovereignty, and the policies and civil legal structures designed to recognize the unique status of American Indians.

Background

Tribal sovereignty, which predates the formation of the United States, empowers tribes to govern their own affairs, protect their people, and manage their resources (Cobb, 2005). The unique status of American Indians as dual citizens of the United States and of sovereign tribal nations is foundational to the civil law policies that constitute Indian law. These policies include major legislation like the Indian Child Welfare Act (ICWA) and the Indian Gaming Regulatory Act.¹ Notably, ICWA is designed to preserve and strengthen Indigenous families and communities by ensuring that child custody decisions prioritize the best interests of Native children and respect tribal jurisdiction (Thibeault and Spencer, 2019; Linjean and Weaver, 2022). And tribal gaming is an essential source of economic development for many tribes, enabling them to fund vital services and programs (Wolfe et al., 2012).

However, opponents of tribal sovereignty and the political status of tribes and tribal members have consistently undermined or dismantled these policies (Leeds et al., 2023; Van Schilfgaarde, 2023). In 2022, for example, the Supreme Court of the United States heard *Haaland v Brackeen*,² in which opponents of ICWA relied almost entirely on race-based arguments, claiming it unfairly discriminates against non-Indigenous families seeking to adopt Native children (Gale and McClure, 2020; Deer et al., 2022). Legal observers suggest that by portraying Brackeen and related cases as race and equal protection issues, while disregarding sovereignty and cultural erasure concerns (see, e.g. Sandefur, 2018), these efforts aim to weaken federal and state tribal sovereignty protections, benefiting gaming, mining, and other industries (Maher, 2022). Efforts to chip away at policies rooted in tribal sovereignty not only weaken the ability of Indigenous nations to govern their affairs but also undermine the progress made in recognizing and respecting the inherent rights and self-determination of Native communities. Consistent with this spirit, we consider whether and how the tools of state criminal law, such as heavy policing and disparate punishment, impact the civil justice needs of Indigenous people and the very sovereignty these policies aim to protect.

A brief history of US Federal Indian Law

Between 1823 and 1832, the US Supreme Court decided “The Marshall Trilogy”³—a series of cases that became the foundation for federal Indian law and established the broad jurisdictional contours of Indian country today. Chief Justice John Marshall found Tribes’ sovereignty “as independent nations, w[as] necessarily diminished...” as a result of what he described as the right of discovery and conquest held by European nations and their successors (including the US) which gave them “ultimate dominion” over the lands (*Johnson v. M’Intosh* 1823, 21 U.S. 543). These cases became the legal foundation for federal Indian Law by establishing the federal government’s “trust

responsibility” (in which the federal government serves as the “guardian” over Indian country), affirming the inherency of tribal sovereignty, and defining tribal governments as “domestic dependent nations” with unique rights and status (Rey-Bear and Fletcher, 2017). Nonetheless, these foundational concepts have been continually scrutinized and challenged throughout American history.

As tribal cultural practices and traditional values continued to conflict with the Euro-American mission of assimilation, federal legislation emerged to restrict tribes’ administration of justice. This was seen, for example, in the passage of the Major Crimes Act, effectively removing major law enforcement authority from Indian nations and transferring jurisdiction over major crimes in Indian Country to the federal government (Peak, 1989). Further efforts toward assimilation, such as through the Dawes Severalty Act of 1887, sought to dissolve tribes as federally recognized communities, weakening tribal governments and justice systems (Wells and Falcone, 2008). However, the Indian Reorganization Act of 1934 reversed these policies, restoring limited tribal sovereignty and funding for tribal institutions, while encouraging tribes to adopt government systems akin to Anglo-American models (Van Schilfgaarde, 2023: 16).

Public Law 280

Part of the post-World War II “termination” movement, which sought to end the special trust relationship between the federal government and Indian tribes, PL-280 transferred jurisdictional authority over criminal and civil matters on reservations from the federal government to many states, including Alaska, California, and most of Minnesota and expanded this jurisdiction even past the previous federal boundaries.

PL-280 remains in effect in sixteen states, with several consequences for tribal justice systems. Neither tribes nor the states in which their reservations are located were given a voice over the policy, and no funding was provided to states for the additional responsibilities of policing reservations (Goldberg and Champagne, 2020). In addition, the resultant jurisdictional maze has created extensive barriers to criminal accountability in Indian Country, including high declination rates (decisions not to prosecute) for crimes on reservations, delayed response times, and increased instances of service denial due to the remoteness of location (Goldberg and Singleton, 1998).

Indian Civil Rights Act

In 1968, through the passage of the Indian Civil Rights Act (ICRA),⁴ Congress conferred most of the protections outlined in the Bill of Rights onto tribes and acknowledged the existence of tribal courts. As tribes were encouraged to adopt the administrative components of the US government through the IRA, the ICRA compelled tribal courts to adopt adversarial norms (Jones, 1998). Thus, tribal courts today tend to look and act like state and federal courts (McCoy, 1983).

