

Respect

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Indigenous Women and Girls Seek Visibility and Justice *by Daryl E. Lucas*

In September 2021, the disappearance of Gabby Petito, a young white woman from New York who was traveling with her boyfriend across the country, made national news. The search by five different government agencies remained in the public eye until, tragically, her remains were found in Wyoming's Grand Teton National Park less than a month later.

According to the Wyoming Missing and Murdered **Indigenous** Task Force, nearly 500 indigenous women were reported missing between 2011 and 2021 in the same area that Petito was found. In an interview with KVTB in Idaho, Tai Simpson, the director of Social Change for the Idaho Coalition Against Sexual and Domestic Violence, who is a member of the Nez Perce Tribe, pointed out the contrast to how missing persons cases involving Indigenous women are handled. She noted that there are 5,700 unsolved missing Indigenous person cases nationwide.

As an example, in November 2020, Mary Johnson, an indigenous woman and member of the Tulalip Tribe, went missing in Washington State. The search for her

consisted of a billboard and local media coverage. To date, Johnson has not been found.

The governor of Washington state recently signed legislation that grants state authorities the power to create an alert system for missing Indigenous women similar to Amber Alerts, which is an alert system established in 1996 that addresses child abductions. The Indigenous system would notify law enforcement when there is a report of a missing Indigenous person. In addition, the system places messages on highway reader boards, as well as on the radio and social media.

The disappearance of Mary Johnson highlights an ongoing crisis of American Indian and Alaska Natives

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Double Burden on Black Farmers in America *by Sylvia Mendoza*

Farming in the United States is a tough profession for anyone. You're always at the mercy of Mother Nature for whether you have a good harvest or your crop is destroyed. The life is made even more difficult for Black farmers who have faced discrimination from the time of **emancipation**—a bias that still echoes today.

In 1965, the U. S. Commission on Civil Rights found that the U.S. Department of Agriculture (USDA) and Farmers Home Administration (FHA),

"may have hindered the efforts of Black small farm operators to remain a viable force in agriculture" failing to "provide equal opportunities in farm credit programs." The USDA, a federal agency that supports farmers and farming, has admitted to discriminating against Black farmers. In 1997, the USDA published a report, titled, "Civil Rights at the

United States Department of Agriculture," which detailed the agency's history of discrimination.

The consequences of that unfair treatment for Black farmers were severe and still reverberate today. According to a recent USDA census, of the 3.4 million farmers in the U.S., only 37,000 are Black. In 1910, that number was approximately one million.

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Because of decades of racial discrimination, unfair lending and land ownership policies, researchers from Harvard University estimate that Black farmers lost approximately 90% of their land between 1910 and 1997. That loss, researchers say, amounts to a financial loss of between \$250 to \$350 billion.

40 acres and a mule

Immediately after the Civil War ended, Union General William T. Sherman and Secretary of War Edwin M. Stanton met with 20 leaders of the Black community in Savannah, Georgia on January 12, 1865 to ask what they wanted in terms of compensation for what they had endured. The newly freed slaves wanted land. The spokesman for the

group was Rev. Garrison Frazier, a former slave who bought his freedom in 1857.

"The way we can best take care of ourselves is to have land and turn it and till it by our own labor," Rev. Frazier said, according to transcripts of the meeting. "We can soon maintain ourselves and have something to spare."

When asked whether the newly freed slaves would rather live in colonies of their own or among the whites, Rev. Frazier said, "I would prefer to live by ourselves, for there is a prejudice against us in the South that will take years to get over."

The government seized 400,000 acres of Confederate-owned land, and General Sherman issued his famous Special Field Order No. 15, commonly known as the “40 acres and a mule” policy, four days later. The order stated: “The islands from Charleston, south, the abandoned rice fields along the river for thirty miles back from the sea, and the country bordering the St. Johns River, Florida, are reserved and set apart for the settlement of the Negroes now made free by the acts of war and the proclamation of the President of the United States.” The order went on to state “...each family shall have a plot of not more than (40) acres of tillable ground...” There was actually no mention of mules in the order; however, some families received leftover Army mules, which is where the common name comes from. By the spring of 1865, more than 40,000 former slaves had settled on the seized land.

