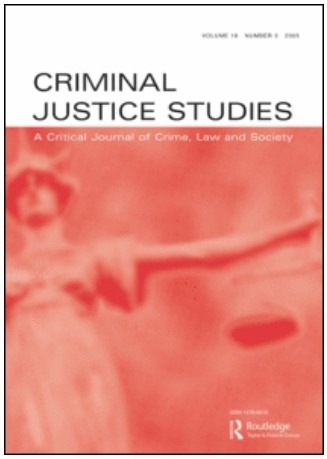

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American Indian Executions in Historical Context

David V. Baker

The research record on capital punishment in the USA is void of any empirical analysis of American Indian executions. This paper corrects for this deficiency by presenting a descriptive profile of American Indian executions within a historical–contextual framework of the American Indian experience in US society. The paper suggests that the history of American Indian executions is nested within the sociopolitical context of internal colonialism calculated to dispossess American Indians from their sacred tribal territories, disruption of their cultures, and continuation of their marginalized status.

Keywords: American Indians; Executions; Internal Colonialism

Introduction

Scholars maintain that the condition of American Indians relative to the US criminal justice system 'defies description' (National Minority Advisory Council on Criminal Justice, 1982, p. 123). To unravel the criminal justice complexities concerning American natives, scholars insist, 'It is impossible to understand American Indians in their contemporary setting without first gaining some knowledge of their history as it has been formed and shaped by the Indian experience with Western civilization' (Deloria & Lytle, 1983, p. 1). Ross (1998) adds to this notion by arguing that an *individualistic* approach to explaining American Indian criminality systematically overlooks the social and historical context of Indian crime. Studying imposition of the death penalty to American natives, then, must include a comprehensive analysis of Indian criminality within the context of Indian victimization and criminalization by early European colonizers and the US government.

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In this regard, a critical shortcoming of the research record on capital sentencing in the USA is that justice researchers have ignored American Indian executions and the historical contexts in which jurisdictions have executed Indian prisoners. Researchers have overlooked the social, political, and economic conditions giving rise to American native executions and, as a result, much about the *historical maturation* of systemic, racist oppression in Indian executions remains elusive to justice investigators. The dearth of inquiry on the racist and oppressive history of imposing the death penalty to American natives is, perhaps, predictable given a growing consensus among many scholars that the US justice system is void of institutional bias (DeLisia & Regoli, 2005; Georges-Abeyie, 1990; Langan, 1994; Milovanovic & Russell, 2001; Thomas, 2000; and compare Wilbanks, 1987). Interestingly, scholars make this assertion despite one of the most comprehensive (and ignored) studies on the impact of crime and criminal justice on persons of color in the USA explaining that the contacts of American Indians with justice agents historically have produced devastating outcomes on Indians. The study concedes that '[t]he displacement of American Indian sovereignty by the encroaching Anglo-European system of laws and values has had pernicious, debilitating effects to the present' (National Minority Advisory Council on Criminal Justice, 1982, p. 131). The present work corrects for inadequacies in the research record on American Indian executions by constructing a descriptive profile of Indian executions within the historical context in which they occurred.

Yet the construction of a descriptive file of American Indian executions is tantamount to not much more than a heuristic devise for identifying the social and political influences on Indian executions. For one, the information on Indian executions derived from death penalty inventories and sociohistorical accounts is noticeably limited to only partial characteristics of Indian executions and the sociodemographic attributes of Indian offenders. Historically based death penalty inventories provide no information on many substantive factors criminal justice scholars find important and influential to the imposition of capital punishment (Espy & Smykla, 2004; Frazier, 2006; Hearn, 1997, 1999, 2005; O'Hare, Berry, & Silva, 2006; O'Shea, 1999). Similarly, there is little information available on procedural issues influencing capital punishment to American Indians. Another limitation for social researchers studying the execution of American Indians is that death penalty inventories fail to define the tribal membership of condemned prisoners; and thus, there can be no authoritative discussion on the sociocultural distinctions among tribal groups, criminality, and the likelihood of executions (Snell, 2007; see also Zion, 1998). Consequently, these limitations to the historical record preclude researchers from constructing a more comprehensive and definitive portrait of American Indian executions. Still, construction of even a limited descriptive profile in historical context advantages researchers to understanding Indian executions in a society dominated by white colonial interests.

Unquestionably, conquest, exploitation, colonization, enslavement, and immigration accent American racial history (Olivas, 2000). In this regard, the meta-theoretical framework of internal colonialism furthers understanding of the sociohistorical context in which jurisdictions have executed American Indians. The history of American Indian executions is clearly nested within a sociopolitical context of genocidal colonialism

calculated to dispossess American Indians of their *Indianism* by removing them from their sacred tribal territories, disrupting their traditional cultures, and continuing their marginalized status in US society today. To understand the inherent hypocrisy of a society that espouses social justice and equal rights to all persons while concomitantly disenfranchising racial minorities with means of structural racism (Feagin, 2000, 2006), social scientists have developed a set of conceptual approaches toward its analysis (Yinger, 1985; see also Heffernan & Kleinig, 2000). One of the more important frameworks is *internal colonialism* (Allen, 1969; Blauner, 1969, 1972, 2001; Carmichael & Hamilton, 1967). Internal colonialism remains a viable explanation of the structure and dynamics of systemic oppression accented in the association between US justice agents and American Indians. Internal colonialism refers to the corresponding structure of social relations rooted in the exploitation and subjugation of racially heterogeneous groups (Casanova, 1965), and scholars use internal colonialism to analyze the historical development of these social relations. The importance of internal colonialism is that it has brought into focus often neglected dimensions of the unequal social relations that distinguish the white European conquest of American natives (Bee & Gingerich, 1977; Churchill, 1985; Churchill & LaDuke, 1992; Gedicks, 1983, 1985; Jacobson, 1985; McKenna, 1981; Snipp, 1986). The often overlooked features of colonialization are (1) forced entry upon a sovereign people by the colonizing power, (2) the carrying out of policies designed to alter and/or destroy indigenous peoples and cultures, (3) controlling indigenous groups with legal institutions, and (4) using racism as an ideological justification for oppressing indigenous groups (Blauner, 1969, 1972, 2001; Hurst, 2007; Memmi, 2003; Snipp, 1986; Williams, 1989). The following discussions utilize these attributes of internal colonialism as a conceptual framework to explore the historical context of American Indian executions.

Conquering American Indian Populations

Before the European exploration and colonial conquest of North America, the indigenous population consisted of more than 700 separate cultural units with deep-rooted civilizations. Some of the earliest documented American Indian cultures date to New Mexico sites in *Sandia* (25,000 BC), *Clovis* (11,500 BC), and *Folsom* (8,000 BC). Other prehistoric sites include the *Cascades* in the Pacific Northwest (9,000 BC), *Danger Cave* in Utah (9,000 BC), *Cochise* in Arizona (12,000 BC), and *Plano* in the Great Plains (7,500 BC) (Gibson, 1980, pp. 18–20). One archaeological study dates indigenous prehistoric sites in South Carolina back more than 50,000 years (Walton & Coren, 2004). Some scholars classify the prehistory of indigenous peoples in what is now the USA in anthropological terms, including Eastern hunter-gatherers, the Great Plains hunters, the fishing societies of the Pacific Northwest, the seed gatherers of California, the shepherds and pueblos of Arizona and New Mexico, the desert societies of the American Southwest, and Alaskan peoples (Gibson, 1980, pp. 18–22). Others have formulated linguistic schemes to differentiate the more than 300 indigenous language groups, including Algonkian, Iroquoian, Siouian, Caddoan, Uto-Aztecan, Athapascan, Muckhogean, and Tanoan (Gibson, 1980, p. 41; see also Debo, 1970; Nash, 1992; Zinn, 1995).

Beginning in the mid-16th century however, Spain, France, Holland, Russia, and England explored and established settlements in North America; and thus began the forced entry of the colonizing powers resulting ultimately in the exploitation and subordination of American natives to white Europeans. Spain controlled much of the continent from Florida's Atlantic Coast westward to what is now the states of Texas, New Mexico, Arizona, and California. France claimed much of the central continent from the Great Lakes to the Mississippi Valley stretching to the Gulf Coast. Holland laid claim to the areas of southern New York, eastern Pennsylvania, New Jersey, and Delaware, while Russia limited its influence in the New World to the Northwest as far south as northern California. Having vanquished all other European claims by 1763, the British eventually controlled most of the continent (Gibson, 1980).

One outcome of the forced entry of white European colonizing powers was systematic extermination of the continent's indigenous people. Since the earliest appearance of Europeans in North America, genocide, military assault, epidemic disease, psychological disorientation, and high levels of pathogen- and stress-induced infertility put the indigenous population at risk of total destruction (Stannard, 1992, p. 268). Europeans were mostly unaffected by the diseases they transported to the New World, but epidemics of virulent diseases such as influenza, diphtheria, measles, pneumonia, whooping cough, smallpox, malaria, typhoid, cholera, tuberculosis, dysentery, syphilis and gonorrhea, the bubonic plague, pleurisy, scarlet fever, mumps, colds, and chancroid had enormously destructive effects on American Indian mortality (ibid.; see also Stiffarm & Lane, 1992). The first epidemics most likely began in Florida with the first expedition of Ponce de Léon in the Caribbean, and scholars have chronicled some 41 smallpox epidemics and pandemics occurring in North America from 1520 to 1899; 17 measles epidemics between 1531 and 1892; 10 major epidemics and pandemics of influenza from 1559 through 1918; four plague epidemics between 1545 and 1707; five diphtheria epidemics between 1601 and 1890; four typhus epidemics from 1586 through 1742; three major outbreaks of cholera between 1832 and 1867; four scarlet fever epidemics between 1637 and 1865; and six epidemics of other diseases, including typhoid, between 1528 and 1833 (Stiffarm & Lane, 1992, p. 31; compare Stevenson, 2007, January 8). Most indigenous populations across the continent suffered death rates between 95 and 99% and some plagues fully decimated countless other tribes (Stannard, 1992, p. 118). A disquieting fact about the Indian mortality rate during the conquest is that it was greater than the number of Europeans killed by the Black Death pandemic of the 14th century (ibid., p. 108).

Though debate continues on the actual number of indigenous persons living in North America before the arrival of Europeans, scholars generally put the figure at between 8 and 12 million (Jaffey, 1992; Thorton, 1995; Utter, 1993). But Stannard (1992) suggests that the more outstanding scholarship in the field suggests that the true figure is higher than the highest end of this range. One eyewitness account illustrates the human devastation caused by the epidemics: upon returning home from a voyage to England with a subordinate of Captain John Smith, an American Indian lamented as the ship traveled down the eastern seaboard from southern Maine to Narragansett Bay that 'they were sailing along the border of a cemetery 200 miles long and 40 miles

deep' (Mann, 2005, p. 102). Some historians maintain that the epidemics and pandemics resulting in the decimation of millions of indigenous people in North America amounted to natural disasters and that the Europeans did not intentionally induce contagions. Other scholars debate this argument and suggest that significant evidence exists to the contrary. In 1763, for instance, British forces gave the Ottawa blankets infected with smallpox which spread quickly among the Mingo, Delaware, Shawnee, and other peoples of the Ohio River Valley, killing as many as 100,000. There is also speculation that military forces used this same tactic to destroy warring tribes decades earlier. Likewise, the US Army distributed smallpox-infected blankets to the Mandan at Fort Clark in South Dakota causing the pandemic of 1836–40 (Stiffarm & Lane, 1992, p. 32).

Besides the catastrophic destruction wrought by deadly diseases, the forced entry of the European colonizing powers into North America included hundreds of years of armed conquest resulting in the annihilation of millions of more Indians (Gibson, 1980; Stannard, 1992; Zinn, 1995). The British, for instance, 'engaged in an unbroken string' of genocidal campaigns against American natives (Stannard, 1992, p. 147). Interestingly, as Churchill points out, 'There is no historical record of any war between Indian nations and the United States which was initiated by the Indians. Each known outbreak of open warfare was predicated upon documentable invasion of defined (or definable) Indian lands by U.S. citizenry' (quoted in Robbins, 1992, p. 91). Nothing less than openly racist *official* policies of genocide developed when some of our country's most venerated political leaders called for the systematic killing of American natives. George Washington considered Indians 'beasts of prey,' and in 1779 instructed a military subordinate 'to attack the Iroquois and lay waste all the settlements around' and not to consider 'any overture of peace before the total ruin of their settlement is effected' (Stannard, 1992, p. 119). In the aftermath of the attack, soldiers skinned many of the dead Indians 'from the hips downward' and fashioned 'boot tops' and 'leggings.' Washington's troops went on to massacre much of the Seneca, Mohawk, Onondaga, and Cayuga tribes of the northeast (ibid., p. 120). Native people also had reason to fear John Adams and James Monroe as commanders-in-chief. But it was Thomas Jefferson and his racist instructions to his Secretary of War in 1807 to use 'the hatchet' against Indians resisting westward intrusion of whites into their tribal lands. Jefferson wrote, 'And if ever we are constrained to lift the hatchet against any tribe, we will never lay it down till that tribe is exterminated' (ibid.). Andrew Jackson referred to Indians as 'savage dogs' and scalped Indians he killed in his purge of the Cherokee. In his campaign against the Creek, Jackson personally supervised 'the mutilation of 800 or so Creek Indian corpses—the bodies of men, women, and children that he and his men had massacred—cutting off their noses to count and preserve a record of the dead, slicing long strips of flesh from their bodies to tan and turn into bridle reins' (ibid.). That defenseless women and children accounted for sizeable percentages of the dead in military campaigns is one reason why Indian populations so dramatically waned in the 18th and 19th centuries. As Stannard writes, 'The European habit of indiscriminately killing women and children when engaged in hostilities with the natives of the Americas was more than an atrocity. It was flatly and intentionally

genocidal. For no population can survive if its women and children [are] destroyed' (ibid., p. 119).