Subsequent US Supreme Court holdings have limited tribal courts in their adjudicatory powers and jurisdictional authority. For example, *Montana v. United States* (1981) held that tribes lacked civil jurisdiction over non-Indians, curtailing the ability

of tribes to issue protective orders against nonmembers, regulate hunting and fishing on non-Indian-owned lands within a reservation, and several other governmental powers. Today, tribal justice systems are limited in their ability to address crime on reservations themselves. While scholars have attended to broader threats to tribal sovereignty at the federal level, the same scrutiny has not been applied to local scales of governance (Montoya, 2019). For example, policing became a shared responsibility between local/state and tribal institutions under PL-280, which in some instances led to a paradox of simultaneous over-policing/under-policing (Perry, 2009). The new arrangement, which was primarily guided by settler goals rather than tribal priorities, created an extra layer of police control and surveillance for reservation residents but has not led to additional preventative, supportive, and/or investigative police services. Yet, few scholars have studied how police practices on the ground in rural Indian country may contribute to both criminal and civil legal disparities among American Indians.

American Indians, policing, and rural access to justice

Research on discrimination by US police has focused almost exclusively on urban policing and the experiences of Black people. Comparatively little attention has been paid to policing and the American Indian experience, despite estimates that American Indians are killed by police at a rate three times higher than people who are white (Hansen, 2017). Likewise, research on the treatment of American Indians within the criminal legal system has remained sparse and outdated (e.g. Franklin, 2013; Nielsen, 2009, Pommersheim, 1991; Young, 1990), even as American Indians are grossly overrepresented at federal, state, and local levels and through every stage and position of the criminal justice process (Ulmer and Bradley, 2019; Perry, 2009; Skoog, 1996).

American Indians are also a disproportionately rural population (USDA Economic Research, 2014), and criminal justice studies have long held an urban bias, situating the social problems associated with criminal justice system contact as “urban” issues (Young, 2017) and largely ignoring rural spaces (e.g. Fassin, 2011; Moskos, 2008). Even within the substantial literature on inequalities in police practices and in more limited scholarship on rural policing (e.g. Garriott, 2013), scholars have rarely sought to extend findings from urban policing to rural and Native communities, including the ways investigatory stops communicate consequential messages around mobility, freedom, and citizenship (Epp et al., 2014), and the process through which police respond to and “consolidate” the material and conceptual inequalities that map onto historically segregated spaces (Gordon, 2020).

Prominent ideas about rural places also play a role in limiting critical investigations around policing. Rural areas are often characterized as idyllic, crime-free, empty, and boring, and rural populations as primarily white, uneducated, and working class (Donnermeyer and DeKeseredy, 2014; Linneman and Wall, 2013; Metzl, 2019; Wray, 2006; Young, 2017). However, these popular imaginings of rural America as a primarily “white space” have also consistently overlooked the dynamics of race, space, and rurality, ignoring the historical presence of Indigenous peoples and the complexities of settler colonial histories (Carrillo et al., 2021).

While the empirical scholarship on justice gaps in the US similarly prioritizes urban spaces, we know that many of the same socio-spatial characteristics that constrain access to general services in rural areas—among them isolation, poverty, attorney shortages, and limited or absent public transit, broadband, and cellular reception—also influence individuals' ability to access civil justice (Statz, 2021, 2022). These socio-spatial vulnerabilities are arguably more heightened for Indigenous people, as 29% of Indigenous people in the US are rural, compared to 15% of the total US population.

Settler colonialism in the United States

Scholarship applying the settler colonial framework to the United States provides a structural and historical basis for understanding the relationship between policing practices and criminal legal disparities among American Indians (see, e.g. Beardall, 2021; Denis, 2015; Glenn, 2015; McKay et al., 2020; Nielsen, 2009; Steinman, 2012, 2016; Steinmetz et al., 2017; Stewart et al., 2022). This framework helps to draw connections between the civil justice needs experienced by Native people in rural areas, all of which implicate underfunded institutions, insufficient legal representation, limited or absent cross-jurisdictional cooperation, and tribal sovereignty.

Settler colonialism involves foreign settlers permanently residing on lands already inhabited by Indigenous peoples. Because settlers do not leave, settler colonialism functions as an enduring structure, not a past event (Wolfe, 2006). This form of governance aims to eliminate Indigenous nationhood and presence, while simultaneously constructing settlers as native to the land. Through this move, settlers naturalize their presence on Indigenous territories. To maintain territoriality, settler-colonial states employ methods of domination to “disappear” Indigenous people (e.g. genocide, assimilation, and geographic containment) (Wolfe, 2006). They also use techniques of *transfer* (Veracini, 2010), clearing Indigenous lands and erasing Indigenous political sovereignty and diversity (McKay et al., 2020).

The settler colonial framework also reveals that American Indians inhabit a unique political status that is often concealed by their treatment as a racial minority. This intersection shapes their experience in distinct ways as they are subjected to settler colonialism “across multiple interlocking institutional spheres” (Ulmer and Bradley, 2019: 338), including both criminal and civil justice contexts. Under PL-280, the shared jurisdiction of tribal and state justice systems on tribal lands exemplifies this interlocking institutional power.

This political understanding of Indigeneity highlights the consequences of police contact for Native people and the connections between historical and contemporary policies aimed at isolating, containing, and assimilating them (Dhillon, 2015; Beardall, 2021; Simpson and Le Billon, 2021). In this vein, Beardall's (2021) conception of “sovereignty threat” positions the Native experience with police to the historical violence that *produced* the US settler-state. Indigenous people pose a unique threat to the legitimacy of the settler-state because controlling, policing, and punishing Native people serves to constitute settler agents, such as courts and police, as rightful and legitimate agents of lands we now call the United States. This process echoes earlier practices to isolate, assimilate,

and control Indigenous people. Thus, viewed through the lens of settler colonialism, the settler colonial state's presence has shifted from institutions like residential schools to prisons, maintaining its physical and material influence (Nichols, 2014: 448). Although the lived realities of American Indians may be positioned as unrelated to the historical and larger political questions around Indigenous sovereignty and self-determination, the settler colonial framework allows for the distance between these seemingly disparate issues to be collapsed and placed in direct conversation with one another.