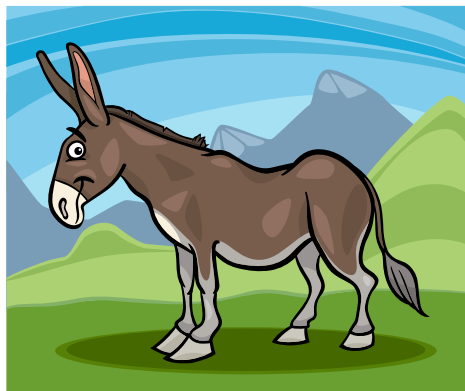
Promises broken

The promise to the nearly four million former slaves, however, was short-lived. In the fall of 1865, President Andrew Johnson, who succeeded to the presidency after President Lincoln's assassination, **overturned** Special Field Order No. 15,

giving the land back to the original white owners and evicting thousands of freed slaves.

In *The Root*, an African American online magazine, noted historian and filmmaker Henry

Louis Gates Jr. wrote, "Try to imagine how profoundly different the history of race relations in the United States would have been had this policy been implemented and enforced; had the former slaves actually had access to the ownership of land, of property; if they had had a chance to be



self-sufficient economically, to build, accrue and pass on wealth. After all, one of the principal promises of America was the possibility of average people being able to own land, and all that such ownership entailed.”

In 1867, House Speaker Thaddeus Stevens of Pennsylvania argued for a plan to distribute confiscated Confederate land to former slaves. “Withhold from them all their rights and leave them destitute of the means of earning a livelihood, and they will become the victims of hatred or cupidity [greed] of the rebels whom they helped to conquer,” Stevens said while defending his bill from the House floor. That effort failed.

Class action lawsuits— Pigford I & II

For decades, Black farmers complained that they were not receiving fair treatment when they applied for farm loans or assistance from the USDA. In 1997, Timothy Pigford, a Black corn and soybean farmer from North Carolina, claimed USDA officials denied his loan application because he was Black.

The *Pigford v. Glickman* case evolved into a class action racial discrimination lawsuit with more than 400 other farmers. A one-billion-dollar settlement was reached and nearly 23,000 Black farmers,

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who were denied federal aid from 1981 to 1996, were eligible to participate. For the *Pigford I* case, thousands of Black farmers filed late and were not allowed to participate. Congress passed what came to be known as the 2008 Farm Bill, giving claimants the right to pursue their discrimination claims if they had been left out of the *Pigford I* case.

A second class action suit was launched in 2010. In *Pigford II*, also known as the Black Farmers case, more than 25 law firms helped thousands of Black farmers across the U.S. submit their claims within the 180-day timeframe deadline. Since many did not have access to the Internet, the attorneys went to them, meeting in person. The lawyers working on the case found locations within an hour's drive from many farmers' homes and organized 400 meetings with potential claimants across 24 states.

One of the attorneys who worked with *Pigford II* claimants was Eric Sanchez, Vice President of Strategy and Innovation at a Raleigh, NC law firm. Sanchez remembers working at one session, helping to sign in Black farmers.

"An older man came in. He put in his birthday, and he was 102 years old. He signed his name with an X. The three people who followed him were his son, his son's son, and more. Four generations," Sanchez recalls. "It's seared in my memory the hurt, the deep wound, the indignity. This man's legacy to his children was gone, the inability to pass his land down, and the subsequent generations trying to get land."

Of the 39,000 submitted claims by Black farmers, 17,665 were approved. The successful claimants received \$50,000 each plus an additional \$12,500 to offset potential tax liability. For Sanchez, it seemed like too little, too late.

"\$50,000 isn't an insignificant amount, but you couldn't use that money to buy back the land they lost," Sanchez says. "I can't think of any claimant who would have traded their land for it."

White farmers claim discrimination

In March 2021, more than \$4 billion of debt relief was allocated to farmers of color, which

included Black, Native American, Alaskan Native, Asian American, Pacific Islander and Hispanic farmers. The measure was met immediately with lawsuits in Wisconsin, Florida and Texas from white farmers alleging reverse discrimination.