What's more, private persons engaged in the systematic killing of American natives. Arizona and New Mexico settlers and Catholic Church officials attacked Navaho camps killing the men and kidnapping women and children to use as slaves. Counties in these territories offered bounties for Indian scalps as high as $500. The savagery of armed assaults against American Indians is embodied in the events surrounding the vicious attack of a Cheyenne and Arapaho village called Sand Creek in southeastern Colorado in November 1864. After an unknown group of Indians killed a family of settlers, Colorado's governor authorized some 700 settlers poised as volunteer troops to kill all the Indians they could track down. Actually, the Indian attack on the family of settlers was simply a pretext to the state's governor to kill off the Cheyenne and Arapaho tribes and open up their hunting grounds to white development. On the day of the massacre, only 35 mostly elderly men and some 600 women and children were in the village—most of the men were on a buffalo hunt. Ironically, the federal government considered the Sand Creek Indians innocuous and peaceful since they were unarmed having previously surrendered their weapons to officials. In the pre-dawn attack, the volunteer militiamen surrounded the village killing men and women, running bayonets through infants and children, and subsequently mutilating the dead bodies (Jacobs & Potter, 1998, pp. 59–60). The federal government never brought any of the militia to justice for the massacre. Robert Bent's testimony before Congress is but one eyewitness account exposing the grisliness of the 'Sand Creek Massacre.'

> After firing the warriors put the squaws and children together, and surrounded them to protect them. I saw five squaws under a band for shelter. When the troops came up to them they ran out and showed their persons, to let the soldiers know they were squaws and begged for mercy, but the soldiers shot them all.… There were some thirty or forty squaws collected in a hold for protection; they sent out a little girl about six years old with a white flag on a stick; she had not proceeded but a few steps when she was shot and killed. All the squaws in that hold were afterwards killed, and four or five bucks outside. The squaws offered no resistance. Every one I saw dead was scalped. I saw one squaw cut open with an unborn child as I thought, lying by her side.… I saw quite a number of infants in arms killed with their mothers. (Stannard, 1992, p. 132)

American Indian Executions: Historical and Contextual Factors

Internal colonialism accents colonizing powers controlling subordinate groups by means of legal institutions. Indeed, the white dominant group in the USA has used the imposition of capital punishment against American natives throughout the country's history to realize its social, political, and economic interests. The first execution of an American Indian took place when military authorities beheaded Nepauduck in Connecticut in October 1639 for the murder of Abraham Finch, a white man (Hearn, 1999, p. 8). Nepauduck's execution resulted from the genocidal brutality reaped upon the Pequot Indians in that year by the colonial army. One observer wrote about an incident with the Pequot Indians, 'In a little more than one hour, five or six hundred of these barbarians were dismissed from a world that was burdened with them' (Stannard,

1992, p. 114). Since then, historical inventories show that death penalty jurisdictions have executed 450 American natives (Death Penalty Information Center, 2006; Espy & Smykla, 2004; Hearn, 1997, 1999, 2005; O'Hare et al., 2006). Murderous encounters with racist white settlers underscore much of American Indian history, and as a result, death penalty researchers have no accurate count of Indian executions. The historical record abounds with instances of European settlers and white vigilante groups indiscriminately killing American natives 'while local government looked the other way' (Rummel, 1994). For instance, when white settlers found the body of John Oldham, an abusive English colonist banished from Plymouth in 1636, the settlers 'proceeded to murder more than a dozen [Pequot] Indians found at the scene of the crime, whether or not they were individually responsible' (Stannard, 1992, p. 112). Similarly, in 1642 Dutch colonizers butchered 'a friendly village' of some 120 American Indian men, women, and children with bayonets while they slept. A witness to the atrocity reportedly found alive a young man the next morning 'who'd had his left hand and legs hacked off … supporting his protruding entrails with his other hand' (Davis & Fortier, 2006; see also Strong, 1994).

Scholars have established a strong association between legal executions and lynchings (Beck, Massey, & Tolnay, 1989; Beck & Tolnay, 1990; Tolnay & Beck, 1992, 1995; Tolnay, Beck, & Massey, 1989, 1992; Vandiver, 2006; see also *Forum*, 1998), but the historical record is mostly silent on American Indian lynchings despite the fact that, as Waldrep (1998, p. 15) puts it, 'the tension between constitutionalism and extralegal violence is a central paradox of American society.' There is some evidence of mob violence toward Indian victims in California, Washington, Wisconsin, and Wyoming (Pfeifer, 2001, 2006), and Carrigan (2004) writes of mob violence against American Indians in the conquest of Central Texas beginning in the 1830s. In July 1849, a mob lynched an American native for murderous assault in Chippewa Falls, Wisconsin (Wylie, *Land of the Free*). White mob violence against Indians lasted well into the late 19th century in the Oklahoma Indian Territory when in 1898 a crowd of vicious townspeople burned alive two young Seminole men named Palmer Sampson and Lincoln McGeisey whom the mob tortured into confessing to Mary Leard's murder, a white woman. One scholar's account of the killings concludes that the young native men were not guilty of the murder and that a drifter named Keno was responsible (Littlefield, 1996). To one commentator, the lynching attracted considerable numbers of 'white Southerners who considered the victimized Seminoles as yet another human variety of non-white scapegoats' (Davis, 2005). One newspaper reporter vividly described the lynching:

> Stoically, the Indians went to their death. One of them, it is true, when the pain was unbearable, leaned forward and sucked the flames into his lungs. But the other, like the braves among his ancestors who had silently borne the worst tortures enemies could devise, stood erect until the flames ended his life, a dreadful punishment at the best made still more dreadful by the thought that the victims might have been innocent of the crime laid on them. (Sampson, 2002)

Deloria and Lytle (1983) have provided death penalty researchers with a useful framework for investigating the criminal justice history of American Indians with each

historical period accenting the impact of government initiatives to resolving the continuing problem of dealing with American Indians. They divide the historical contact of American Indians with European whites into six distinct periods: an initial period of *discovery, conquest, and treaty making* from 1532 to 1828; a period of *removal and relocation* from 1828 to 1887; a period of *allotment and assimilation* from 1887 to 1928; a period of *reorganization and self government* from 1928 to 1945; a period of *termination* from 1945 to 1961; and a period of *self determination* from 1961 to the present.

Discovery, Conquest, and Treaty Making (1532–1828)

Europeans recognized American Indians as legitimate entities capable of dealing by treaty. In turn, treaties became the means by which Europeans gained a foothold in North America. As Deloria and Lytle (1983) explain, 'treaty making brought civility and legitimacy to the white European settlers' relations with the Indians, and became the basis for defining the legal and political relationship between Indians and European colonists' (p. 5). Yet, the treaties between American Indian nations and the federal government were not conciliatory mechanisms but efficient instruments of colonization calculated to legitimate the extermination and dislocation of American Indian nations from their sacred tribal lands (Robbins, 1992). These arrangements often put Indians at a severe disadvantage because not only did the national government rarely honor the agreements, but also the treaty makers regularly wrote the agreements in English and those persons who had a direct interest in the outcome of the arrangement often interpreted the treaties. In fact, the government never honored a single agreement. Discouraged with treating making, Sitting Bull (also known as Tatanka Yotanka) once asked, 'What treaty that the whites have kept has the red man broken? Not one. What treaty that the whites ever made with us red men have they kept? Not one' (Blaisdell, 2000, p. 175).

As early as 1810 in *Fletcher v. Peck*, the US Supreme Court held that states owned Indian land even though tribes had not consented to surrender their land. To Chief Justice John Marshall, the land reserved to Indians was vacant (ownerless). Besides genocide and cultural annihilation, Eric Kades (2000) argues, '[o]ne of the most critical deprivations that the American Indians suffered at the hands of the United States was the loss of their lands. Within two centuries of the first European settlements in North America, the newcomers held title to almost every acre of the continent' (p. 1065). Nowhere is the discovery rule more poignantly illustrated as an accepted legal doctrine concerning the federal government's acquisition and possession of Indian territories than John Marshall's majority opinion of the US Supreme Court in 1823 in *Johnson v. McIntosh*. The case involved an appeal to determine title to Indian-occupied territories where the plaintiff had purchased land from the Illinois and Piankeshaw Indians. The issue in the case was 'in a great measure confined to the power of Indians to give, and of private individuals to receive, a title which can be sustained in the courts of this Country' (*Johnson v. McIntosh*, 1823, p. 572). Marshall's opinion on the legitimacy of the conveyances made it clear that 'the discovery of the Indian-occupied lands of this

nation vested absolute title in the discoverers, and rendered the Indian inhabitants themselves incapable of transferring absolute title to others' (Cribbet, Johnson, Findley, & Smith, 1996; see also Kades, 2001; Note, 1975). The British conquerors vested absolute title of Indian-occupied lands to themselves with Indian nations having only a possessory interest in their tribal territories. Justice Story explained, 'Indian possession of desirable lands was not treated as a right of property and dominion, but as a mere right of occupancy. As infidels, heathens, and savages, they were not allowed to possess the prerogatives belonging to absolute, sovereign, and independent nations' (quoted in Perea, Delgado, Harris, & Wildman, 2000, p. 174).

Also at work was the racist thinking of *Manifest Destiny*. Morris (1992) explains that '[u]nder this philosophy, the Americans believed that through *divine ordination* and the natural superiority of the white race, they had a right (and indeed an obligation) to seize and occupy all of North America' (p. 67). The racism entrenched within this philosophy ultimately justified westward expansionism and the federal government's Indian extermination policy, destruction of native cultures, elimination of tribal governments, and forced assimilation of Indians resisting white superiority and the divine right to conquer North America (Bradford, 2002, pp. 41–42, n. 10). By the time the framers defined the rights and liberties of individuals in the Constitution, inequality had already become the predominant feature of race relations in the USA (Pole, 1988). The US Constitution explicitly and implicitly recognized racial subordination:

> First, as a result of the compromise between Northern and Southern representatives to the Constitutional Convention, Article 1 required the counting of each slave as three-fifths of a person for the purposes of determining legislative representation and taxes.… In addition, a section of Article II permitted the slave trade to continue until 1808. The Constitution also incorporated a fugitive slave provision, requiring the return of runaway slaves to their owners. (Feagin & Feagin, 1993, p. 4)

Added to this notion is that 'neither the Declaration of Independence, with its great "all men are created equal" phrase, nor the Constitution, with its revolutionary Bill of Rights, was seen by its white framers as applying to a large proportion of the population' (ibid., p. 11). The framers of the Constitution were fully aware of the differentiating effects race would have on the social and political rights of persons of color. As a result, inequality became instrumental in privileging *white society* early in the forging of American society. Indian nations inevitably lost in the colonial conquest designed to promote the social presence and interests of white persons in North America. White society deprived Indian nations of their land in order to establish a system of rights rooted in the belief that 'equality' in white society was dependent on the 'inequality' of Indian nations. For white society to privilege itself in North America, that is, it had to deprive Indian nations of their basis for existence—their sacred lands. Indian nations became notably unequal in this process of accommodation. By the time the framers of the Constitution decided to define the rights and liberties of persons, inequality had become the hallmark of race and ethnic relations in American society.

This, then, is the historical backdrop to the execution of 157 American Indians during indigenous people's initial contact with Europeans in the early 16th century. American Indian executions waxed and waned throughout the period of discovery,

conquest, and treaty making with the first major peak in Indian executions occurring in the 1670s resulting from King Philip's War. In that decade military authorities in Massachusetts, New York, and Rhode Island executed 53 American Indians for murder mostly by hanging and firing squad. Massachusetts alone executed 45 Indian prisoners in 1675 and 1676 as a result of the hostilities. Stemming from the conflict, New York hanged Kaelkompte and Keketamape in February 1673 for the robbery–murder of Jan Stuart, a white man. Officials gibbeted their bodies after death. Rhode Island executed Punnean (alias Indian John) for the rape of Lottira Bulgar and the burglary of her home in May 1673. Much of the historical record is silent about these executions other than the fact that considerable conflicts accented the decade. There was so much warring between the colonizers and Indians that the New England Indian population decreased from 30,000 in 1630 to 12,000 in 1670 (History of American Indians). In one account, and pursuant to military authority for his participation in King Philip's War, Massachusetts Quakers tied Old Matoonas to a tree, tomahawked him to death, cut off his head, and then stuck it on a pole next to that of his son whom authorities executed five years earlier. Young Matoonas hanged for the murder of Zachary Smith, a white man, in June 1671. 'A part of his body was to be seen upon a gibbet for five years after' (Bacon, 1921; Hearn, 1999). Tribal enemies had betrayed Old Matoonas and turned him over to authorities. Matoonas's execution that took place near the graves of the executed band of Indian prisoners, some thirty of them, of King Philip's war. The thirty other Indians execution resulted from murder and sedition against the early English colonists.

There was a slight increase in American Indian executions in the 1700s over the two preceding decades. There, Connecticut, Virginia, Massachusetts, and New York executed eight American Indians. Connecticut hanged three Quinnipiac Indians in 1700 for killing an unknown colonist, and Virginia hanged an unidentified Indian slave in January 1700 for murdering an unknown victim. New York hanged Sam, an Indian slave, along with two unidentified male and one female African slave in February 1708 for the ax murder of their owner, their owner's pregnant wife, and their five children while they slept. The four retaliated against William Hallet, Jr. (their owner) and his family because Hallet would not allow them free time on Sundays. Authorities gibbeted Sam alive in a barbed cage, and the female slave 'roasted alive over a slow fire for several hours' (Hearn, 1997, pp. 5–6). The fate of the male slaves involved in the murder is unknown. Massachusetts hanged two Indians named Joseph and Josias in October 1709 for murder, and another Indian named Finch in September 1704. Joseph killed a fellow Indian named Isaac George with a hoe in a potato field during an intense argument; an intoxicated Josias beat, stomped, and bludgeoned his wife to death with a burning stick; and Finch, a Nantucket Indian, killed his wife.