Data, methods, and positionality

Our analysis is based on data collected across northern Minnesota and Wisconsin between 2015 and 2022. Colloquially referred to as “the Northland,” the region has a rugged woodland topography and a strong settler history. In the early 1900s, for instance, over 40 distinct national identities were represented on the Iron Range (LaVigne, 2015). Today, the Northland includes prominent rural Hmong, Latine, and Somali communities. Of particular relevance to this article, seven Anishinaabe nations span northern Minnesota, and 11 federally recognized tribes and the Brothertown Indian Nation share geography with northern Wisconsin. Minnesota and Wisconsin are also two of the states named in Public Law 83-280 (PL 280).

Data collection

Our data are drawn from two parallel and complementary research projects. These projects include Stewart's and Watters's work with the Minnesota contingent of the Multi-state Study of Monetary Sanctions, led by Alexes Harris (Harris et al., 2022), which included ethnographic fieldwork and interviews in northern Minnesota, and Statz's and Watters's mixed-methodological research on rural access to justice across tribal and state court jurisdictions in northern Minnesota and Wisconsin. Having employed comparable methodologies over similar geographies, we recognize the rich potential of bringing our research together to illuminate the everyday entanglements of criminal law, access to civil justice, and sovereignty in cross-jurisdictional rural spaces. Here, we draw on relevant ethnographic data that include semi-structured interviews with over 120 justice system actors (public and private attorneys, tribal and state judges, local police officers, and other court actors) and nearly 50 system-impacted people (Statz et al., 2020, 2021, 2022; Stewart et al., 2022); and observations of criminal and tribal court hearings, local municipal and county meetings, and other public events across the region (Statz, 2022).

We recruited research participants through snowball sampling based on networks established during preliminary fieldwork. Although snowball sampling in large populations is often insufficient owing to size and a lower chance of an exhaustive sample frame (Sharma, 2017), individuals in rural areas are likely to have more interpersonal interactions or shared histories with one another, even if they are geographically dispersed (Beggs et al., 1996). Thus, snowball sampling in small communities is an effective way to build a broader sampling frame.

We engaged in a grounded-theory approach that integrates theoretically informed questions, ongoing data collection, and line-by-line coding of interview transcripts and fieldwork notes to identify themes (Thornberg and Chamez, 2014). As part of our analysis, we routinely revisit research collaborators and participants to review “surprise” data through local interpretations and expertise. To evaluate whether and to what extent our separate projects might illuminate the topic at hand, we conducted a second round of analysis, coding data for relevant themes and questions. As we developed this article, we identified, discussed, and selected representative interview excerpts together.

It is important to note that our respective projects occur in close collaboration with Indigenous individuals and tribal courts (Statz, 2022). Not only do these communities have unique relationships to land and place that continue to be threatened by the legacy and ongoing reality of settler colonialism, but many have also experienced *research* as a distinct form of colonization (Denzin and Lincoln, 2008; Kiel and Brooks, 2016). To that end, we each take very seriously how our positionalities—that is, self-identifications, experiences of marginalization, and professional privileges—shape our research questions, methods, and analyses (Massoud, 2022). We engage these topics as an Anishinaabe descendant and sociologist who was raised in a single-parent home on the Fond du Lac reservation in northern Minnesota (Watters); as a formerly incarcerated sociologist of settler ancestry who was raised in rural southern Minnesota on the traditional lands of the Wahpeton people (Stewart); and as an anthropologist of law and first-generation college graduate who grew up in a low-income, white farming family on the traditional land of the Hocąk (or Ho Chunk) Nation/south-central Wisconsin (Statz). In our work with Native and non-Native collaborators, we are transparent about these positionalities, and likewise about the overwhelmingly western epistemological frameworks and methodologies in which we were each trained.

Throughout, our collective priority is to Indigenous research paradigms of relationality and reciprocity, as well as histories deeply contextualized through place, family, and community amid broader destructive forces (see e.g. Anderson and O’Brien, 2017; Wilson-Hokowhitu, 2019). We also acknowledge that the knowledge our respective projects uncovers is at times re-presented in—and thereby reproduces—dominant scholarly frameworks and publishing conventions, including an article such as this. As critical theorists, we effort to subvert these spaces by elevating Indigenous-driven priorities and modes of knowing, while honoring principles of Indigenous data sovereignty and policy throughout all stages of our research.

Findings

Law enforcement practices under Public Law 280 can further exacerbate social, spatial, and justice inequalities that American Indians face through targeted enforcement practices. In and around Indian Country, Native residents often described feeling subject to police scrutiny. As a young Native man in his early 20s told us, “Every day I walk here and I see police driving by me, twice, trying to look at me, and I know they can’t stop me because I haven’t done nothing wrong. But they will drive by and try to look for something.”