Jeffrey Lay, a white farmer who grows corn and soybeans and is president of his county farm bureau, told *The New York Times*, "They talk about they want to get rid of discrimination. But they're not even thinking about the fact that they're discriminating against us."

In defense of the Biden Administration's plan, U.S. Secretary of Agriculture Tom Vilsack reported that of the \$24 billion of COVID-19 stimulus set aside for farmers and distributed during the Trump Administration, only \$20.8 million went to Black or socially disadvantaged farmers, the rest—approximately 99%—went to white farmers. In addition, a CNN analysis of USDA loan data revealed that 42% of Black farmers were rejected for direct loans in 2021, more than any other demographic. The percentage of white farmers denied direct loans for the same time period was nine percent.

"Over the last 100 years, policies were implemented that specifically twisted in a way that disadvantaged socially disadvantaged producers," Secretary Tom Vilsack told *The Washington Post*. "There's no better example of that than the COVID relief efforts. Billions of dollars went to white farmers, because the system is structured in a way that gives them significant advantages."

In April 2021, President Biden also signed a \$1.9 trillion COVID stimulus relief package. Of the \$10.4 billion in the American Rescue Plan that supports agriculture, approximately \$5 billion was set aside to help Black and other disadvantaged farmers. The money would provide debt relief as well as grants, training, education and help to buy land. That money is also being held up as lawsuits from white farmers make their way through the court system. In February 2022, a trial judge in Texas issued a ruling in one of the lawsuits.

"The Government puts forward no evidence of intentional discrimination by the USDA in at least the past decade," the Texas trial court's opinion

read. "To find intentional discrimination, then, requires a logical leap, as well as a leap back in time. In sum, the Government's evidence falls short of demonstrating a compelling interest, as any past discrimination is too **attenuated** [reduced] from any present-day lingering effects to justify race-based remedial action by Congress."

In an article on its website, the Southern Poverty Law Center, a nonprofit legal advocacy organization, said: "Basically, the court has ruled that there is a time limit on how far back Congress can go to **remediate** intentional discrimination by the government. This has enormous implications for other kinds of **reparations**."

For John Wesley Boyd Jr., a Virginia bean and grain farmer who is the founder of the National Black Farmers Association, it's nothing new.

"Anytime in the United States, if there's money for Blacks, those groups speak up and say how unfair it is," Boyd told *The New York Times*. "But it's not unfair when they're spitting on you, when they're calling you racial **epithets**, when they're tearing up your application." •



1. The newly freed slaves were promised 40 acres and (maybe) a mule. Look at the quote from Henry Louis Gates Jr. under the subhead "Promises broken." What might be different today if the promise had been kept? Explain your answer.
2. In the article Jeffrey Lay claims that white farmers are being discriminated against in the Biden Administration's plans to compensate Black and other socially disadvantaged farmers. What do you think about that claim? Explain your answer.
3. The Texas trial judge ruled that the discrimination against Black farmers happened too long ago to be judged today. What do you think about that decision? Is it ever too late to right a wrong?

Addressing Race-Based Hair Discrimination *by Suzi Morales*

Chances are that your school has a dress code or other rules to make sure class isn't disrupted by what students are wearing or by their appearance. By law, such appearance standards in schools or the workplace must be neutral and not single out a particular racial, ethnic or religious group.

For more than half a century, U.S. law has prohibited discrimination on the basis of race in settings like schools and workplaces. However, there are arguments that current law doesn't adequately address "hair discrimination," which **disproportionately** discriminates against African Americans. Since 2019, some states have passed laws—called CROWN Acts, which stands for Creating a Respectful and Open World for Natural Hair—to specifically address hair discrimination. Federal **legislation** has been proposed as well, but so far has not been passed into law.

Rooted in the past

To understand how hair discrimination affects African Americans, you need to understand what hair means to that community. African tribal members wore elaborate hairstyles that designated a lot about a person, including their social and marital status, as well as their occupation.

"Hair was almost like your Social Security number. It could tell everything about you," Ayana Byrd, a journalist and co-author of *Hair Story: Untangling the Roots of Black Hair in America*, told *Glamour* magazine.