Another peak in American Indian executions occurred in the 1720s and 1730s when military authorities in the New England and Middle Colonies of Maine, Connecticut, New Jersey, Massachusetts, Rhode Island, and the southern colonies of Virginia, North Carolina, and Louisiana together hanged 20 Indian prisoners for murder, burglary, slave revolt, piracy, and desertion. Another peak took place from the 1760s to the 1780s when authorities executed 14 American Indians. Pennsylvania's hanging

of Mamachtaga of the Delaware tribe for murder in December 1785 was the first state execution in the USA of an American native. According to one account, Mamachtaga had been drinking when he rushed into a cabin and stabbed to death a white man named Smith. Mamachtaga's murder of Smith is most likely related to an incident two years earlier when militia from Chartiers Creek attacked Mamachtaga's tribe and killed all but a few of the friendly Indians encamped on Smoky Island. Criminal defense lawyer Hugh Henry Brackenridge represented Mamachtaga before an all-white jury that sentenced him to hang for Smith's killing. Mamachtaga had 'the appearance of great ferocity, was of tall stature and fierce aspect' (Brackenridge, 2003, p. 4). Brackenridge described Mamachtaga's botched hanging:

> A great body of people assembled at the place of execution. [T]he Indian ascended a ladder placed to the cross timber of the gibbet; and the rope [was] fastened. When he was swung off, [the rope] broke and the Indian fell, and having swooned a little, he rose with a smile and went up again. A stronger rope in the meantime having been provided, or rather two put about his neck together so that his weight was supported … he underwent the sentence of the law and was hanged till he was dead. (p. 8)

Inventories also reveal that military officials called for the execution of four Pamo Chiefs by firing squad in San Diego County (California) for conspiracy to commit murder in 1789. Their names were Aaran, Achil, Aleuirin, and Taquaqui (Espy & Smykla, 2004).

American Indian executions decreased during the 1790s but again increased in the 1800s through the 1820s. Shateyaronyah (1732–1810), also called 'Leatherlips,' a Wyandot chief, was the first American Indian executed pursuant to tribal authority. Apparently, Shateyaronyah was distrusted by other Indian leaders because he assisted invading white settlers and refused to join the Tecumseh and Tensquatawa confederacy against the advancing whites. One source described Shateyaronyah's bludgeoning-to-death execution:

> Shateyaronyah became a major rival. In 1810, Tecumseh and his brother 'the Prophet' accused Shateyaronyah of witchcraft and sentenced him to die. The sentence was served to Shateyaronyah in the form of a drawing of a tomahawk etched into birch bark. Shateyaronyah accepted the verdict and the punishment, singing his death song as Chief Roundhead, a Huron, prepared to flay Shateyaronyah's brain with a tomahawk. The execution was staged in front of several witnesses near Shateyaronyah's home not far from present-day Columbus, Ohio. One of the witnesses, a white justice of the peace, tried and failed to dissuade the others from killing him. Shateyaronyah was said to have clung to life for several hours after a number of surely fatal blows to the head and despite his advanced age—evidence to some of his murderers that they had indeed put a witch to death. (Indian Chief Biographies)

In the fall of 1830, a young Wyandot brave named Soo-de-nooks, killed another brave of the same tribe. Tribal authorities in Ohio arrested, tried, found Soo-de-nooks guilty of murder. He died by firing squad in October 1830. Chief Mononcue in a letter told of the affair:

> One of our young men was killed by another about two or three weeks ago. The murdered was John Barnet's half-brother, the murderer, Soo-de-nooks, or Black Chief's, son. The

> sentence of the chiefs was the perpetual banishment of the murderer and the confiscation of all his property. When the sentence was made known to the nation, there was a general dissatisfaction; and the sentence of the chiefs was set aside by the nation. Thursday morning, about daylight, he was arrested and brought before the nation assembled, and his case was tried by all the men (that vote) over the age of twenty-one, whether he should live or die. The votes were counted, and there were 112 in favor of his death, and twelve in favor of his living. Sentence of death was accordingly passed against him, and on the second Friday he was shot by six men chosen for that purpose—three from the Christian party and three from the heathen party. The executioners were Francis Cotter, Lump-on-the-head, Silas Armstrong, Joe Enos, Soo-cuh-guess, and Saw-yau-wa-hoy. The execution was conducted in Indian military style; and we hope it will be a great warning to others, and be the means of preventing such crimes hereafter. (History of Wyandot County)

New York authorities hanged 17-year-old John Tuhi, an Oneida Indian, in July 1817 for axing to death his brother Joseph while intoxicated after drinking and quarreling over money. Some 15,000 people attended Tuhi's hanging from a tree at Corn Hill in Utica under military supervision (New York Corrections History Society, 2006). In the summer of 1819, authorities in Norwalk, Ohio, tried and executed two Ottawa Indians named Ne-Go-Sheck and Ne-Gon-A-Ba for robbery–murder. To one observer, the executions exemplified the need of the Indians to abide by the white man's law. Many Indians attended the execution and requested that the bodies not be disturbed in their graves. C. B. Squire, an attorney, described the events leading to the executions:

> In the spring of 1816 John Wood, of Venice, and George Bishop, of Danbury, where trapping for muskrats on the west side of Danbury, in the vicinity of the 'two harbors,' so-called; and having collected a few skins had lain down for the night in their temporary hut. Three straggling Ottawa Indians came, in the course of the night, upon their camp and discovered them sleeping. To obtain their little pittance of furs, etc. they were induced to plan their destruction. After completing their arrangements the two eldest armed themselves with clubs, singled out their victims, and each, with a well directed blow upon their heads, dispatched them in an instant. They then forced their youngest companion, NEGASOW, who had been until then merely a spectator, to beat the bodies with a club, that he might be made to feel that he was a participator in the murder and so refrain from exposing their crime. After securing whatever was then in the camp that they desired, they took up their line of march for the Maumee, avoiding, as far as possible, the Indian settlements on their course.… Their bodies were found in a day or two by the whites under such circumstances that evinced that they had been murdered by Indians, and a pursuit was forthwith commenced. The Indians living about the mouth of Portage river had seen these straggling Indians passing eastward, now suspected them of the crime, and joined the whites in the pursuit. They were overtaken in the neighborhood of the Maumee River, brought back and examined before a magistrate. They confessed their crime and were committed to jail. At the trial the two principals were sentenced to be hung in June, 1819: the younger one was discharged. The county of Huron had at this time no secure jail, and they were closely watched by an armed guard. They nevertheless escaped one dark night. The guard fired at and wounded one of them severely in the body, but he continued to run for several miles, till, tired and faint with the loss of blood, he laid it down, telling his companion he should die, and urging him to continue on. The wounded man was found after the lapse of two or three days, somewhere in Penn township, in a dangerous condition, but he soon recovered. The other was recaptured near the Maumee by the Indians, and brought to Norwalk, where they were both hanged according to sentence. (Howe, 1888)

American Indian rape

Indian executions in the early colonial period account for about 35% of Indian executions in the USA since 1639. Massachusetts, Connecticut, and California executed roughly half of the Indians put to death in this period. Capital punishment jurisdictions executed 66 American Indians mostly for crimes involving murder, including actual murder, conspiracy to commit murder, robbery–murder, and murder–rape–robbery. Death penalty authorities executed far fewer numbers of Indian prisoners in the period for *slave revolt* and *desertion*. But more historically significant is Massachusetts' hanging of an Indian known simply as Tom in 1674 for *rape* and the execution of four other American Indians for rape by other jurisdictions in later periods. Undoubtedly, the number of American Indian executions for rape is a flawed indicator of the actual number of Indians who allegedly perpetrated rapes. Although rape was a capital offense in the early colonial period, courts rarely imposed death sentences and instead usually subjected defendants to public whippings. In 1654, for instance, a Massachusetts court convicted an Indian named Sam for raping a young English girl, but instead of hanging Sam, the court sentenced him to a severe whipping and sent him out of the country (Strong, 1994). In a 1723 case, a Massachusetts court found an Indian laborer named Simon Tripp guilty of assault with the intent to rape a married white woman, but instead of a death sentence, the court ordered him whipped, to forfeit a £50 bond, cover the costs of prosecution, and to provide two £25 sureties for good behavior until the next court term (Lindeman, 1984). In still another case, Massachusetts authorities convicted and sentenced to death a Delaware–Lenape Indian named Nangenutch for raping a white woman but he escaped and avoided recapture (Strong, 1994). Colonial criminal codes often prescribed castration for Indians convicted of rape and other sexual offenses such as sodomy, bestiality (homosexual practices), and incest, but there is no evidence that authorities actually castrated Indian prisoners—a punishment largely reserved to African slaves (Jordan, 1968).

The relatively few incidences in the historical record of American Indian men raping white women leave social historians to surmise that the *rape* and *sexual attack* of white women by American Indians was an extremely rare occurrence in US history (Strong, 1994). Numerous historical accounts exist of white women kidnapped and taken captive by Indians claiming their captors never violated them. One scholar points out that some 40% of white women taken captive by Indians refused opportunities to reunite with their communities after living among tribal people (Smith, 2005). White women found it surprising that they were unmolested by Indian men even during periods of open conflict between settlers and Indians. White female captives often claimed that Indian men treated them as their wives, although Brownmiller (1975) draws a fine line between 'rape' and the euphemism 'he treated me as his wife.' Even so, white female narratives attest to their reasonable treatment by Indian men. Take the case of Mary Rowlandson whom a group of Nipmunk and Narragansett Indians captured in 1676 after attacking and burning Lancaster (Massachusetts) and killing half the inhabitants. Rowlandson published her experiences with her captors in 1682 and declared:

> I have been in the midst of those roaring lions and savage bears that feared neither God nor man nor the devil by night and day, alone and in company, sleeping all sorts together, and yet no one of them ever offered the least abuse of unchastity to me in word or action.

Though little evidence exists of Indian men raping white women, there is consensus among scholars of the pervasiveness of white men raping Indian women. White men sexually assaulted Indian women with impunity since the rape of an Indian woman historically was not a crime (D'Emilio & Freedman, 1988; Harris, 1990; hooks, 1981; Hutchinson, 1999). Indian women had no legal standing; 'an Indian woman's testimony regarding rape meant nothing in a white court of law. Her testimony could not convict a white man' (Brownmiller, 1975, p. 162, n. 86). The law essentially rendered Indian women easy targets for sexual attack; they were sexually *violable* and *rapable*. White rape of Indian women was integral to the colonial conquest of tribal natives (Smith, 2005). Still, unlike the historical record compiled from narratives of sexual violence experienced by bonded black servants of white planters during slavery, similar testaments are few for Indian women (Brownmiller, 1975).

The rape and sexual assault of Indian women began early in the European conquest of North America (Anderson, 2002). A friend who accompanied Christopher Columbus on his second voyage evidences one of the earliest encounters of European men raping Indian women:

> When I was in the boat, I captured a very beautiful Carib woman … having brought her into my cabin, and she being naked as is their custom, I conceived desire to take my pleasure. I wanted to put my desire to execution, but she was unwilling for me to do so, and treated me with her nails in such wise that I would have preferred never to have begun. But seeing this … I took a rope-end and thrashed her well, following which she produced such screaming and wailing as would cause you not to believe your ears. Finally we reached an agreement such that, I can tell you, she seemed to have been raised in a veritable school of harlots. (de Cuneo, 1992, p. 129)

Whites rationalized raping Indian women as part of the conflict associated with the conquest and westward expansionism of the USA (Anderson, 2002). Military troops raped American Indian women relentlessly (Kirk, 2005). One historian explains that Spanish-Mexican soldiers in California and New Mexico used rape as a weapon of conquest (Armitage, 1994). In California, for example, 'white men assumed a right to sexual access with Indian women and any sexual relations white men had with them usually consisted of rape' (Anderson, 2002, p. 68). Jackson (2002) explains that white settlers of the Gold Rush era abused the same Indian women and girls who suffered rape and sexual assault by the earlier arriving Spanish soldiers in California.

> White miners began raping and murdering Indians in March 1849 when Oregon miners raped Maidu Indian women at a village along the American River. When Maidu men tried to rescue their daughters, sisters, and wives, the Oregonians shot them to death. This sexual violence soon took on a profit motive. Miners raped Indian women and enslaved children, forcing young girls into prostitution or selling them outright to the highest bidder. The forced prostitution of hundreds of Native American women and girls was routinely justified by denigrating their race as inferior, and their women as licentious temptresses, implying that women deserved their fate because they had made bad, immoral choices. (p. 483)

The atrocity of white rape of Indian women continues today, and constitutes a continued proliferation of the colonial violence suffered by this country's indigenous people historically (Smith & Ross, 2004). While most rapes are intraracial rapes, more than 70% of American Indian rapes involve white assailants (Bachman, 2003; Tjaden & Thoennes, 2000). Studies show that 9 in 10 American Indian rape victims have non-Indian assailants. Studies also reveal that 1 in 3 American Indian and Alaskan Native women will most probably suffer rape at some point in their lives (Deer, 2005; Tjaden & Thoennes, 2000). Like female rape victims generally, less than half of all raped and sexually assaulted American Indian and Alaska Native women report the offense to law enforcement because of their inherent mistrust of police. Unfortunately, family members often silence and ostracize Indian rape victims (Demleitner, 2002). As a result, the actual number of Native women victims of rape and sexual assault is far higher than investigations reveal (Hart & Rennison, 2003). Research on major newspaper coverage of rapes in American Indian communities shows that media coverage is almost entirely limited to cases where Indian men are the suspected perpetrators and white women the victims and little to no media attention is paid to Indian rape victims (Smith, 2005). This is interesting since American Indian women are far more likely to suffer sexual assaults than are non-Indian women (Perry, 2004). What's more, American Indian defendants convicted of raping non-Indians garner more severe punishment than Indians convicted of raping Indian women. Some suggest that the prevailing societal notions of promiscuity among American Indian women most likely operate to make the criminal justice agents devalue sexual assault claims. As one scholar points out:

> Among domestic violence, hunger, poverty, and forced sterilization, rapes on the reservation are a big scandal. The victims are mostly full-blood girls, too shy and afraid to complain. A few years back the favorite sport of white state troopers and cops was to arrest young Indian girls on a drunk-and-disorderly, even if the girls were sober, take them to the drunk tanks in their jails, and there rape them. (Turner, 1997, p. 115)

American Indian slavery

The historical record is clear; the USA did not exclusively enslave persons of African descent (Bennett, 1982; Franklin & Moss, 2000; Gallay, 2002; Lauber, 1913). American Indian *slavery* is an issue concerning capital punishment in the early colonial period. Virginia, New York, Massachusetts, Rhode Island, Michigan, and Louisiana together hanged six Indian slaves between 1700 and 1763 (Espy & Smykla, 2004). Virginia authorities executed an Indian slave for murder in January 1700 in Greensville County, and in April 1710, Virginia executed Salvador, an Indian slave belonging to the Jackman family, in Surry County for slave revolt—an uncommon offense among American Indians. As noted, New York hanged Sam and three African slaves belonging to William Hallett for the murder of Hallet's entire family in Queens County in February 1708. Sam's execution led to the passage of a New York law in October of that year preventing conspiracies among Indian and African slaves. Rhode Island executed 'Job the Indian' belonging to Giles Slocum by firing squad in September

1712 for bludgeoning to death Slocum's two sons. Authorities denied the Indian burial and his body was gibbeted where it remained for many years. Louisiana hanged Indian slave Bontemps in June 1728 in Orleans County for desertion, and in March 1733 Massachusetts hanged Julian belonging to Quincy in Suffolk County for murdering John Rogers, a bounty hunter, hired by Quincy to return Julian who had run away. Massachusetts and Michigan put to death the only two American Indian female slaves executed in the USA. In the first case, officials hanged Abiah Comfort in August 1737 for infanticide of her own child, and in the second case, an unidentified Indian slave woman belonging to the Clapham family hanged for murder in Wayne County in April 1763. Unfortunately, the historical record provides little about the circumstances precipitating these crimes and the subsequent execution of these Indian slaves (Hearn, 1999).