Targeted enforcement

Throughout our interviews with defense attorneys and Native residents, in particular, there was widespread agreement that police regularly targeted Native Americans. The primary targeting tactic cited by our interviewees was pretextual stops of vehicles with either reservation plates or with an object hanging from the rearview mirror, such as a dreamcatcher (colloquially referred to as “dreamcatcher stops”). According to an attorney we spoke with,

People with [reservation] plates get pulled over for anything. They could have something hanging off their rear-view mirror, they could have a “light bulb out” on their license plate—and I say that with quotations because we have a lot of stops for that, then all of a sudden when the person goes and looks five minutes later, their light bulbs are on. I mean, they absolutely pull over people with [reservation] plates more than anything.

Interviewees pointed to these experiences as feeding their anxiety about driving in the area. Several people we spoke with told us they either intended to get state plates on their next vehicle or deliberately chose not to get tribal plates after these experiences, or even hearing about others’ experiences of being targeted with “rez plates.” While law enforcement may justify these kinds of stops as legitimate efforts to deal with minor traffic violations, a defense attorney noted that even when officers do not appear to have a legitimate reason for stopping what he called “rez cars,” police might “knock out a taillight with [their] stick” to justify the stop. “Happens all the time,” he added.

These targeted enforcement practices contributed to feelings of alienation and marginalization among many American Indians in Indian Country, eroding Native residents’ sense of security and belonging in their own communities and ancestral homelands. By eroding Native peoples’ sense of belonging, they secure settler colonial space in ways that echo the laws and tactics of previous eras—such as those policies that aimed to assimilate Indigenous children through forced removal and boarding schools—and that threatens or fractures a tenuous trust in local institutions.

Surveilling space and patrolling borders

In addition to targeting, several attorneys and judges reported patterns of law enforcement surveillance that were prevalent among border town police, in which law enforcement would excessively surveil locations frequented by Native Americans. One public defender described how local police would simply sit and wait for Native residents at a local Walmart on the edge of the town nearest to a local reservation:

We have a cop who, on the day that the tribes pay out [per capita payments], will go and sit in the Walmart parking lot, because he suspects that he’s gonna get some people shoplifting, and he’s going to pick some people up on warrants. And to him, every Native person looks shady.

Later in the interview, this public defender also told us about a local trailer park that had primarily Native residents and which was regularly patrolled by police:

We have cops who sit outside of [the trailer park], and then when people leave that, will start to follow the people who live in that trailer park, and try to find a reason to stop them. We have a state trooper who works particularly out of my county who openly admitted while we were at lunch, that if someone's leaving [the trailer park], he will try to find a reason to stop them. I mean, yeah, it's absolutely targeted at poor people and poor people of particularly Native descent.

Another attorney described how border police often patrol the borders of local reservations as a pretext to conduct warrant checks:

One of the favorite things of law enforcement in [local county] is to sit on the [local highway], which comes from [a local reservation], and ... find any reason to pull over cars full of people because the assumption is they're going to find somebody on a warrant. They're going to figure out a way to search the car.

Not only do police and other criminal justice actors patrol physical borders between Native and settler communities, but also cultural borders. We spoke to a county judge who had briefly worked for a local tribe. As a result, she was distrusted by local law enforcement, and white defendants assumed she was biased because she had "worked for the Indians." In a county, in which tensions between the Native and settler communities were high, her experience and relationships with the Native community were perceived negatively by non-Native people but positively by the Native community.

"Jurisdictional Maze" of layered policing and civil justice

The jurisdictional complexity of layered police work under PL-280 has several consequences that implicate criminal and civil legal systems. One tribal attorney described a complicated system for issuing traffic tickets on the reservation that border police often disregard. Under the agreement between the county and the tribe, border police "can do traffic stops [on the reservation], but what they're supposed to do is give tribal tickets to band members, and those are heard in tribal court." However, tribal nations do not have jurisdiction over non-Native people for traffic stops, so they must issue state tickets to those drivers. As the attorney further explained,

You have to figure out who you're stopping—and it's been a problem. We don't have an agreement with state troopers. And so—and this has happened a couple of times since I've been here—I think usually [band members] just don't know. They get their ticket and go, okay, that sucks. Like, state troopers can't ticket our band members legally on the reservation. They do it. But, technically, they don't have jurisdiction to do that.

As tribal governments attempt to coordinate with border town governments in navigating the jurisdictional complexity of the Indian country, participants described other controversial practices of border town police. These issues, among others, include border town police being resistant to operate under tribal court orders; refusing to and/or

being punished for responding to requests for backup by tribal police; and leaving domestic violence incidents without an arrest.

Both court actors and residents described the saturation of various law enforcement agencies on reservations, coupled with targeted enforcement practices, as a cause of high rates of pre-trial detention among American Indians. A public defender observed that in the rural county court where he works, “75% of the docket is Native,” and further characterized the nearby reservation community as “the most closely policed community that [he] knows of in the area.” Likewise, a county judge attributed these high rates of pre-trial detention to *where* policing happens,

If you sit there and say, well the roster is 60% Native American, my guess would be, the police stops were somewhere [around] 60% Native American, because that’s where the contact happened. But it also really goes down to enforcement. It’s where they are patrolling. Where are they actually engaging? And there’s so much discretion that officers have, and so if you sit there and look at the basis of the stops—everybody can get stopped. Right? ... [it’s] a very racially disparate application of our enforcement. Of our statutes. Of our resources, at the courthouse.