During the Transatlantic slave trade, these tribal members were captured and brought to the colonies against their will. "One of the first things that happened when people were put on slave ships was that their hair was shaved," Byrd said. "It was a really visual, immediate symbolic way of erasing someone's identity."

Byrd also points out that maintaining Black natural hair, a term coined in the 1960s and 70s, is difficult and time-consuming. The newly enslaved had no tools with which to care for their hair, resorting to bacon grease or butter as moisturizers. Many also relied on head scarves to cover their hair, protecting it from the harsh sun. Under the scarves, their hair was often in a braided style such as cornrows. Even after **emancipation**, many

freed slaves tried to straighten their hair in an effort to **assimilate**. Straightening natural Black hair can be costly and dangerous even today as it involves harsh chemicals. The newly freed slaves sometimes used lye mixed with potato in an effort to obtain what was considered "good hair," which at the time meant straight hair.

What is hair discrimination?

According to Corinn Jackson, a Seattle attorney who advises national employers on compliance with various state CROWN Acts, many businesses and schools have rules that dictate aspects of appearance like hair, uniforms and other clothing. Ideally, these rules should directly relate to the way the school or business operates. For example, a requirement that food service workers wear hair nets addresses food safety concerns.

Jackson says problems arise when policies meant to apply to everyone are disproportionately applied to African Americans. For example, a policy could require employees to keep a "neat appearance." As interpreted, however, hairstyles like Afros haven't been found to be "neat." In this way, hairstyles often worn by Black employees, such as Afros and dreadlocks, haven't been found to comply with some school and employer appearance policies. Students and employees of other racial and ethnic backgrounds are not affected to the same extent.

According to a Dove research study, Black women bear the brunt of hair discrimination in the workplace. "Black women's hair is three times more likely to be perceived as unprofessional," the study revealed. In addition, Black women were 80% more likely to be required to alter their hair (i.e., straighten it) to fit in at work, and one and half times more likely, compared to their white counterparts,

to be sent home from their workplace because of their hair.

Legal background

You may be thinking, isn't discrimination based on race illegal? The Civil Rights Act of 1964, passed by Congress during the civil rights movement, banned discrimination on the basis of race in places of public accommodation (i.e., restaurants, hotels, public transportation), employment, and schools.

The law, however, leaves room for interpretation of whether a particular policy discriminates—against employees or students—based on race. Another question not addressed by the Act is whether certain hairstyles are an indication of race.

Jackson notes that the issue becomes more complicated when courts draw distinctions between aspects of Black hair like texture, which is considered to be immutable [not able to be changed] while certain styles like cornrows and braids were considered to be mutable [able to be changed]. Something that is mutable, some courts have found, is the choice of the individual and not an indication of race. The problem with this distinction, Jackson says, is that many of these styles, including dreadlocks, braids and cornrows, —often called protective hairstyles—keep Black hair healthy. Even though a style may be worn as part of cultural identity or to protect certain textures of hair from breakage, courts have distinguished between mutable characteristics like hairstyles and immutable characteristics like skin color.

The U.S. Equal Employment Opportunity Commission (EEOC) provided guidance on hair discrimination, stating that, "Title VII [of the Civil Rights Act of 1964] also prohibits employers from applying neutral hairstyle rules more restrictively to



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hairstyles worn by African Americans.” Although the EEOC has stated that hair discrimination like this is prohibited under Title VII, such statements are not binding upon courts. In addition, they do not address hair discrimination in schools.

How courts have ruled

One of the first legal challenges to take on hair discrimination was brought in 1981 by Renee Rogers, a ticket agent at American Airlines. Rogers, who wore her hair in cornrows, was forced to put her hair in a bun while at work and then cover it with a hairpiece, because her employer prohibited braided hairstyles.

Rogers sued American Airlines in federal court, claiming that the requirement was uncomfortable, and that her hairstyle was reflective of her African heritage. In her complaint, Rogers contended her hairstyle “has been, historically, a fashion and style adopted by Black American women, reflective of the cultural, historical essence of the Black woman in American society.”