The enslavement of weaker American Indian tribes by stronger tribes existed long before their contact with the Europeans. The Illinois Indians, for instance, possessed slaves from other tribes as far south as the Carolinas and Florida, which they used in trade to acquire goods from the Ottawa and to maintain peace with the Iroquois. The Huron and Ottawa had Iroquois slaves, and the Ottawa and Sauk enslaved the Pawnee, Osage, Missouri, and the Mandan. The Menominee traded slave children from the Pawnee. In southern regions, the Choctaw and Chickasaw enslaved the Cadodaquiou and Choccuma, and the Pima in Arizona took slaves from the Apache and the Yuma Indians. Slavery was prevalent in the Northwest among the Hupa, Nozi, Klamath, Modoc, Cayuse, and Nez Percés (Lauber, 1913). In most cases, Indian slaves worked as domestics and agricultural workers and to a lesser extent in mining, hunting, and fishing. Female Indian slaves often became mistresses of their captors. While some Indian captors treated their Indian slaves benevolently, others treated slaves ruthlessly (Saunt, 1998).

The Spanish, French, and British developed Indian slave trades in North America in the 16th century, but scholars stress that these European powers did not develop an Indian slave trade separately and distinct from African slavery (Wiecek, 1977). This is one reason why it is impracticable for historians to construct an exact count of Indian slaves in the European colonies. In most cases, census reports and other vital statistics on Indian slavery are infrequent or lacking, and reports often fail to mention Indian slaves or include Indians in their counts of Africans. Colonial slave statutes regularly referred to *Negro*, *mulatto*, *Indian*, and *mestizo* within the same context, and as a result much of the scholarly discussion on African slavery in the USA is equally pertinent to Indian slaves (ibid., p. 263).

Still, social historians have been able to piece together a partial mosaic of American Indian slavery for the early colonial period. European enslavement of American Indians began as early as 1610 with the Algonquians, Powhatans, Tuscaroras, and smaller coastal Indian nations comprising most of the early Indian slaves. One estimate puts the number of southeastern Indians sold in the British slave trade between 1670 and 1715 at 51,000 (Gallay, 2002). Similar events emerged in the Southwest Borderlands of the USA where 'indigenous and colonial practices joined to form a "slave system" in which victims symbolized social wealth, performed services for their masters, and

produced material goods under the threat of violence' (Brooks, 2002, p. 31). Indians comprised nearly 10% of the slave population in the USA by the mid-18th century (Lauber, 1913). As early as the 1680s, however, English settlers were routinely kidnapping American Indian women and children from Virginia and North Carolina and selling them at Indian slave exporting centers located in Jamestown, Edenton, and Charleston. Because of the colonial wars with the Pequot (1637), the Wampanoag (1675), the Tuscaroras (1711), the Yamasees (1715), and other Indian tribes, the New England and Middle Colonies enslaved and relocated tens of thousands of American Indians (Becker, 2000). Of the nearly 12,000 Indians in southern New England in 1675, King Philip's War (named for Chief Metacomet of the Wampanoag by the English) claimed 68% of the population; colonists killed 1,875, exposure and disease killed 3,000, some 2,000 were forced from the region, and another 1,000 Indians were sold as slaves (Axtell, 1992). Colonial Pennsylvania imported so many American Indian slaves during the period that the Iroquois confederacy threatened a major military intervention if Pennsylvania failed to stop the practice. Consequently, Pennsylvania's colonial government passed a law in 1705 prohibiting the importation of Indian slaves. The Carolinas also had a significant population of American Indian slaves. A 1708 census report shows 1,400 American Indian slaves in the Carolinas, and Massachusetts claimed 200 American Indian slaves in 1790 (Morris, 1996; Reich, 1989). California's 'Act for the Government and Protection of Indians' legalized the state's Anglo population to take orphaned American Indian children as indentured slaves during the 1850s and 1860s (Ross, 1998). The law essentially compelled American Indians to work. As Hurtado (1988) explains, 'Any Indian found loitering or strolling about was subject to arrest on the complaint of any white citizen, whereupon the court was required within twenty-four hours to hire out arrestees to the highest bidder for up to four months' (p. 130). One estimate shows that as many as 10,000 Indians were indentured between 1850 and 1863 in California (Heizer, 1974). European powers mistreated Indian slaves severely and oral histories corroborate the savagery. In an edited work on the construction of Franciscan missions in California between 1769 and 1834, for instance, Max Mazzettii (1987), a tribal chair of the Rincon Reservation, recalls the words of his grandmother:

> It's hard to believe what our people went through in the missions. I recall what grandma (Filicad Calac Molina) told us years ago. Her mother told her about the Mission San Luis Rey. The Father (Fr. Junipero Serra) there had Spaniards working the Indians as slaves there, and when they ran away, the Spaniards would come to Rincon and get the babies, swinging them by the arm or leg and toss them into the cactus.… The reason for this was while the baby (or babies) were crying, the Spaniards would make the parents tell where the Indians were hiding … those who had run away from the mission. (p. 154)

Still, Indian slavery differed significantly from African slavery. Unlike African slaves, most Indian slaves were captives of colonial wars and kidnappings. Some tribes indentured Indians to whites, Indian families often sold their children to whites, and still other Indians voluntarily indentured themselves for protection or payment of debts. Colonial authorities sold and transported most Indian slaves rather than bonding them as laborers since colonists did not generally use Indian slave labor. Traders of Indian

slaves transported most slaves to the colonial empires of Latin America where enslaved Indian labor was widespread—the British Caribbean colonies of Antigua, Nevis, Barbados, St Kitts, and Jamaica bought thousands of American Indian slaves. Since Indian slaves were colonial captives, the profits received from the sale of Indian slaves usually went to colonial treasuries rather than slaveholders. Moreover, Indian servitude was limited to a term of years; Indian slavery was rarely life-long. But the abusive management of Indian slaves by white traders did not differ substantively from the brutality suffered by African slaves. Whites commonly whipped, branded, and mutilated runaway Indian slaves. Europeans brought about the demise of American Indian slavery primarily because of the destruction of much of the Indian population by pandemics and armed conflict. Some scholars contend that Indian slavery did not fare well for colonists because American natives did not submit well to bonded servitude since they would not endure sustained labor, as would African slaves. Moreover, the large numbers of white indentured servants migrating from Europe, together with the unlimited supply of African slaves, proved far more economically prosperous to the early colonists than Indian slaves.

Female Indian executions

During the initial period of discovery, conquest, and treaty making, death penalty jurisdictions hanged eight American Indian women for murder. Connecticut executed the first Indian woman put to death under civil authority in the USA in May 1711 when Hartford County officials hanged Waisoiusksquaw, of the Mohegan-Pequot people, for disemboweling her husband, Wawisungonot. In July 1735, officials hanged 23-year-old Patience Sampson for the murder of 8-year-old Benjamin Trott. Reportedly, Sampson hurled young Benjamin down a well for an unknown reason where he drowned. As noted, Massachusetts hanged Abiah Comfort, a Nantucket Indian woman, for infanticide of her own baby girl in August 1737. Connecticut hanged 27-year-old Catherine Garrett three years later in May 1738 also for infanticide of her own child. Michigan hanged an Indian slave woman in April 1763 whose age and name are unknown or otherwise unavailable. Madison County officials in New York hanged 20-year-old Mary Antoine, an Oneida Indian, in September 1814 for fatally stabbing another Indian woman with whom Mary's Indian boyfriend had developed a relationship after ending his involvement with Mary. One account of Mary's execution explains:

> The witness whose testimony at trial most helped convict her was a local farmer named John Jacobs. He figured also in her apprehension for the crime. Appearing unremorseful about her violent act, Mary was quoted as saying that the victim deserved to die for taking away her boyfriend. On the day of execution, authorities had arranged for her father, Abram, and brother who lived on a farm near Siloam to say their good-byes to her. They did so on the scaffold, stoically shaking hands without sign of emotion and then walking away without looking back. However, Abram had openly vowed before and after his daughter's execution that he would kill Jacobs whom he blamed for Mary's death. For years, Jacobs stayed away from Madison County. But reportedly after receiving assurances transmitted to him from Abram that no harm would befall him, Jacobs returned. One day when Jacobs was hoeing

> a field with a group of men, Abram approached in a friendly manner, shaking hands in greeting each one in turn. But as he greeted Jacobs, Abram pulled a knife and fatally stabbed him. Eventually apprehended, Abram was tried, convicted and sentenced to death. Exactly nine years to the month after his daughter's execution, the 73-year-old warrior—he had fought on the American side during the Revolution—was hanged for killing the prosecution's chief witness against her. (*A New York Correction History Society Timeline on Executions by Hanging in New York State, 1813–1815*)

Hannah Peggin succumbed to hanging in Northampton, Massachusetts, in July 1785 for infanticide of her illegitimate male child. Apparently, Hannah 'took a length of flax from a nearby loom and knotted it tightly around the baby's throat. The result was fatal strangulation' (Hearn, 1999, p. 169). But it is Connecticut that holds the dubious distinction of executing the youngest condemned American Indian prisoner in US history. Officials in Groton hanged Hannah Ocuish, a 12-year-old mentally retarded Pequot Indian girl, for killing 6-year-old Eunice Bolles. Authorities executed Hannah three months before her 13th birthday in late December 1786. One commentator gave the following account of Hannah's case: 'On the 21st of July, 1786, at about 10 o'clock in the morning, the body of the murdered child was found in the public road leading from New-London to Norwich, lying on its face near to a wall.' The document went on to trace the investigation that followed:

> The neighborhood turned out to hunt for the murderer; Hannah was questioned and claimed that she had seen four boys near the scene of the crime. When a search failed to turn them up, Hannah was interrogated again, and then taken to the Bolles home to be charged with homicide in the presence of the dead child. She burst into tears and confessed.… Five weeks earlier, Eunice had reported Hannah for stealing fruit during the strawberry harvest, and Hannah had plotted revenge. Catching sight of her young enemy headed for school one morning, Hannah had lured Eunice from her path with a gift of calico, then beat and choked her to death. (Halttunen, 1996; see also Streib, 1987)

Removal and Relocation (1828–87)

Compulsory removal of American Indians from their sacred territories held in millennium and relocated to mostly inhospitable lands accented the relations between American natives and the national government during much of the 19th century (Deloria & Lytle, 1983). To lessen hostilities between the early colonists and American Indians, Thomas Jefferson was the first president to propose relocating American Indians out of the newly acquired territories comprising the Louisiana Purchase. But it was not until two years after Andrew Jackson's presidential election that the federal government began forcibly removing the Seminole, Creek, Choctaw, Chickasaw, and Cherokee and other Indian nations from their ancestral lands in the southeast. The tribes were the primary objects of the Indian Removal Act passed by Congress in May 1830, but the national government had already constrained and forcibly relocated other Indians from all over the eastern USA to reservations mostly in the Oklahoma territory; including the Kickapoos, Shawnees, Delawares, Sac and Fox, Miamis, and Ottawas from the Great Lakes region to territories west of the Mississippi (Gibson, 1980, pp. 295–298). Federal agents relocated the Seminoles from central Florida after

ceding their tribal lands to the USA in 1832–33. Authorities removed the Cherokee from their tribal lands located in northwestern Georgia and northeastern Alabama in 1835, the Creeks from eastern Alabama in 1832, the Chickasaw from northern Mississippi in 1832, and the Choctaw from south-central Mississippi in 1830 (Smallwood, 1998). The removal of these indigenous groups continued for more than a decade. As some scholar puts it, 'The idea was to "clear" the native population from the entire region east of the Mississippi, opening it up for the exclusive use and occupancy of Euroamericans and their Black slaves' (Churchill & Morris, 1992, p. 14).