The high rates of pre-trial detention among Native people can undermine the stated goals of enforcement mechanisms such as those used to secure child support. Two female participants, Beth and Naomi, said that this was the reason that their tribal court was seeking to transfer child support cases from the county,

Beth: All of our male tribal members out in the county, it seemed like they were always in jail. They were not able to provide because they were in jail...

Naomi: If you were in child support in [border town] county, you would have to pay a certain amount of your income. But this guy could just bring you a quart of wood, or some fish, or some deer meat and you are providing for your family. Or do absolutely nothing.

Beth: And nothing will happen.

Beth and Naomi’s explanation underscores the challenges tribal members face in navigating these systems, especially with respect to how pretrial detention and involvement with the state criminal legal system can impede their ability to provide for their families.

Discussion

In this article, we examine policing practices in Indian country through the lens of settler colonialism to highlight the complex and often overlooked intersection of criminal law enforcement and civil justice needs within Indigenous communities. Participants in our study overwhelmingly associated Native people as targets of pretextual investigatory stops (Epp et al., 2014), communicating important messages about mobility, freedom, and citizenship—that is, where Native people “can” and “should” go, and where they

“should not.” For those subject to them, investigatory stops shape understandings around who has the freedom to be part of a mobile society and who must be subjected to surveillance and monitoring (Epp et al., 2014).

Viewing investigatory stops through the lens of settler colonialism focuses attention toward the messages these stops communicate to Native people as dual citizens and whose tribal citizenship—as communicated through their license plate—serves as the basis for such stops. Of course, investigatory stops can be experienced as humiliating, marginalizing, and punitive for Native people, especially when they result in incarceration or even lesser measures like tickets, fines, and fees. However, our data highlight that investigatory stops can also serve more classically colonial functions. When investigatory stops influence Native people’s decision to use state license plates over tribal license plates, as our data suggest, investigatory stops function as a form of domination through assimilation.

Although our findings focus primarily on criminal enforcement, they have implications for civil justice. Policing is the most visible incarnation of settler state power, thus settler policing practices may engender reluctance to view other settler state entities as legitimate spaces through which civil legal needs, for example, eviction, domestic violence, or access to public benefits, may be addressed. These perceptions can hinder working relationships between tribal and local civil justice systems which, in cross-jurisdictional spaces, is uniquely advanced via formal tribal court-state court forums, informal collaborations between tribal and state court judges, and shared-jurisdiction healing to wellness courts (Statz, 2022). Reinforcing physical and cultural borders between Native American communities and settler communities can discourage Native Americans from freely accessing public spaces and civil justice services outside of reservations and tribal lands. These formal and informal practices can create a hostile environment that deters Native people from pursuing civil justice remedies, such as filing complaints against landlords or seeking restraining orders against abusive partners. Moreover, these practices hinder working relationships between tribal and local justice systems by creating an atmosphere of mistrust and complicating already complex jurisdictional issues. Additionally, the byzantine system of jurisdictional complexity not only complicates criminal justice, it disrupts civil justice access for Native Americans. Overlapping jurisdictions can confuse tribal members resolving civil issues such as child custody or housing disputes. The uncertainty about where to file, which laws apply, and which authorities have jurisdiction can lead to delays and may even result in the denial of justice.

Moreover, these overlapping jurisdictional complexities directly and indirectly undermine the legitimacy of tribal sovereignty and self-determination. The state imposes an external settler colonial criminal and civil legal framework that usurps tribal precedence in practice, if not in explicit policy. This imposition is not neutral; it forces tribes to operate within a legal paradigm that is often at odds with Indigenous concepts and understandings of justice. The jurisdictional maze thus becomes a tool of assimilation by delegitimizing and stifling traditional tribal systems and coercing tribes into adopting foreign legal norms and practices. This is an example of the “productive” side of settler colonialism (Wolfe, 2006), in which the settler state undermines tribal civil legal systems as a means to replace them with the “legitimate” civil and criminal systems.

Considered in this context, the jurisdictional maze serves as a microcosm of the broader settler colonial project. It does not aim to simply complicate legal processes; it works to maintain a system that perpetuates Indigenous dispossession and replaces Indigenous cultural and legal systems with settler systems. By forcing Native communities to navigate this maze, the settler state chips away at tribal self-determination by effectively limiting the spaces where tribal sovereignty can be exercised, whether it's in the realm of criminal justice or civil matters such as land disputes and child welfare.

Further, if investigatory stops can have an assimilative effect on Native people, they are an affront to tribal sovereignty because the sovereignty of any political body is legitimated through, among other things, symbols of self-governance and citizenship such as birth certificates, driver's licenses, and license plates. Our findings suggest that these stops can also threaten tribal sovereignty when they result in "transfers" of both Native adults and Native children (Veracini, 2010). High rates of pre-trial detention and out-of-home placement among Native children disproportionately disappear Native people from their families, communities, and homelands in the rural north. By denying the possibility of Indigenous lifeways, incarceration, and out-of-home placement prevents Native people from reproducing Native identity, culture, and children. This is a critical threat to the sovereignty of tribal nations. Without the reproduction of Native culture, sovereignty becomes void of any meaning (Coffrey and Rsosie, 2001; Porter, 2002).