In *Rogers v. American Airlines*, a federal district judge in New York dismissed Rogers’ claim of racial discrimination, ruling that her hairstyle was a mutable characteristic, and she had the option of quitting her job. In addition, there was an alternative

provided to Rogers in the form of the hairpiece. The judge also rejected the idea that cornrows were associated with African Americans and indicated his belief that Rogers chose the style to emulate Bo Derek, a white actress who adopted the hairstyle for her role in the movie *10*, which had been released two years prior to the judge’s ruling.

In another hair discrimination case, the EEOC filed a lawsuit in 2013 on behalf of Chastity Jones, an Alabama woman who wore her hair in dreadlocks. Jones was offered a job at Catastrophe Management Solutions as a customer service representative but was informed that her hairstyle violated the

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Swimming in Controversy

Just before the Tokyo Olympics, held in the summer of 2021, Black hairstyles were again in the spotlight. A swim cap produced by Soul Cap, a British company that specializes in larger swim caps to accommodate thicker and curlier hair, specifically Black hairstyles, was banned from Olympic competition by the International Swimming Federation (FINA).

FINA said the rationale for the ban was that “athletes competing at the international events never used, neither require to use, caps of such size and configuration” and that swim caps from Soul Cap do not follow “the natural form of the head.” FINA also speculated whether the cap created an advantage by “disrupting the flow of water,” however, because it is a bigger cap, many swimmers say that it could be a competitive disadvantage in the pool. Soul Cap’s product is designed with extra room at the crown of the head to accommodate natural hairstyles such as braids, dreadlocks and Afros.

The founders of Soul Cap told National Public Radio, “We hoped to further our work for diversity in swimming by having our swim caps certified for competition, so swimmers at any level don’t have to choose between the sport they love and their hair.”

Backlash in the pool

The backlash against FINA was swift, with many Black swimmers calling for it to reconsider its decision.

“We want to be included, all we’re asking for is to have a piece of equipment that has been designed to cater to the issue of our hair, which is a significant barrier to participation in aquatics as a whole,” Danielle Obe, the chair and founder of the Black Swimming Association in Great Britain, told *The New York Times*.

Due to the backlash of its decision, FINA’s governing body agreed to reconsider its decision. Eventually, it reaffirmed the ban just days before the Olympics began in July 2021.

After FINA reaffirmed the ban, the Women’s Sports Foundation issued a statement, saying: “Banning the Soul Cap and other caps that cater to natural Black hair from the elite competition is unacceptable and will continue to deter athletes with natural hair from entering or advancing in the sport.”

Not just an issue of competition

Swimming is a sport that is lacking in Black participation. But swimming is more than just a sport, it’s a life skill—one that Black children in America lack.

Lia Neal, a two-time Olympic medalist and only the second Black female swimmer to make the U.S. Olympic team, told *The New York Times*, “This is so much bigger than banning a type of cap.”

During the era of Jim Crow laws, passed between 1877 to 1964, which legalized **segregation** in the United States, many African Americans were denied entrance to public pools. In 2020, a study published in the *International Journal of Aquatic Research and Education* linked “systemic exclusion from public pools” to the fact that Black youth are 2.6 times more likely to die from drowning than white children. According to the USA Swimming Foundation, 64% of Black children don’t know how to swim, compared to 40% of white children.

Though it was too late for the Olympics, FINA said it was “fully aware of the cultural issues that Soul Cap has raised, and we are reviewing the process.” FINA encouraged Soul Cap to reapply next year. — *Jodi L. Miller*

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company's grooming policy, and she would need to cut them. When Jones refused, the job offer was taken back.

In *EEOC v. Catastrophe Management Solutions*, a federal district court judge in Alabama dismissed the lawsuit on much the same grounds as in the *Rogers* case, saying that

racial discrimination must show bias on traits that a person cannot change, like skin color. The court ruled that hairstyles don't fit into that category. In an **appeal**, the 11th Circuit Court of Appeals **upheld** that ruling in 2016.