Forcibly removing and relocating American natives from their tribal territories furthered the economic interests of the federal government; relocating American Indians to government-assigned reservations detribalized Indians and 'transform[ed] [them] from free, roving hunters and raiders to settled, peaceful, law-abiding wards made self-sufficient by the adoption of agriculture and stock raising' (Gibson, 1980, p. 426). A formal policy of Americanization complemented the reservation system with the goal of rendering Indians self-sufficient, isolated from unscrupulous whites, educated, Christianized, and instilled with a system of laws (ibid., at p. 428). The national government strengthened its administrative hold over Indian nations by defining indigenous people as *domestic dependent nations* similar to 'that of a ward to its guardian' and immune from state jurisdiction. Jackson's policy of forcibly removing Indians deliberately contradicted US Supreme Court holdings in *Cherokee Nation v. Georgia* (1831) and *Worcester v. Georgia* (1832). In the *Cherokee Nation* case, Georgia made the Cherokee Nation subject to its state laws and sovereignty in an attempt to gain control over Indian land in Georgia. Chief Justice John Marshall claimed, however, that the Court lacked original jurisdiction because the Cherokee Nation was a 'domestic dependent state' and not a foreign state as defined in the Constitution. A year later in *Worcester*, the Chief Justice held null and void a Georgia law requiring missionaries teaching on the Cherokee Nation to obtain state permits. State officials imprisoned the missionaries. Marshall ordered the prisoners released and argued that Indian nations are under the direct protection and exclusive control of the national government. Meanwhile, some 40,000 white settlers continued their descent onto Indian land enhanced by the discovery of gold. Stannard (1992, p. 122) points out, however, that the white settlers' movement was part of the government's plan to drive the Indians off the land.

> Intruders entered Indian country only with government encouragement, after the extension of state law. And once on the Indians' land, they overran it. Confiscating the farms of wealthy and poor Indians alike … they took possession of Indian land, stock, and improvements, forced the Indians to sign leases, drove them into the woods, and acquired a bonanza in cleared land. They then destroyed the game, which had supplemented the Indians' agricultural production, with the result, as intended, that the Indians faced mass starvation.

A minority of the Cherokee leadership ceded tribal lands to the federal government. Soons thereafter, the relocation process known as 'The Trail of Tears' began when the US military herded 17,000 Cherokee men, women, and children and marched them through territories knowingly infested with cholera and other epidemic diseases

(Jahoda, 2002). Along the way, the military fed the Indians spoiled flour and rancid meat. The maltreatment of the Cherokee during the march to the Oklahoma territory took a death toll of some 8,000 Cherokee men, women, and children. As Stannard (1992, p. 124) puts it, that is, 'about half of what then remained of the Cherokee nation was liquidated under Presidential directive, a death rate similar to that of other southeastern peoples who had undergone the same process—the Creeks and Seminoles in particular.' During the march, US soldiers raped and sexually violated Cherokee women (Smith, 2005). Stannard (1992) has likened the destruction reaped upon the Cherokee to that of the Bataan Death March of 1942. The federal government also affected conquests of Indian tribal groups in the southwest, the Pacific Northwest, the Great Basin, and the Rocky Mountains. Geronimo's Apaches waged the last vestige of Indian resistance to Anglo conquest of tribal territories in 1866. Still, the federal military suffered some defeats in the Indian Wars against western expansionism of white settlers. The Battle of Little Big Horn is the most notorious. There, Sitting Bull and Crazy Horse led roughly 1,200 Lakota-Sioux, Northern Cheyenne, and Arapaho warriors in June 1876 against 600 federal troops, killing most of them.

The removal and relocation policies of the federal government resulted in more American Indian executions than at any other time in the history of the USA. Undoubtedly, the large number of Indian executions in this period compared to earlier periods stems from Indian resistance to the brutal methods of the military to effect the national government's removal policies. While most Indian tribes relocated hesitantly but willingly, many other tribes violently resisted ceding their tribal territories. As one early report explained, 'The continuing Indian resistance in most cases was due to unlawful settler intrusion and hunter trespass on Indian territories and precipitate action by overzealous military officers' (Gibson, 1980, p. 393). Jurisdictions executed 193 American Indians during this period; comprising nearly half the number of all Indian executions in US history. Mostly local authorities in Alabama, Arkansas, California, Minnesota, Oklahoma, and Oregon executed nearly 97% of these prisoners for crimes of murder. All but one of the Indian prisoners executed (sex unknown) were males and most hanged for their crimes. In the 1830s, jurisdictions executed 18 Indian prisoners, the number decreased to 12 in the 1840s, but then increased to 22 Indian executions in the 1850s. In the 1860s, authorities executed 59 American Indian prisoners. Most of these executions took place in the largest mass execution in the history of the USA in direct response to the Dakota-Sioux uprising in Minnesota when, on a single day in December 1862, federal authorities hanged 39 American Indians. California also executed large numbers of American Indians in the 1860s. There were 44 Indian executions in the 1870s and officials executed 45 Indians in the 1880s.

At Fort Smith, Arkansas, the federal government put more people to death than in any other place and at any other time in US history. Federal authorities executed 86 condemned prisoners over a 23-year period from August 1873 to July 1896. Judge Parker—better known as 'the hanging judge'—condemned 79 of these men to the gallows from 1875 (Fort Smith National Historic Site). In that period, 41% of the executions performed under federal authority at Fort Smith involved condemned American Indian prisoners. In August 1873, 27-year-old John Childers became the first

Indian executed at Fort Smith. A jury had convicted Childers of the robbery–murder of Reyburn Wedding. Apparently, in October 1870, Childers met Wedding in the Cherokee Nation and killed and robbed him of $280. Authorities arrested Childers a short time later but he escaped from the federal jail. Recaptured in 1871, Judge William Story resentenced Childers. Childers confessed to the crime on the gallows. Two thousand spectators witnessed Childers' execution. Two years later in October 1873, federal authorities hanged Tu-na-gee (alias Tuni) and Young Wolf, two Cherokee Indians that robbed and killed two trappers on the Grand River in the Cherokee. To one observer, 'A large concourse of people' witnessed the executions (Fort Smith National Historic Site). As noted, in April 1874 the federal government hanged Isaac Filmore for murdering a traveler from California, and on the same day federal authorities hanged John Billy, a Choctaw Indian convicted of murdering Deputy Marshal Perry Duval in 1873, and John Pointer, a Seminole Indian, for murdering a white man in the Chickasaw Nation. One observer pointed out that 'a vast crowd' gathered to witness the hangings with 'one-third being women' (ibid.).

In January 1875, federal officials hanged McClish Impson when a jury convicted him in November 1874 for the July 1873 murder of an unknown person that Impson shot in the back. On the scaffold, he confessed to the crime. This was the last execution that took place under Judge William Story at Fort Smith. In contrast to many other federal executions, there were comparatively few spectators at Impson's hanging (Fort Smith National Historic Site). The first American Indian executions under Judge Isaac C. Parker occurred in September 1875. Two of the six men hanged on that day were American Indian prisoners. Samuel Fooy murdered a schoolteacher for $250, and Smoker Mankiller shot and killed his neighbor (Fort Smith National Historic Site). The federal court carried out the execution of four American Indian prisoners in September 1876, with each convicted of murder in a jury trial. These condemned Indian prisoners were James Hanson, Samuel Peters, Osey Sanders, and Sinker Wilson. After James Hanson had accused Peters of theft, he went to Hanson's home and stabbed his wife to death. A jury convicted Sanders, finding him guilty of the robbery–murder of Thomas S. Carlyle. Sanders protested his innocence. A jury also found John Valley guilty of robbery–murder but claimed he was drunk at the time of the crime. In 1867, Wilson murdered Datus Cowan, a sheep drover. A jury convicted Wilson and Judge Parker sentenced him to death. Wilson escaped jail and remained at large for nine years until authorities captured him in 1876. One thousand spectators witnessed the executions of these four condemned Indian prisoners.

In December 1878 federal authorities hanged John Postoak, a Creek Indian who had shot and killed John Ingley. In September 1881, brothers Abner and Amos Manley hanged for shooting and killing Ellis McVay, a farmer who offered them shelter for the night in December the year before. In June 1883, Te-O-Lit-Se, a Creek Indian, shot and killed a traveler named E. R. Cochran and robbed him of $7.40. He eventually confessed to the killing. In July 1884, federal authorities hanged John Davis for the murder of a traveler in the Choctaw Nation in 1883, and Jack Womankiller for killing a settler in the Cherokee Nation. Apparently Davis and Womankiller murdered their victims to rob them. And in June 1885, the government hanged Cherokee Indians

James Arcine and William Parchmeal for the November 1872 killing of Henry Feigel, a native of Sweden, who was traveling in the Cherokee Nation. Official accounts of the murder show that Arcine and Parchmeal shot Feigel four times, crushed his skull with a large rock, and robbed the body of its clothing and 25 cents. It would be 13 years before deputy marshals gathered enough evidence to arrest Arcine and Parchmeal. Their first trial ended in a hung jury, but the jury in a second trial found both prisoners guilty. Both men confessed to the crime on the gallows.

July 1886 brought the hanging execution under federal authority of Calvin James for killing a companion on a trip to Texas to acquire a supply of whiskey in August 1885. The other men with James later served as witnesses against him. That same year in August, Kit Ross hanged for the killing of Johnathan Davis in December 1885. Though wounded, Davis apparently chased Ross for 75 yards and wounded him twice before Davis began to weaken from the loss of blood. Davis died that night. Citizens gathered a reward of $150 for Ross' capture and authorities apprehended him six weeks later. In October 1887, federal officials hanged two Cherokee Indians named Silas Hampton and Seaborn Kalijah. Silas Hampton killed Abner Lloyd, a white farmer, for $7.50 and a pocketknife. At the time of his arrest, Hampton reportedly said 'Don't take me to Fort Smith; kill me right now.' Deputy John Phillips arrested Seaborn Kalijah in January 1887 for the murders of three possemen, Mark Kuykendall, Henry Smith, and William Kelly. Deputy Phillips had left Kalijah in the care of these men and when he returned the next morning he found the three possemen murdered and Kalijah gone. Deputy Phillip rearrested Kalijah and the federal court at Fort Smith found him guilty of the killings. In April 1888, a Choctaw Indian named Jackson Crow hanged for killing a prominent merchant named Charles Wilson in 1884.

Richard Smith hanged in 1889 for the murder of Thomas Pringle. A dying Pringle named Smith as his killer, but the key to conviction was a unique footprint at the crime scene that showed the murderer wore a pair of boots with soles full of round headed tacks, 21 tacks in the right foot and 14 in the left. Smith was wearing boots matching the footprints at the time of his arrest even though he had removed the tacks from the heels of his boots. A witness led officers to the location where Smith had thrown the heels but the holes from them were visible in the shoe soles. Smith declared his innocence on the gallows even though he had previously confessed to the arresting deputy. Also in 1889, federal authorities hanged Jack Spaniard (or Sevier) for shooting and killing Deputy Marshal William Irwin in April 1886. Spaniard's motive for the killing was to help Felix Griffin, a horse thief, escape from Irwin's custody. Other men likely participated in Irwin's killing, but officials never captured them and the jury found Spaniard solely responsible.

Of course, not all federal executions of American Indians occurred at Fort Smith. Because of the Modoc Indian wars in 1872 and 1873 with the US Calvary in Oregon, federal authorities tried by court-martial four Modoc Indians for killing General E. R. S. Canby, Reverend E. Thomas, and some white settlers. Officials hanged Black Jim, John Schonchin, Kintpuash (also spelled Keiutpoos, and commonly known as 'Captain Jack'), and Charles Boston for murder in March 1873. To one commentator, these men died for 'their brave and stubborn fight for their native land and liberty—a war in some

respects the most remarkable that ever occurred in the history of aboriginal extermination' (Modoc Indian Chiefs and Leaders). Other Indian executions during the period included the April 1876 hanging of two Choctaw Indians, Isham Seely and Gibson Ishtanubbee, for the murder of an old Indian doctor named Funny and his black female cook. In September of that same year, Osey Sanders (alias Flyer Wilson), Sinker Wilson (alias Acord), Sam Peters, and John Valley, all Choctaw Indians, for murder. Sinker Wilson committed murder as a 16-year-old juvenile in 1867 (Arkansas Cherokee Pioneers).

As noted, the most notorious mass execution of Indian prisoners by the federal government in US history took place in Minnesota in December 1862 when federal officers executed 39 American Indians for murder, accessory to murder, and kidnapping in the aftermath of the Dakota-Sioux uprising, and after additional trials in November 1865 military officials executed two other Dakota-Sioux. According to Chomsky (1990), the trials and subsequent executions of the Dakota-Sioux were different because (1) the trials took place before a military commission rather than in state or federal criminal courts, (2) the cases were appealed to the President of the USA and not a jurisdictional appellate court, (3) the convictions stemmed from killings committed in warfare which are not usually defined as crimes of murder, and (4) the military tried the Dakota-Sioux on civilian crimes of murder, rape, and robbery and not on violations of the customary rules of warfare (p. 13).

The Dakota were part of the Sioux Nation comprising seven tribes, but only four tribes were involved in the war—the Mdewakanton, Wahpekute, Sisseton, and Wahpeton. Prior to 1600, the Sioux inhabited much of Minnesota and were later forced to occupy lesser areas by the Chippewa. The Sioux signed two treaties in 1851, which established adjacent reservations on either side of a section of the Minnesota River. A treaty in 1858 reduced the reserved territories to an area on the southern bank of the river. The Dakota had controlled much of the land in the upper Midwest, but through a series of treaties from 1805 to 1858, the Dakota had ceded much of their land to the USA. By 1862, the 7,000 Dakota became relegated to a narrow strip of land along the Minnesota River 120 miles long and 10 miles wide. The Sisseton and Wahpeton occupied the northwestern part of the reservation, and the Mdewakanton and Wahpekute resided in the southeastern region. Existence on the diminished reservation led to a situation where it was extremely difficult for the Sioux to sustain themselves by traditional means. They were starving and had been lied to by the federal government. Tensions between the Dakota-Sioux and white settlers progressively increased since the government had not kept its promises of the 1851 treaty providing lump sums of money for the land. For 11 years the Dakota did not receive the funds that resulted in severe food shortage. It was this worsening economic condition of the Dakota that precipitated the conflict. Meanwhile, white settlers continued to move onto the Dakota Territory. Then, one morning a group of young Dakota braves attacked a settlement killing some 20 Americans. In the 37 days of fighting, around 1,400 people died in the conflict including American Indians, white settlers, and military personnel (American Indian Communities in Minnesota). The commission had tried 392 Dakota Indians and convicted 323. Of those convicted, the commission sentenced 303 to death by

hanging, sentenced 20 to terms of imprisonment, and acquitted 69 others. President Lincoln's review of the cases favored execution for the 39 Indians involved in 'massacres' as opposed to those involved in 'battles.' On December 26, all 39 Dakota Indians hanged in a single moment and later buried in a single shallow grave. Two other warriors, Wakanozanzan and Shakopee hanged at Fort Snelling in November 1865 for their participation in the uprising (Chomsky, 1990). After the conflict ended, the Forfeiture Act of 1863 negated the tribes' reservation and treaty rights and the government expelled most tribal members from Minnesota.