Conclusion

Analyzing policing in border towns clarifies how settler colonial logics operate through the practices of law enforcement that lead to criminal legal disparities among Native people and threaten and diminish tribal sovereignty. Such an approach builds on the concept of sovereignty threat by applying it to the everyday experiences of Native people who come into contact with local police (Beardall, 2021). As articulated in our interview with Beth and Naomi, critiques of criminal justice reform are insufficient for addressing the justice concerns of Native communities. For American Indians and tribal nations, criminal justice reform must transcend conventional frames and address the imposition of settler adversarial justice models on tribes (Van Schilfgaarde, 2023).

The complexities and implications of this intersection of civil law—vis a vis Indian law and tribal sovereignty—and criminal law warrant future research. Existing scholarship documents the "multiple and simultaneous duties" (Van Schilfgaarde, 2023: 27) performed by tribal courts in the face of significant scrutiny and inadequate resources (Pommersheim, 1991; U.S. Commission on Civil Rights, 2018). Nonetheless, tribal judges are keenly aware of the generational cycles of violence and abuse that they confront, and they play critical roles in supporting Native communities (Flies-Away and Garrow, 2013; Statz, 2022). In light of the historical and ongoing violence of settler colonialism, and the harms caused by the criminal legal system, future research should thoroughly examine how tribal courts adopt alternative approaches that align with Indigenous cultural values and promote healing within tribal communities, such as through justice models that diverge from the adversarial system (Tauri et al., 2005).

While acknowledging the procedural and substantive differences between tribal and state courts—and, likewise, between many tribal courts—this work simultaneously regards rural places as an element that may uniquely supersede jurisdictional divides. The challenges of these concurrent or cross-jurisdictional regimes are relatively well-documented (Champagne and Goldberg, 2020), but empirical research on cross-jurisdictional partnerships, such as joint advocacy for tribal court database access, collaborative justice innovations, combined treatment courts, and tribal-state court forums is less common (Nesper, 2015; Statz, 2022).

After all, the spaces at the heart of this research are never exclusively a concurrence of white settler communities and reservations. Instead, Northland “border towns” at once hold complex settler colonial and im/migrant realities with shifting racial demographics; bear the costs of urban-normative state- and federal-level decision-making (i.e. policy orientations based on the needs or conditions of urban rather than rural centers) in under-resourced schools, health systems, justice systems, and infrastructure; and represent cross-jurisdictional complexities and their attendant opportunities for violence, tolerance, or even care.

Declaration of conflicting interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) received no financial support for the research, authorship, and/or publication of this article.

ORCID iD

Brieanna Marie Watters  <https://orcid.org/0000-0002-1668-2427>

Notes

1. Indian Child Welfare Act of 1978, Pub. L. No. 95-608, 92 Stat. 3069; Indian Gaming Regulatory Act, Pub. L. No. 100-497, 102 Stat. 2467.
2. *Deb Haaland, Secretary of the Interior, et al. v. Chad Everet Brackeen, et al.*, No. 21–376, 594 U.S. (2021).
3. *Johnson v. M'Intosh*, 21 U.S. (8 Wheat) 543 (1823); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).
4. Public Law 90-284, 82 Stat. 77 (1968).

References

- Andersen C and O'Brien JM, eds. (2017) *Sources and Methods in Indigenous Studies*. New York, NY: Routledge.
- Beardall TR (2021) Sovereignty threat: Loreal Tsingine, policing, and the intersectionality of Indigenous death. *Nevada Law Journal* 21(3): 1025–1060.
- Beggs JJ, Haines VA and Hurlbert JS (1996) Revisiting the rural-urban contrast: Personal networks in nonmetropolitan and metropolitan settings 1. *Rural Sociology* 61(2): 306–325.