With the help of the NAACP's Legal Defense Fund (LDF), Jones appealed the decision to the U.S. Supreme Court. In its petition to the Court, LDF lawyers said, "Black women who wish to succeed in the workplace feel compelled to undertake costly, time-consuming, and harsh measures to conform their natural hair to a stereotyped look of professionalism that mimics the appearance of white women's hair."

In May 2018, the U.S. Supreme Court declined to hear the case, letting the lower court ruling stand.

Essentially, these cases came to the same conclusion that there was no association between hair and race discrimination because hair is a changeable or mutable characteristic. That is why proponents of CROWN Acts say passing legislation at the state and federal level is crucial

New Jersey's CROWN Act

California was the first to pass its CROWN Act in 2019. The law specifically bans hair discrimination in the workplaces and schools. Since then, 13 states, as well as 29 municipalities, have passed laws prohibiting hair discrimination, notes Jackson.

In December 2019, the Garden State became the third state to pass a CROWN Act, which is similar to laws passed in other states, notes Jackson. According to a release issued by the Governor's Office, New Jersey's law "clarifies that prohibited race discrimination includes discrimination on the basis

of 'traits historically associated with race, including, but not limited to, hair texture, hair type, and protective hairstyles.'"

"13 states, as well as 29 municipalities, have passed laws prohibiting hair discrimination."

New Jersey's law passed exactly a year to the day that a viral video showing Andrew Johnson, a Black wrestler from Buena Regional High School in Atlantic County, being forced to cut his dreadlocks in order to compete in a championship match. Johnson was given the choice of cutting his dreadlocks or forfeiting the match.

Even before New Jersey's CROWN Act was passed, the Division on Civil Rights of the Office of the Attorney General of New Jersey issued a statement in September 2019 that the state's anti-discrimination law "generally prohibits employers, housing providers and places of public accommodation (including schools) in New Jersey from enforcing grooming or appearance policies that ban, limit, or restrict hairstyles closely associated with Black people, including, but not limited to, twists, braids, cornrows, Afros, locs, Bantu knots, and fades."

A federal CROWN Act

While states continue to pass CROWN Acts, federal legislation was introduced in the U.S. Senate by Senator Cory Booker of New Jersey and in the House of Representatives by New Jersey Representative Bonnie Watson Coleman in the spring of 2021. In March 2022, the House passed the CROWN Act in a 235-189 vote. During debate on the House floor, several representatives criticized the necessity of the bill and claimed the House had more pressing issues to focus on.

Representative Al Green of Texas called it a "kitchen table issue in Black households. Because when Johnny comes home and he's been fired because of his hair, that's a kitchen table issue. That's unemployment...So we have a duty and obligation to do what we are doing."

At press time, the CROWN Act is still awaiting consideration in the Senate where it would need 60

votes to pass, though a representative from Senator Booker's office anticipates a future vote that could require only a simple majority. If passed, a federal CROWN Act would become law in all 50 states, providing uniform protections for African Americans.

"Discrimination against Black hair is discrimination against Black people. Implicit and explicit biases against natural hair are deeply ingrained in workplace norms and society at large and continue the legacy of dehumanizing Black people," Senator Booker said in a press statement. "This is a violation of our civil rights, and it happens every day across the country. No one should be harassed, punished, or fired for the beautiful hairstyles that are true to themselves and their cultural heritage." •



1. After reading the article, what is your understanding of the connection between hair discrimination and slavery?
2. The article references two discrimination cases where courts concluded "no association between hair and race discrimination exists because hair is a changeable or mutable characteristic." Do you agree or disagree with the courts? Is there a connection between racial identity and certain hairstyles? Explain your answer.
3. The article mentions the choice that Andrew Johnson had to make of either cutting his dreadlocks or forfeiting his wrestling match. What do you think of his decision? Have you ever faced a difficult decision? What did you do? Would you do anything differently?
4. Read the sidebar on swim caps (on page 5). What do you think about the racial disparities in drowning statistics and its connection to African Americans being denied access to public swimming pools after the Civil Rights Act of 1964 was passed? Explain your answer.