Territorial authorities in Washington authorized the hanging of a tribal chief named Leschi (the last Chief of the Nisqually Indians) for the murder of Abram Benton Moses in February 1858. Leschi had apparently fired the shot that killed Moses during a skirmish with a militia on the Naches Trail while it passed through an Indian encampment. Eluding capture for sometime, Leschi's nephew, Sluggia, turned him into authorities who arrested and tried Leschi for Moses' killing. The one-day trial ended in a mistrial when two jurors, Ezra Meeker and William Kinkaid, refused to convict Leschi. Apparently the jurors thought the killing was *an act of war* and not murder. A second trial did not include instructions to consider the killing an act of war and the jury found Leschi guilty of first-degree murder and imposed the death penalty. The Territorial Supreme Court postponed Leschi's execution but eventually upheld the conviction and remanded the case back to the lower court for an execution date. Leschi made a statement to the Court:

> I do not know anything about your laws. I have supposed that the killing of armed men in war times was not murder; if it was, the soldiers who killed Indians were guilty of murder, too. The Indians did not keep in order like the soldiers, and, therefore, could not fight in bodies like them, but had to resort to ambush and seek the cover of trees, logs and everything that would hide them from the bullets. This was their mode of fighting, and they knew no other way.… I went to war because I believed that the Indians had been wronged by the white men, and did everything in my power to beat the Boston soldier, but for lack of numbers, supplies and ammunition I have failed.

Leschi went to the gallows on February 19, 1858 despite many who believed Leschi was innocent of the charges. A stone monument stands near where authorities hanged Leschi that reads in part, 'Martyr to Vengeance of the Unforgiving White Man' (Washington History Museum).

Leschi's case is unusual because rarely did American Indians have an opportunity for appellate review of their capital cases. Negley K. Teeters and Charles J. Zibulka compiled an inventory of state-imposed executions in the USA from 1864 to 1982 that William J. Bowers published as an appendix to his 1984 book *Legal Homicide: Death as Punishment in America, 1864–1982*. The index includes information on whether condemned prisoners appealed capital convictions. Teeters and Zibulka account for appeals to the highest state appellate court in the state of conviction, to federal courts including applications for the writ of habeas corpus to US District Courts and/or to the US Circuit Court of Appeals, to the US Supreme Court including petitions for writs of certiorari, and whether any of these courts ordered a new trials for condemned inmates. Of the 62 American Indian executions carried out in the USA under state

jurisdiction in the period covered by the index, only 22 (35%) condemned American Indian prisoners had an opportunity for appeal to the highest court in the state of execution. The states allowing appeal included Arizona, California, Nebraska, Nevada, New York, North Carolina, Oklahoma, and Wyoming. Among these states, California and North Carolina had the lowest rates of appeal for condemned American Indian prisoners. In California 42% of condemned American Indian prisoners appealed their capital cases, and in North Carolina 50% appealed their cases. Most other states prohibited American Indian prisoners from appealing their capital cases to its highest court. The Teeters–Zibulka index reveals no instance in which a state provided appeals for condemned American Indian prisoners to any federal appellate court or the US Supreme Court. But another source shows that the Supreme Court reversed the murder conviction of Eli Lucas on proof that he was a Choctaw citizen. The Court released the prisoner to the Choctaw Nation for trial in a tribal court (Fort Smith National Historic Site). There is nothing in the historical record showing that tribal authorities executed Lucas (Espy & Smykla, 2004). It also appears from the records of commutations and pardons at Fort Smith, Arkansas, that some American Indians may have had death sentences commuted to life imprisonment by appellate courts (Fort Smith National Historic Site). Still another source reveals that authorities indicted, tried, and found Wat Foreman, a Cherokee Indian, guilty of murder. The Benton County Court ordered Foreman 'hung by neck on the public gallows … until he is dead.' The County Sheriff was to execute the sentence on June 16, 1843. The Sheriff did not execute the death warrant and in May 1844 Foreman appealed the verdict before the circuit court on a writ of habeas corpus. Foreman lost the appeal at the circuit court level, but appealed to the state's supreme court where the court affirmed Foreman's conviction and sentence. Officials executed Foreman according to the sentence (Arkansas Cherokee Pioneers). Foreman's execution does not appear in the Espy and Smykla (2004) index of executions.

After a trial by an all-white jury in Oregon City, Oregon, territorial officials publicly hanged five Cayuse Indians—Isaiachalakis, Kiasumpkin, Klokomos, Tiloukait, and Tomahas—on June 3, 1850, for their involvement in the Whitman Massacre. Reportedly, an outbreak of measles ravaged the Cayuse tribe and Dr Whitman gave the Indians medicine but the Indian fatalities continued to increase. In November 1847, the Cayuse attacked and killed Dr Whitman, his wife Narcissa, and 12 other whites. More than two years after the attacks, the five Cayuse Indians surrendered to the Governor of the Oregon territory whom officials subsequently tried in US District Court for murder. All five Cayuse Indians had turned themselves in to spare their people from persecution. Testimony that tribal custom dictated Indians to kill medicine men whose patients die from their treatment rang hollow with the white jurors. Surprisingly, one of the witnesses was a Cayuse Indian named Stickus that Oregon law prohibited from giving testimony against a white person. That Stickus testified against the territorial government apparently distinguished the allowable testimony (Oregon State Achieves). On his way to the gallows, Tiloukait said, 'Did not your missionaries teach us that Christ died to save his people? So we die to save our people' (Wylie, *Land of the Free?*).

Two US Supreme Court decisions rendered during this period are important to the execution of American Indians. In *Ex Parte Crow Dog* (1883), the Court held that the US government had no jurisdiction over the killing of one Indian by another Indian on reservations. The case arose from Crow Dog's (a fellow tribesman) killing of Sin-ta-ge-le-Scka (Spotted Tail), chief of the Brûlé Sioux. Sin-ta-ge-le-Scka was a very popular and peaceful chief who acted to preserve friendly relations between the USA and more antagonistic Sioux leaders such as Red Cloud, Sitting Bull, and Crazy Horse (Deloria & Lytle, 1983, p. 168). Given to the customs of Sioux Indians, a tribal council ordered Crow Dog to give Sin-ta-ge-le-Scka's family property and services as compensation for his killing—'Crow Dog and his family would pay the deceased's kin $600, eight horses, and one blanket' (Snell, 2007, p. 34). But when the white community became outraged upon learning that the territorial court had not tried Crow Dog for the murder, US Marshals for the Dakota Territory arrested Crow Dog and a territorial court convicted and sentenced Crow Dog to death. What did impress the white community, however, was that Crow Dog voluntarily returned at the appointed time after federal marshals released him to settle his affairs before his execution—'no white man, placed in a similar situation, would conceivably have done the same thing' (Deloria & Lytle, 1983, p. 169). Crow Dog's lawyers filed habeas corpus and writ of certiorari petitions to the US Supreme Court claiming (1) that the crime for which the territorial jury had convicted Crow Dog was not an offence under the laws of the USA, (2) that the district court had no jurisdiction to try him, and (3) as a result, the district court's judgment and sentence are void and should be set aside. Relying on federal statutes, US treaties with the Sioux, and that the Brûlé Sioux maintain their own criminal justice systems as an artifact of their sovereignty, the Court issued the writ of habeas corpus and ordered Crow Dog released (ibid.).

Dismayed by the 'primitiveness' of the Sioux Nation's justice system, Congress acted quickly to extend the national government's authority to criminal matters on Indian reservations in March 1885 with the Major Crimes Act. Scholars claim that the Act effectively destroyed the sovereignty of indigenous nations and constitutes a continued guardianship of the federal government over Indian affairs (Churchill & Morris, 1992). *United States v. Kagama* challenged the constitutionality of the Act in 1866. The case stems from the indictment of two Indians that murdered another Indian on the Hoopa Valley Reservation in California. The US Supreme Court argued that the federal government was duty-bound to protect Indian nations with the Major Crimes Act. But Deloria and Lytle (1983) speak to the detrimental impact of the Act on the exercise of tribal power over criminal matters and argue that, 'For all practical purposes, the tribal governments have been stripped of their power to deal with major criminal activity on the reservations' and that the Act has 'diluted the ability of tribal courts to maintain their prosecutorial functions over criminal activity' (p. 172). Today, tribal courts 'are restricted to dispensing finds and no more that a year of jail time, with major crimes mostly dealt with in federal court' (Snell, 2007, p. 34). Yet another devise by which the federal government strengthened its colonial death grip on American Indian sovereignty.

Allotment and Assimilation (1887–1928)

Allotment and assimilation distinguish the historical period of American Indian relations with the federal government between 1887 and 1928 (Deloria & Lytle, 1983). Although the military campaigns against American Indians had formally ended, Congressional passage of the General Allotment Act (Dawes Act) in 1887 simply meant that 'the war against native peoples continued with the weapons of the rule of law' (Weiner, 2006, p. 37). Congress intended the legislation to terminate tribal ownership of reservation land by partitioning and assigning each Indian outright ownership of 160-acre allotments (Gibson, 1980, p. 486). Its purpose was to further Indian assimilation into mainstream US society by forcing natives to adopt the skills required for subsistence farming. More accurately, however, the government meant to appease *detribalization* and *Americanization* policies by opening surplus reservations lands to homesteading white settlers and thereby succeed in surrendering Indian Territory to white control. With the threat of military action, federal agents effectively dispossessed American Indian tribes of most of their land through allotment. In 1865, for instance, the Comanche controlled 30 million acres stretching from what is now northern Kansas to southern Texas. Within two years, the Comanche had ceded most of their land to the federal government and held less than 3 million acres in southwestern Oklahoma, and by 1900, 'the Comanche reduced their diminished tribal estate to a patchwork of individual holdings' (ibid., pp. 488–489). Overall, allotment policies dispossessed Indian landholdings from 138 million acres in 1887 to 48 million acres in 1934 of which nearly half was desert or semiarid lands useless for farming (Deloria & Lytle, 1983). Besides allotting useless land, the federal government appropriated only $30,000 for seed and equipment for some 3,568 allotments—less than $10 per allotment (ibid.). Moreover, many Indian tribes found farming 'distasteful' and refused to work the allotments. Government agents refused rations and annuities to Indians unwilling to work their allotments. Allotment and assimilation policies were nothing less than outright fraudulent activities of the national government toward American Indians. As Gibson (1980) points out, 'Cheating, criminal collusion, and chicanery of every description corrupted the allotting process. Home seekers, town developers, lawyers, all manner of boomers and promoters and hangers-on lurked about the Indian nations, a predacious wolf pack lusting for the last parcels of tribal land' (p. 502).

The federal government furthered its indoctrination and continued colonial subjugation of American natives during this period with Indian education. Educational indoctrination to Western culture began in the very early 1600s when British charters to the Virginia Company 'contained clauses requiring conversion of Indians by what were called educational means' (Noriega, 1992, p. 372). In 1611, French Jesuit missionaries defused Indian resistance by establishing Indian schools along the St Lawrence River 'to educate the children of the Indians in the French manner' (ibid., p. 371). Spanish Franciscans and Dominicans also used schooling to weaken 'indigenous cultural integrity to the point of nonexistence' (ibid., p. 372). But unique to the American Indian experience during allotment and assimilation was the legal relationship that the US

government established with Indian nations through hundreds of treaties providing education to Indians in exchange for access to tribal lands. Colonial indoctrination of American natives through education took as its primary goals academic education, individualization, Christianization, and citizenship training (Adam, 2005). The federal government used schooling to program Indian children to 'the values of Western civilization and to eliminate any traces of the children's native heritage' (Silverman, 1992, p. 1022). The 'U.S. model of colonialist education' began in the mid-1820s and included boarding schools and day schools (Noriega, 1992, p. 377), and by 1900 the Bureau of Indian Affairs and religious groups operated 225 day schools, 148 boarding schools, and enrolled over 20,000 Indian schoolchildren (Feagin & Feagin, 1993; Gibson, 1980).

The underlying philosophy of boarding/day schools for American Indian children was racial isolation. Often located great distances from the children's family and tribal ties, the boarding school essentially isolated Indian children and facilitated their indoctrination into mainstream American culture (Crow Dog & Erdoes, 2005). Supervisors of boarding and day schools used harsh discipline on errant Indian children, including severe whippings, the denial of food, brutal physical beatings, and placing students in a school jail or guardhouse. Yet, Indian children misbehavior was often as innocuous as speaking one's native language (Adam, 2005). Impoverished Indian parents often willingly sent their children to white schools because 'many families were so poverty-stricken that they could not provide adequate food and clothing for their children' (Gibson, 1980, p. 434). But when parents did not consent, federal agency police rounded-up children and took them to schools by force. Congress authorized the federal government to use whatever means to induce Indian children to attend white schools, 'including withholding rations, clothing, and other supplies parents whose children were not in school' (Braveheart-Jordan & De Bruyn, 1995, pp. 350–351). One Hopi observer explained that federal police forced children unwilling to go to the New Oraibi School by 'capturing children of the hostile families and taking them to school by force. They herded us all together at the east edge of the mesa. Although I had planned to go later, they put me with the others. The people were excited, the children and the mothers were crying and the men wanted to fight' (ibid.). Unsurprisingly, given the ruthless tactics of federal police of stealing Indian children to populate white schools and the brutal treatment of young children once there, the federal government's *Americanization* of colonized Indian children failed miserably. Scholars speak of the devastating psychological effects such tactics had on Indian women (ibid., p. 351).