- Carillo I, Quisumbing King K and Shaft KA (2021) Race, ethnicity, and twenty-first century rural sociological imaginings. *Rural Sociology* 86(3): 419–443.
- Champagne D and Goldberg C (2020) *Captured Justice: Native Nations and Public Law 280*, 2nd Edn Durham: Carolina Academic Press.
- Clinton RN (1976) Criminal jurisdiction over Indian lands – A journey through a jurisdictional maze. *Arizona Law Review* 18(3): 507–583.
- Cobb AJ (2005) Understanding tribal sovereignty: Definitions, conceptualizations, and interpretations. *American Studies* 46(3/4): 115–132.
- Coffrey W and Rsoie R (2001) Introduction: Symposium on Cultural Sovereignty. *Stanford Law and Policy Review* 12(2): 191–221.
- Deer S, Higgins E and White T (2022) Editorializing ICWA: 40 years of colonial commentary. *Indigenous Peoples' Journal of Law, Culture and Resistance* 7: 27–58.
- Denis J (2015) Contact theory in a small-town settler-colonial context: The reproduction of Laissez-faire racism in indigenous-white relations. *American Sociology Review* 80(1): 218–242.
- Denzin N and Lincoln Y (2008) Introduction: Critical methodologies and indigenous inquiry. In: Denzin N, Lincoln Y and Smith LT (eds) *Handbook of critical and Indigenous methodologies*. Thousand Oaks: Sage, 1–20.
- Dhillon JK (2015) Indigenous girls and the violence of settler colonial policing. *Decolonization: Indigeneity, Education & Society* 4(2): 1–31.
- Donnermeyer JF and DeKeseredy WS (2014) *Rural Criminology*. London, New York: Routledge.
- Epp C, Maynard-Moody S and Haider-Markel D (2014) *Pulled Over: How Police Stops Define Race and Citizenship*. Chicago: University of Chicago Press.
- Fassin D (2011) Policing borders, producing boundaries: The governmentality of immigration in dark times. *Annual Review of Anthropology* 40(1):213–226.
- Fenelon JV and Trafzer CE (2014) From colonialism to denial of California genocide to misrepresentations. *American Behavioral Scientist* 58(1): 3–29.
- Flies-Away JT and Garrow CE (2013) Healing to wellness courts: Therapeutic jurisprudence+. *Michigan State Law Review*: 403–451.
- Franklin TW (2013) Sentencing Native Americans in US federal courts: An examination of disparity. *Justice Quarterly* 30: 310–339.
- Gale L and McClure K (2020) Commandeering confrontation: A novel threat to the Indian Child Welfare Act and tribal sovereignty. *Yale Law and Policy Review* 39(1): 292–346.
- Garriott W (2013) Policing methamphetamine: Police power and the war on drugs in a rural US community. In: *Policing and contemporary governance: The anthropology of police in practice*. New York: Palgrave Macmillan US, 53–76.
- Glenn EN (2015) Settler colonialism as structure: A framework for comparative studies of U.S. race and gender formation. *Sociology of Race and Ethnicity* 1(1): 54–74.
- Goldberg C and Singleton HV (1998) Research priorities: Law enforcement in Public Law 280 states. In: *Crime and justice research in Indian country strategic planning meeting*, 14–15 October. National Institute of Justice, U.S. Department of Justice.
- Gordon A (2020) The police as place-consolidators: The organizational amplification of urban inequality. *Law & Social Inquiry* 45(1): 1–27.
- Hansen E (2017) The Forgotten Minority in Police Shootings. *CNN*, 13 November. Available at: <https://www.cnn.com/2017/11/10/us/native-lives-matter/index.html> (accessed 1 April 2023).
- Harris A, Pattillo M and Sykes BL (2022) Studying the system of monetary sanctions. *RSF: The Russell Sage Foundation Journal of the Social Sciences* 8(1): 1–33.

- Jones BJ (1998) Welcoming tribal courts into the judicial fraternity: Emerging issues in tribal-state and tribal-federal court relations. *William Mitchell Law Review* 24: 456–468.
- Kiel D and Brooks JF (2016) Introduction: Reframing and reclaiming indigenous midwests. *Middle West Review* 2(2): vii–x.
- LaVigne D (2015) How immigrants shaped the Iron Range. *MinnPost*, Sept. 1. Available at: <https://www.minnpost.com/mnopedia/2015/09/how-immigrants-shaped-iron-range/#:~:text=Forty%2Dthree%20different%20nationality%20groups,Norwegian%2C%20Cornish%2C%20or%20German> (accessed 3 March 2023).
- Leeds S, Miller R, Washburn K, et al. (2023) Oklahoma v. Castro-Huerta – Rebalancing federal-state-tribal power. *Journal of Appellate Practice and Process* 23(1): 47–104.
- Linjean M and Weaver HN (2022) The Indian Child Welfare Act (ICWA): Where we've been, where we're headed, and where we need to go. *Journal of Public Child Welfare* 17(5): 1034–1057.
- Linneman T and Wall T (2013) 'This is your face on meth': The punitive spectacle of 'white trash' in the rural war on drugs. *Theoretical Criminology* 17(3): 315–334.
- Maher S (2022) Supreme Court to hear challenge to Indian child welfare act – and a lot is at stake. *Marketplace* 7 November Available at: <https://www.marketplace.org/2022/11/07/supreme-court-to-hear-challenge-to-indian-child-welfare-act-and-a-lot-is-at-stake/>
- Massoud MF (2022) The price of positionality: Assessing the benefits and burdens of self-identification in research methods. *Journal of Law and Society* 49: S64–S68.
- McCoy ML (1983) When cultures clash: The future of tribal courts. *Human Rights (Chicago, Ill)* 20: 22.
- McKay D, Vinyeta K and Norgaard KM (2020) Theorizing race and settler colonialism with U.S. sociology. *Sociology Compass* 16(9): 1–17.
- Metzl JM (2019) *Dying of Whiteness: How the Politics of Racial Resentment is Killing America's Heartland*. New York: Basic Books.
- Montoya T (2019) # WeNeedANewCounty: Enduring division and conquest in the Indigenous southwest. *Journal for the Anthropology of North America* 22(2): 75–78.
- Moskos P (2008) *Cop in My Hood: My Year Policing Baltimore's Eastern District*. Princeton: Princeton University Press.
- Nagel J (1996) *American Indian ethnic renewal: Red power and the resurgence of identity and culture*. New York: Oxford University Press.
- Nesper L (2015) Ordering legal plurality: Allocating jurisdiction in state and tribal courts in Wisconsin. *PoLAR: Political and Legal Anthropology Review* 38(1): 30–52.
- Nichols R (2014) The colonialism of incarceration. *Radical Philosophy Review* 17(2): 435–455.
- Nielsen MO (2009) Introduction to the context of Native American criminal justice involvement. In: Nielsen MO and Silverman R (eds) *Criminal justice in Native America*. Tucson: University of Arizona Press, 1–17.
- Peak K (1989) Criminal justice, law and policy in Indian country: A historical perspective. *Journal of Criminal Justice* 17: 393–407.
- Perry B (2009) *Policing Race and Place in Indian Country: Over- and Underenforcement*. Lanham: Lexington Books.
- Pommersheim F (1991) Tribal-state relations: Hope for the future? *South Dakota Law Review* 36: 239–276.
- Porter RB (2002) The meaning of Indigenous nation sovereignty. *Arizona State University Law Journal* 34: 111.
- Rey-Bear DI and Fletcher ML (2017) We need protection from our protectors: The nature, issues, and future of the federal trust responsibility to Indians. *The Michigan Journal of Environmental & Administrative Law* 6: 397.