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who experience violence at higher rates than the national average. The Centers for Disease Control states that homicide is the third leading cause of death for Native women and girls under the age of 19. A 2016 study funded by the National Institute of Justice revealed that the murder rate among Native women is 10 times the national average and 84% of American Indian or Alaska Native women have experienced some type of violence.

Congress addressed the issue of Missing and Murdered Indigenous Women (MMIW), by passing two acts—Savanna's Act and the Not Invisible Act—in October 2020. MMIW is also referred to as Missing and Murdered Indigenous Women and Girls (MMIWG), as well as Missing and Murdered Indigenous Women, Girls and Two-Spirit Individuals (MMIWG2S).

Legacy of colonialism

The National Indigenous Women's Resource Center says the crisis of missing and murdered indigenous women, girls, and two-spirit people—an Indigenous person who expresses a third or fourth gender—is part of a legacy of colonialism. Colonialism is the practice of one country taking full or partial political control of another country and occupying it with settlers for the purpose of profiting from its resources and economy.

In the late 15th century, European nations such as Portugal, Spain, France and England sent out expeditions to explore and establish new trade routes, extracting natural resources from lands outside of their borders. These countries invaded parts of Africa, India, China and the Americas, establishing colonies and conquering local Indigenous people. A *National Geographic* article, titled "What is Colonialism?," explains, "Colonial powers justified their conquests by asserting that they had a legal and religious obligation to take over the land and culture of Indigenous peoples. Conquering nations cast their role as civilizing 'barbaric' or 'savage nations.'"

In 1493, Pope Alexander VI issued the Doctrine of Discovery, a decree granting permission to Christian nations to invade, occupy and enslave non-Christian subjects in the New World. When Europeans "discovered" new lands for their king and then set up a colony, the doctrine granted them possession over the land and the Indigenous people. The U.S. Supreme Court invoked the Doctrine of Discovery as justification for its 1823 decision in *Johnson v M'Intosh*, which established that American Indians did not have the right to sell their lands to private citizens.

Native American treatment under the law

In 1817, Congress passed the Federal Enclaves Act, which made "Indian Country" a "federal enclave" or territory and granted **jurisdiction** to the U.S. federal government over crimes committed against Indians by non-Indians and vice versa. Several Indian Appropriations Acts were also passed from 1851 to 1885. Among other things, these acts created the reservation system, in which

Indigenous people were made to leave their ancestral lands and placed on lands set aside for them by the federal government, essentially establishing new enclaves.

The Major Crimes Act of 1885 granted federal jurisdiction over "major crimes," including murder on reservations, greatly reducing the ability of American Indians and Alaska Natives to enforce laws through their own courts. The act gave jurisdiction over **misdemeanors** to tribal courts, but only those committed by Native Americans, not non-Indians. Essentially, Native Americans had no ability to hold non-Indians accountable for any crime committed on tribal land.

In more modern times, Public Law 280, passed in 1953, "returned jurisdiction of crimes committed on Indian reservations in six states, not to the tribes, but to the state where the Indian reservation is located." In an opinion piece for *The New York Times*, David Heska Wanbli Weiden, a member of the Sicangu Lakota Nation and a professor of Native American studies at Regis University in Denver, wrote about the "jurisdictional complexities" of prosecuting cases on Native American land, including whether the victim or offender is a Native American and where the crime took place.

"If a serious **felony** crime is committed on a reservation by a Native person, the state or tribal police are obligated to refer the case to the Federal Bureau of Investigation (FBI) or another federal agency," Professor Weiden wrote. "But here's the problem: Federal authorities have the right to decline prosecutions in serious felony crimes on Native lands, even when the perpetrator has been arrested. And they frequently do. And, at that point, the offender is usually set free."

In 2018, according to the U.S. Department of Justice, 39% of the cases referred to the FBI and US Attorney's Office were declined. Professor Weiden considers the lack of accountability and jurisdictional complexity of prosecuting felony crimes on reservations as a significant factor for the high rates of violence against Indigenous women.

Savanna's Act

Another impediment to finding missing and murdered Native American women is the accuracy of the data on the victims. According to the "Missing and Murdered Indigenous Women and Girls Report," published by the Urban Indian Health Institute, much of the data about missing Native Americans collected by government agencies contained errors. For example, some victims were not identified as Indigenous. National Crime Information Center records revealed that nearly 6,000 American Indian and Alaska Native women and girls were reported missing in 2016, but only 116 were found in the US Department of Justice's missing persons' database.