The conflict between traditional Indian culture and that of white Americans did not subside under assimilationist polices. The most recognized of subsequent events involved the Ghost Dance and the massacre at Wounded Knee Creek, South Dakota, in late December 1890. The Ghost Dance religion derived from a Paiute Indian in Nevada who had a religious vision that 'white tormentors of the Indian—teachers, missionaries, government agents, traders, ranchers, and farmers—would be destroyed in one grand cataclysmic earthquake. Only Indians would be spared. Restoration of the old order in nature and tribal life would follow' (Gibson, 1980, p. 476). The Dakota-Sioux adopted the religion and its feverish Ghost Dance as a means of escaping the disparity wrought

upon them by the national government. Federal agents banned the Ghost Dance claiming that it had become threatening and feared an Indian uprising. The Indians ignored the order and officials sent for federal troops and their arrival did nothing more than agitate the Indians to engage the dance even more. After killing Sitting Bull and his son Crow Foot in what some scholars maintain was an assassination by the US government (Wagner, *Sitting Bull*), 487 troopers under General Nelson A. Miles of the Seventh Calvary used rapid-firing Hotchkiss guns to massacre 256 Sioux Indians. An Indian survivor explained the tragedy:

> Dead and wounded [Indian] women and children and little babies were scattered all along where they had been trying to run away. The soldiers had followed along the gulch, as they ran, and murdered them in there. Sometimes they were in heaps because they had huddled together, and some were scattered all along. Sometimes bunches of them had been killed and torn to pieces where the wagon guns hit them. I saw a little baby try to suck its mother, but she was bloody and dead. (Gibson, 1980, p. 479)

Ironically, the federal government awarded 20 Congressional Medals of Honor to the soldiers that slaughtered Indians at Wounded Knee Creek, South Dakota, 'including those who operated the four Hotchkiss machine guns used to murder these people because of their religious beliefs and skin color' (Wylie, *Land of the Free?*).

Despite the continued atrocities waged upon the Indian population by the US military, there was little resistance from American Indians to the allotment and assimilation policies of the US government. As a result, retaliation by the national government to Indian resistance was minimal and American Indian executions substantially decreased in the period over the previous era of removal and relocation. Here, jurisdictional authorities executed 66 Indians mostly in Arkansas and Oklahoma for murder. The execution of six American Indians pursuant to federal jurisdiction took place on the same day in January 1890. There, Harris Austin, John Billy, Jimmon Burris, Sam Goin, Jefferson Jones, and Thomas Willis died on the gallows at Fort Smith. Officials found Austin guilty of shooting and killing Thomas Elliott in a dispute over whiskey. Billy and Willis robbed and murdered W. P. Williams in the Kiamichi Mountains. A jury convicted Jones of robbery–murder when he killed Henry Wilson for $12.00 he was carrying. Authorities executed Burris and Goin for killing Houston Joyce as he traveled through Indian Territory (Fort Smith National Historic Site).

In July 1895, the Rufus Buck Gang embarked on a 13-day crime spree. The five gang members—leader Rufus Buck (a Euchee Indian), Lewis and Lucky Davis (brothers and Creek Indians), and Sam Sampson and Maoma July (Creek Indians)—had killed at least two people, including Deputy Marshal John Garrett, wounded several others, robbed anyone who crossed their path, and allegedly raped several women. They were finally apprehended after a seven-hour shootout and stood trial for the rape of Rosetta Hansen. Found guilty, they were the only men to hang in Fort Smith for rape. A review of the historical execution record reveals that this was probably the largest mass execution for rape in US history. The Espy and Smykla (2004) inventory notes the executions of Rufus Buck and his fellow gang members for crimes of murder but not rape. The most notorious execution during this period was that of Chief Two Sticks (CanNumpa Uhah) for the murder of four white men. A federal court in Deadwood, South Dakota,

convicted Chief Two Sticks of the crimes and federal officials hanged him in December 1894. A local newspaper at the time quoted Chief Two Sticks' last words:

> My heart is not bad; I did not kill the cowboys—the Indian boys killed them. I have killed many Indians but never killed a white man. The Great Father and the men under him should talk to me and I would show them that I was innocent.… My heart knows I am not guilty and I am happy. I am not afraid to die.

The body of Chief Two Sticks was buried just outside the fence to Deadwood's St Ambrose Cemetery. Upon his death, Chief Two Sticks asked that his father receive his sacred pipe. Authorities refused his request and instead kept the pipe in Deadwood. Former Sheriff William Remer donated the pipe to the Adams Museum. One hundred years after his execution, Chief Two Sticks' grandson, Richard Swallow of the Oglala Lakota Tribe, in a brief ceremony took possession of the sacred pipe from the museum in compliance with the Native American Graves Protection and Repatriation Act of 1990.

Reorganization and Self-Government (1928–45)

In 1928, Congress recognized the failure of the Dawes Act to solve the 'Indian problem' since American natives had not yet successfully assimilated into US society. Acknowledging the failure of the policy, government officials concluded that it was necessary to provide the means for Indians to reconstruct their traditional ways of life. As a result, then Secretary of the Interior Hubert Work commissioned Lewis Meriam to study the conditions of American natives and the effectiveness of federal policies. Entitled *The Problem of Indian Administration*, Meriam claimed, 'an overwhelming majority of the Indians are poor, even extremely poor, and they are not adjusted to the economic and social system of the dominant white civilization' (quoted in Gibson, 1980, p. 536). Indeed, the mortality rate among American Indians was the highest in the nation due to measles, pneumonia, and tuberculosis. The death rate from tuberculosis was *17 times* the national average among some tribes, and Indian poverty brought widespread malnutrition. The report became a catalyst for changes in the administration of Indian affairs. Among the many recommendations in the report were strengthening tribal governments, stopping the sale of allotments, provide for tribal economic development, and assist tribes in maintaining their cultures. The outgrowth of these proposals was the Indian Reorganization Act (known as the Wheeler–Howard Act) passed by Congress in June 1934, formally ending the government's policy of allotment established by the Dawes Act. The most significant aspect of the Indian Reorganization Act was that it minimized the discretion and power exercised by the federal government to tribal governments. Tribal governments adopted a democratic self-governing structure where historically tribal elders and a tribal chief governed. Some argue that the government's encouragement of tribal self-government was yet another milestone in the colonialization of American Indians (Deloria & Lytle, 1983).

During this period of dismal social and economic deterioration of Indian tribes, death penalty jurisdictions put to death 15 American Indian prisoners. State authorities

executed 12 of these prisoners, the federal government executed one prisoner, and Alaska territorial officials executed two prisoners. There is little in the historical record concerning most territorial executions, but as part of a larger project documenting the death penalty in Territorial Alaska, attorney and legal historian Averil Lerman has researched the trial and jailhouse hanging of Nelson Charles in November 1939 for murdering his mother-in-law, Cecilia Johnson. Reportedly, Charles was drunk when he stabbed Johnson in the back and neck and sexually molested her with an empty bottle. Charles had spent *six months* in jail before officials impaneled a grand jury, and during this entire period, he had no access to an attorney. After the indictment, a federal territorial judge appointed Adolph H. Ziegler to defend Charles and gave the attorney a week to prepare for trial. According to Lerman, Ziegler never attended law school, was conservative on social issues, and was 'an unlikely champion of an Indian charged with murder.' An all-white jury convicted Charles of first-degree murder and recommended death after four hours of deliberation. Ziegler had not put forward any mitigating evidence during the trial. Also, Ziegler never appealed Charles case. The Alaska Native Brotherhood petitioned President Franklin Roosevelt to commute Charles' sentence from death to life in prison, but Roosevelt denied the petition and Charles hanged (Lerman, 1996).

Alaska's territorial hanging of Constantine Beaver is one case that attests to the cultural distinction between native peoples' ideas on capital punishment and those of white judges. Beaver was an Alaska Native who had little to no command of English and required a translator. A jury convicted Beaver in 1929 for the shooting death of a friend during a drunken brawl. The judge instructed the jury that it could return a sentence of life imprisonment or, alternatively, it could return a ballot that was silent concerning the sentence if the jury found Beaver guilty. The jury returned a guilty verdict but remained silent regarding the penalty. The judge sentenced Beaver to death. Shortly after the trial, three jurors filed statements disapproving of the judge's sentence. These jurors argued they would have sentenced Beaver to life imprisonment if they had known that the silent ballot meant the judge would impose the death penalty. The judge rejected the jurors' statements outright claiming that counsel failed to submit the statements promptly. Beaver sought clemency from President Herbert Hoover to commute his sentence to life imprisonment, but he rejected Beaver's appeal. Authorities in Fairbanks hanged Beaver on December 15, 1929, but the executioner botched the hanging. Reportedly, Beaver literally strangled to death since it took him nine minutes to die (Lerman, 1994).

Federal authorities at the Gila County Jail in Arizona hanged Earl Gardner, a San Carlos Apache, in July 1936 for killing his wife Nancy and infant son Edward. Gardner had previously served prison time for the killing of a fellow tribesman in 1925. Gardner had challenged the government to 'get a good rope and get it over with' when apprehended for killing his family. According to one account, members of his own tribe wanted Gardner executed. Authorities tried, convicted, and sentenced Gardner to death by hanging. In a letter from Jack Lefler, a former reporter for the *Phoenix Gazette*, to historian Douglas D. Martin, Lefler wrote the following account of Gardner's botched execution:

> The hanging of Earl Gardner was a very dramatic story and an exciting one to cover.… He was a juvenile delinquent and mean as hell, especially when loaded with tulapai. Marshal McKinney deputized everybody in sight, including reporters. We strutted the streets of Globe carrying rifles and stacking them in the corner of a bar when we went in for a drink. The gallows was an abandoned rock crusher in a canyon below Coolidge Dam. Earl was brought from the jail at Globe during the night and spent his last hours sitting in a car with the Rev. Uplegger.… I tried to interview them but they wouldn't talk. Reporters, officers and other witnesses lounged around campfires in the sandy bed of a wash through the night. There was quite a bit of boozing and horsing around. Earl went to the gallows without apparent concern and died a ghastly death. I was crouched in a corner of the crusher on a pile of gravel and damn near went through the trap after him. Earl's shoulder struck the side of the trap and broke his fall. He hung at the end of the rope gasping for 25 minutes until Maricopa County Sheriff Lon Jordan, a giant of a man, stepped down through the trap and put his weight on Earl's shoulder to tighten the noose and shut off his breathing. (Martin, 1963; see also *Globe Arizona History*)

Convicted of the murder of John Dearman, Wilie Ross (Boss) Weatherford was the first person (and Indian) hanged in the history of Lamar County, Mississippi. The Supreme Court of Mississippi claimed that Weatherford's murder of Dearman was 'one of the most remarkably cold-blooded assassinations with which this court has ever had to deal' even if the court failed to offer any insight into the facts of the case. Weatherford had a court appointed lawyer because he was too poor to secure private counsel. On appeal, Weatherford's attorney claimed among other points that the Court should find Weatherford's confession inadmissible because it was not freely or voluntarily given since Weatherford 'was in a state of fear and that duress, coercion, implied threats and hope of protection were the dominant elements employed by the officers who hear his confession.' Moreover, Weatherford suffered from a mental condition. The Court found otherwise and Weatherford hanged the day after Christmas in 1932. Strangely enough, the state also prosecuted Mrs Nellie Dearman, the victim's wife, for her husband's murder but the jury returned a not guilty verdict (*Weatherford v. State*, 1932; see also *Weatherford to Hang for Dearman Murder*).

State executions also include North Carolina's asphyxiation of two American natives in June 1943 for aggravated rape. According to court records, Harvey Hunt and Purcell Smith stole a cab in Fayetteville and kidnapped Mrs Eason and Mrs Capell while they walked along a highway to another sister's house. Mrs Capell escaped from Hunt and Purcell who then drove Mrs Eason to a dirt road where Hunt and Purcell took turns raping her at gunpoint. North Carolina executed both defendants on the same day.

Termination (1945–61)

The Second World War had severely depleted domestic treasuries and the national government looked to reducing public expenditures by ending its trust relationship with Indian tribes. The Hoover Commission devised a list of tribes that the government could easily suspend federal services to. Termination, then, refers to several congressional resolutions implementing federal policy in the 1940s to the 1960s changing tribal land ownership, terminating trust relationship between the federal government and Indian tribes, imposing state legislative jurisdiction and judicial authority over tribes,

suspending state tax exemptions, discontinuing social programs to tribes and individual Indians, and terminating tribal sovereignty (Deloria & Lytle, 1983). The federal government left untouched large tribes with which it had treaty obligations, but between 1953 and 1958 the government suspended federal programs such as medical care and education assistance to some 109 native nations including the Menominee in Wisconsin, the Klamath and tribes of western Oregon, the Paiute in southern Utah, and several tribes in California, New York, Arkansas, Alabama, Texas, South Carolina, Nebraska, Michigan, and Florida (Gibson, 1980).

The government touted termination as a means to 'liberate American Indian tribes from federal domination' but it actually used termination to 'do away with tribes and their reservations' (Robbins, 1992, p. 98). Predictably, the consequences of termination for affected tribes were disastrous. One outcome of termination was that the federal government once again seized sacred Indian land. The secretary of the interior at the time authorized the sale of 2.5 million acres of prime Indian land containing minerals, timber, oil, coal, and water sites to private interests. Restrictions were lifted on 1.6 million acres of allotted land and sold to non-Indians. Tribes sold their land largely because the government's termination policies pauperized Indian tribes even further than they were already. Termination tribes suffered severe economic turmoil, they were unable to provide necessary social services to their members, unemployment skyrocketed, and the standard of living among tribal members fell even further among reservation Indians. The national government terminated services to the Seminoles in Florida 'even though only one-fifth of the tribe spoke English and most of them were so poor they didn't own a pair shoes' (cited in Gibson, 1980, p. 551).