- Sandefur T (2018) Recent developments in Indian Child Welfare Act litigation: Moving toward equal protection. *The Texas Review of Law & Politics* 23: 425.
- Sharma G (2017) Pros and cons of different sampling techniques. *International Journal of Applied Research* 3(7): 749–752.
- Simpson M and Le Billon P (2021) Reconciling violence: Policing the politics of recognition. *Geoforum; Journal of Physical, Human, and Regional Geosciences* 119: 111–121.
- Skoog D (1996) Taking control: Native self-government and native policing. In: Nielsen MO (eds) *Native Americans, crime, and justice*. New York: Routledge, 121–135.
- Statz M (2021) On shared suffering: Judicial intimacy in the rural northland. *Law & Society Review* 55(1): 5–37.
- Statz M (2022) “It is here we are loved”: Rural place attachment in active judging and access to justice. *Law & Social Inquiry* 1–31.
- Statz M, Billings KR and Wolf J (2022) Rurality as concordance: Mental health service delivery for rural survivors of intimate partner violence. *Sociological Perspectives* 65(3): 485–505.
- Statz M, Friday R and Bredeson J (2020) ‘They had access, but they didn’t get justice’: Why prevailing access to justice initiatives fail rural Americans. *Georgetown Journal on Poverty Law & Policy* 28: 321.
- Steinman E (2012) Settler colonial power and the American Indian sovereignty movement: Forms of domination, strategies of transformation. *American Journal of Sociology* 117: 1073–1130.
- Steinman E (2016) Decolonization not inclusion: Indigenous resistance to American settler colonialism. *Sociology of Race and Ethnicity* 2(2): 219–236.
- Steinmetz K, Schaefer B and Henderson H (2017) Wicked overseers: American policing and colonialism. *Sociology of Race and Ethnicity* 3(1): 68–81.
- Stewart R, Watters B, Horowitz V, et al. (2022) Native Americans and monetary sanctions. *Russell Sage Foundation Journal of Social Sciences* 8(2): 137–156.
- Tauri J (2005) Indigenous perspectives and experience: Maori and the criminal justice system. In: Walters R and Bradley T (eds) *Introduction to Criminological Thought*. New Zealand: Pearson, 183–204.
- Thibeault D and Spencer MS (2019) The Indian adoption project and the profession of social work. *Social Service Review* 93(4): 804–832.
- Thornberg R and Charmaz K (2014) Grounded theory and theoretical coding. *The SAGE Handbook of Qualitative Data Analysis* 5: 153–169.
- Ulmer JT and Bradley MS (2019) Criminal justice in Indian country: A theoretical and empirical agenda. *Annual Review of Criminology* 2: 337–357.
- U.S. Commission on Civil Rights (2018) Broken promises: Continuing federal funding shortfall for Native Americans. Briefing Report, Washington, DC, December .
- USDA Economic Research Service (2014) American Indians remain disproportionately rural. Available at: <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=77893> (Accessed 1 April 2023).
- Van Schilfgaarde L (2023) Restorative justice as regenerative tribal jurisdiction. *California Law Review*. Epub ahead of print 30 Sep 2023. DOI: 10.2139/ssrn.4375140.
- Veracini L (2010) Introducing settler colonial studies. *Settler Colonial Studies* 1(1): 1–12.
- Wells LE and Falcone DN (2008) Rural crime and policing in American Indian communities. *Journal of Rural Social Sciences* 23(2): 199–225.
- Wilson-Hokowhitu N, ed. (2019) *The Past Before Us: Mo‘okū‘auhau as Methodology*. Honolulu, HI: University of Hawaii Press.

- Wolfe B, Jakubowski J, Robert H, et al. (2012) The income and health effects of tribal casino gaming on American Indians. *Demography* 49(2): 499–524.
- Wolfe P (2006) Settler colonialism and the elimination of the native. *Journal of Genocide Research* 8(4):387–409.
- Wray M (2006) *Not Quite White: White Trash and the Boundaries of Whiteness*. Durham, NC: Duke University Press.
- Young ST (2017) Wild, wonderful, white criminality: Images of ‘white trash’ Appalachia. *Critical Criminology* 25(1): 103–117.
- Young T (1990) Native American crime and criminal justice require criminologists’ attention. *Journal of Criminal Justice Education* 1(1): 111–116.

Brieanna Marie Watters is a PhD candidate in the Department of Sociology at the University of Minnesota, Twin Cities.

Robert Stewart is assistant professor of Criminology and Criminal Justice at the University of Maryland.

Michele Statz is an anthropologist of Law and associate professor at the University of Minnesota Medical School.