The Savanna's Act, named in honor of Savanna LaFontaine-Greywind, a young member of the Spirit Lake Nation in North Dakota who was murdered in 2017, specifically addresses the issue of how much data is available and how



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information about missing and murdered Indigenous people is collected. The law requires greater sharing of information between tribal, federal, state, and municipal law enforcement agencies.

Savanna's Act requires the Secretary of the Interior and the US Attorney General to collaborate with tribal nations to improve data collection and provide culturally relevant training to law enforcement who investigate cases of murdered and missing Indigenous women, girls and two-spirit people.

The Not Invisible Act

The Not Invisible Act instructs the U.S. Department of the Interior and the U.S. Department of Justice to create a commission that will make recommendations on how all stakeholders involved, including the tribal nations, federal, city, and state law enforcement agencies can work together to keep Indigenous women, girls, and two-spirit people safe. The act requires the commission be made up of family members of missing and murdered Indigenous people, survivors, tribal and local law enforcement, as well as members from tribal advocacy organizations whose purpose is to end violence against women and children.

Secretary of the Interior Deb Haaland, a member of the Pueblo of Laguna, is the first Native American to serve as a cabinet secretary. In a press statement, Secretary Haaland said: "The Interior and Justice Departments have a unique opportunity to marshal our resources to finally address the crisis of violence against Indigenous peoples. Doing this successfully means seeking active and ongoing engagement from experts both inside and outside of the government. Incorporating Indigenous knowledge, tribal consultation and a commission that reflects members who know first-hand the needs of their people will be critical as we address this epidemic in Native American and Alaska Native communities."

The commission was to be created within 120 days following the signing of the legislation but has been delayed. The National Indigenous Women's Resource Center pointed out that the positions for family members and survivors

is uncompensated, creating a significant obstacle for people interested in joining. The U.S. Government Accountability Office reported that the relevant agencies within the Departments of Justice and the Interior have stepped up efforts to investigate cases of missing and murdered Native American women in Indian Country, "but they have not implemented certain requirements to increase intergovernmental coordination and data collection" as mandated by Savanna's Act and the Not Invisible Act. At press time, no one had been selected for the commission.

In March 2022, Congress also passed the reauthorization of the Violence Against Women Act, which increases the criminal jurisdiction of tribal courts to cover non-Indian perpetrators on reservations. According to a fact sheet provided by the White House, the Departments of Homeland Security, Health and Human Services, Justice and Interior will prioritize the crisis of missing or murdered Indigenous people. The Department of the Interior also established the Missing and Murdered Unit intended "to pursue justice for missing or murdered American Indians and Alaska Natives." •



1. What is the difference in the way the disappearances of Gabby Petito and Mary Johnson were handled? What do you think about that?
2. List three ways that colonialism dating back to the 15th century affected Indigenous people throughout history. How does colonialism still affect Indigenous people today?
3. The Savanna's Act and the Not Invisible Act were passed in October 2020. How do you think these acts will affect the issue of Missing and Murdered Indigenous Women and Girls? Explain your answer.

Glossary

appeal — a complaint to a higher court regarding the decision of a lower court. **assimilate** — to resemble or liken; absorb into a culture. **attenuated** — having been reduced in forces, effect or value. **disproportionate** — out of proportion; to large or too small in comparison with something else. **emancipation** — the release from slavery. **epithet** — a word or phrase meant to demean someone. **felony** — a serious criminal offense usually punished by imprisonment of more than one year. **Indigenous** — native; originating in a particular place. **jurisdiction** — authority to interpret or apply the law. **legislation** — laws proposed by a legislative body. **misdemeanor** — a lesser crime, usually punishable by a fine or short jail term. **overturned** — in the law, to void a prior legal precedent. **remediate** — provide a remedy to make right. **reparations** — financial compensation. **segregation** — the policy of separating people from society by race or social class. **upheld** — supported; kept the same.