During the period of termination and federal oversight of the welfare of American Indians that created wholesale chaos and destitution among severed tribes, death penalty states executed nine American Indian prisoners. Predictably, these executions took place in many of the same states where the effects of the national government's termination policies were the most disastrous. The period opens with Washington's hanging of Joe Bill in September 1945 for rape–murder. Oklahoma put Mose Johnson to death by electrocution in November 1946 for the December 1943 killing of Sergeant Pat Riley at the Oklahoma State Reformatory at McAlester. Apparently, an inmate named Smalley reported to Sergeant Riley that Johnson and Stanley Steen had robbed him of a watch and $30. Riley located the two in the boiler room where they both worked. While questioning Johnson and Steen about the robbery, Johnson hit Riley over the head with a claw hammer and Steen stabbed Riley in the face and back. Johnson then struck Smalley with a hammer in the face while Steen stabbed Smalley with an ice pick. Smalley died a short time later. Pittsburg County authorities tried and convicted Johnson for the murder of Riley and Smalley; a jury sentenced Johnson to life imprisonment for the murder of Riley and to death by electrocution for Smalley's killing. Steen committed suicide while in the death cell at the Oklahoma State Penitentiary, awaiting execution (*Mose Johnson v. State*, 1946; see also *Stanley Steen v. State*, 1946).

California put Paul Charles Winton to death by lethal gas in May 1948 for the murder of his wife Esther Lewis Winton (white), his daughter Mary Winton Porter (American Indian), and his son-in-law Clifford Porter (race unknown) in October

1947. Winston was a laborer born on the Del Norte County Indian Reservation. Winton had previously spent time in San Quentin Penitentiary for sexually assaulting his 13-year-old daughter Cecelia. Prison officials paroled Winton in 1935, he returned to prison in 1936, and authorities eventually released him in 1943 when he returned to live with his wife. A few years later, Winton's daughter Mary, her husband, and two small children moved into the small house. Winton found the living arrangements troubling and in time, the others drove him from the house. It is at that time that Winton killed the three with a deer rifle. After pleading insanity, court officials sent Winton to the Mendocino State Hospital where mental health professionals deemed him sane. Winton changed his plea to guilty on three capital murder charges and the court sentenced him to death. Winton essentially volunteered for state execution since he did not pursue automatic appeals and 'consistently expressed his willingness to face his penalty' (O'Hare et al., 2006, pp. 455–456).

California also executed Eugene Augustine Morlock for rape–murder on the Rincon Indian Reservation near San Diego. Apparently, Morlock had gotten into a drunken brawl with his wife, relatives, and friends and ending up killing his wife striking her with a fence post. As she lay unconscious, Morlock and a friend of his both raped Morlock's wife who died shortly afterwards. Morlock had a very troubled past before this event including several arrests for burglary and public drunkenness and a dishonorable discharge from the military. He had also served time in prison in Arizona. Morlock had undergone a psychiatric evaluation after the murders and found borderline mentally defective although sane. California convicted Morlock of the killings and put him to death by lethal gas in June 1956 (O'Hare et al., 2006, p. 518).

Nebraska executed Timothy Iron Bear, a Lakota Indian, in December 1948 for murdering a ranch woman who lived near Rushville (*Bear v. Jones*, 1948). Tennessee executed Leander Jacobs and Hector Chavis on the same day in December 1949 for the robbery and brutal murder of Martin L. Blackwell, a 79-year-old store owner (*State v. Chavis*, 1949). New York put to death Harley Lamarr for kidnapping–murder–robbery of prominent socialite Marion Little Frisbee in January 1951 (Falk, 1990). Arkansas executed Bill Jenkins for murder in May 1954.

Self-Determination (1961–Present)

By the 1960s, the national government's policies of *termination* and *assimilation* of American Indians had failed (Canby, 2004). The federal policy now is to recognize and encourage tribal governments as autonomous, sovereign nations with the legal authority and responsibility for their own people and land (Ruralfacts, 2006). Self-determination suggests, however, that social justice at last has prevailed for American Indians. But in its long history of contact with Americans natives, the national government is still failing to assure *fairness* and *equity* in wealth holdings among American Indians and Alaska Natives or even to satisfy their most basic and urgent human needs by adequately funding federal programs designed to enfranchise American natives (Heffernan & Kleinig, 2000). A recent US Commission on Civil Rights (2003) report offers considerable evidence that a *crisis* remains in the persistence and growth of unmet health care,

education, public safety, housing, and rural development needs among American Indian tribes. In this regard, the federal government continues its colonialization of American natives through self-determination policies by precluding equal access to the educational, economic, and political institutions though participation in these institutions is indispensable to Indians gaining social parity with European whites.

Today, American Indians are the most economically disadvantaged group in the USA. The socioeconomic indicators of American Indians and Alaska Natives reveal that Indian populations remain deprived of access to adequate social services. Native populations are disproportionately poor and live in squalor conditions compared to non-Indians. The poverty rate for Indian populations is *more than double* the poverty rate for the overall US population. One-fifth of all native households on reservations and federal trust lands lack complete indoor plumbing including hot and cold-piped water, a flush toilet, and a bathtub or shower. Abysmal living conditions are particularly onerous among the Navajo where roughly 60% live without complete indoor plumbing facilities (US Department of Commerce, 1995). About 1 in 5 American Indian reservation households dispose of sewage by means other than public sewer, septic tanks, or cesspools, such as outhouses, chemical toilets, and other types of facilities for sewage disposal. Although most Indian households obtain water through public systems, private companies, or individual wells, many American Indian households on reservations obtain water through less desirable sources. What is more, roughly 25% of Indian households on reservations live in crowded conditions; more than half of all Indian reservation households do not have telephones; 18% lack complete kitchen facilities; and 23% are without a motor vehicle. Nearly one-third of Indian reservation households still use wood to heat their homes (US Department of Commerce, 1994).

The continued marginalization of American Indians and Alaska Natives is not limited to the dire conditions of reservation life. Twenty-one percent of urban Indian households are female-headed compared to 21% of non-Indian families; married-couple families are 45% of Indian families compared to 53% in the general population (Ogunwole, 2006). Dramatically low levels of educational attainment among American natives are directly related to the deprived living conditions of American Indians and Alaska Natives. As a result, not only do Indians participate less in the labor force but they are also adversely situated in the US labor force when compared to non-Indian populations; Indians comprise much larger proportions of American workers than non-Indians employed in service occupations, farming, forestry, and fishing jobs, precision production, craft, and repair occupations, and as operators, fabricators, and laborers. Together with lower occupational participation, lower educational attainment levels mean that Indians have much lower incomes than non-Indians. American Indian males earn about 76% of non-Indian males and Indian females earn about 84% of non-Indian females. As a result, over half of all Indian female-headed householder families live below the poverty level; Indians are twice as likely as non-Indians not to own homes; and American natives are twice as likely as the general population to be without health insurance coverage (NeNavas-Walt, Proctor, & Lee, 2005). A result of limited access to health and medical care is that the Indian mortality rate is considerably higher for Indians than for non-Indians.

Increasing populations and continued social, political, and economic marginalization put American natives at substantial risk of contact with the racially oppressive US justice system. The ruinous consequences for American Indians of an oppressive justice system are not limited to the country's historical past. The National Minority Advisory Council on Criminal Justice (1982) pointed out more than 20 years ago that '[t]he discriminatory law enforcement experienced by American Indians is perpetuated in the U.S. judicial system where it assumes the more subtle form of institutionalized discrimination and racism' (p. 137). The racial chauvinism of criminal justice agents continues to oppress and marginalize American natives (Snyder-Joy, 1995). To one commentator, the socioeconomic deprivation suffered by Indians results 'in feelings of helplessness, powerlessness, and despair' and unquestionably 'these feelings may result in increased violence [and] criminal activity' among American Indians (ibid., p. 318).

Recent compilations of official criminal justice data on the effects and consequences of crime on American natives give scholars an insight into the continued victimization of Indians by the US justice system (Perry, 2004). National arrest figures reveal that American natives suffer disproportionate arrests for such minor public offenses as *drunken driving*, *liquor law violations*, and *public drunkenness*. One would expect overrepresentation of American Indian arrests for these types of offenses given the deplorable social conditions under which significant proportions of American natives live out their lives. Law enforcement agents arrest American Indians and Alaska Natives at nearly *twice* the rate as that of the greater US population for violent and property crimes (Peak & Spencer, 1987; Minton, 2005). Besides disparate arrests, studies have found that American natives receive harsher treatment in the criminal justice system for particular types of crimes compared to non-Indians. One study reveals that American Indians receive much longer sentences than non-Indians for burglary and robbery than for homicide, sexual assault, and assault (Alvarez & Bachman, 2005). Not only do state and federal courts sentence Indians to longer prison terms than non-Indians, but Indians serve more of their sentences than do non-Indians (Snyder-Joy, 1995).

At midyear 2003 (the latest figures available), local, federal, state, and tribal authorities held 53,329 American Indians and Alaska Natives in custody or under community supervision (Minton, 2005). Of the 23,624 Indians in custody, officials held four times as many Indians in local jails (7,200) than in jails under tribal jurisdiction (1,826). Of the 29,705 Indians under community supervision of state and federal authorities, 24,464 are on probation and 5,159 are on parole. These figures mean that American natives are 0.6% of the 3.3 million adults on probation and roughly 0.6% of the 765,000 adults on parole in the USA—1.4% are federal parolees and 0.5% are state parolees (Harrison & Beck, 2006). These figures further indicate that American Indian prisoners are underrepresented in their ability to take advantage of correctional strategies designed to integrate prisoners back into their respective communities. Corrections data also show that prisons in Oklahoma, Alaska, and California hold slightly more than *one-third* of the entire American Indian prison population. The incarceration rate of American Indians and Alaska Natives is *19% higher* than the national rate. The US Commission on Civil Rights (2003) attributes higher rates of incarceration among

American Indians to differential treatment by the criminal justice system, lack of access to adequate counsel, and racial profiling (see also Hensen & Taylor, 2002). One outcome of such maltreatment by criminal justice agents is a higher suicide rate among American native inmates incarcerated in jails than non-Indian inmates (Severson & Duclos, 2005).

What's more, correctional authorities subject American Indian prisoners to abuse and are particularly callous when American Indians attempt to identify with their native cultures by 'wearing head-bands, using native languages, maintaining long, braided hair, enjoying native music, or securing cultural-related leisure and educational materials' (Mann, 1993, p. 235). Prison authorities often prescribe mind-altering drugs as a means to control American Indian prisoners. In one case, Oregon prison authorities denied an Indian female inmate suffering from depression a Paiute spiritual leader and instead gave her Prozac and sent her back to isolation (Ross, 1998). Because of the animus that prison officials hold toward American Indian female prisoners, 6 out of 11 inmates housed in maximum security in Minnesota are native women (Ross, 1998). What is more, the substantial increase in the female prison population over the last several decades has given rise to an increase in the risk of sexual assault of native female inmates by male corrections officers (Rafter, 1990; Ross, 1998).

American native crime victimization rate is *twice* that of non-Indians—2.5 times the victimization rate of whites, 2.0 times the rate for blacks, and 4.6 times the rate for Asian Americans. It is also significant that mostly whites victimize American natives (Perry, 2004). National crime victimization surveys reveal that whites perpetrate 57% of the violent crimes committed against American Indians. Whites also commit nearly 80% of the rape and sexual assaults committed against them, 57% of the robberies, 58% of the aggravated assaults, and 55% of the simple assaults perpetrated against American Indians (Perry, 2004). As noted, many scholars consider the prevalence of white rape on American Indian women an ongoing proliferation of the colonialism suffered by indigenous people historically in this country (Smith & Ross, 2004). One scholar contends that the most striking theme emerging from white ethnoviolence toward American Indians living near or in reservations is its *normativity* (Perry, 2008).

Thirty-nine American Indian prisoners reside on state and federal death rows in the USA; comprising 1.1% of the country's entire death row population (Fins, 2006). Seven states and the federal government hold condemned Indian prisoners. Since 1961, state jurisdictions have executed 15 American Indian prisoners with authorities executing 13 Indian prisoners for killing whites and 2 Indian prisoners for killing other Indians. Yet, between 1976 and 1999, whites killed 32% of the 2,469 American Indians murdered and American Indians killed 1% of the 164,377 whites murdered. These figures reveal that whites murdered 790 American Indians while American Indians murdered 1,644 whites (Perry, 2004). This means that American Indians are slightly more than *twice* as likely to murder whites as are whites to murder American Indians. Since no jurisdiction has executed a white defendant for killing an American Indian, American Indians are *13 times* more likely to suffer execution for killing whites than whites are for killing American Indians (Fins, 2006).

The relatively small number of American Indian executions during this period is partially the result of capital punishment undergoing constitutional challenges from the early 1970s to the late 1980s. In 1972, the US Supreme Court held in *Furman v. Georgia* that the imposition of capital punishment as then administered contravened constitutional protections against cruel and unusual punishment because the punishment was arbitrary and capricious in its application. The Court found defective the death penalty statutes of 40 states, the District of Columbia, and the federal government. The result of *Furman* was a 10-year moratorium on the death penalty throughout the USA. No state or federal jurisdiction conducted any executions between June 1967 and January 1977. The Court relied upon long-standing empirical findings that capital punishment jurisdictions had applied the death penalty in a discretionary and discriminatory manner. Many in the academic and judicial community believed that the Court had 'sounded the constitutional death knell' for capital punishment in the USA. But in 1976, in *Gregg v. Georgia*, the Court found capital punishment constitutionally permissible so long as death penalty statutes provided procedural safeguards to guide the discretion of the sentencer. Yet, the essence of the Court's 1987 holding in *McCleskey v. Kemp* is that there are acceptable standards of risk of racial discrimination in imposing the death penalty. Accordingly, empirical studies simply showing that a discrepancy appears to correlate with race in imposing death sentences do not prove that race enters into any capital sentencing decisions or that race is a factor in the petitioner's case. As Stevenson and Friedman (1994) point out about the *McCleskey* decision:

> It is unimaginable that the U.S. Supreme Court, an institution vested with the responsibility to achieve equal justice under the law for all Americans, could issue an opinion that accepted the inevitability of racial bias in an area as serious and final as capital punishment. However, it is precisely this acceptance of bias and the tolerance of racial discrimination that has come to define America's criminal justice system. (p. 510)

The trend in American Indian executions during the present historical period of self-determination shows a significant increase in Indian executions during the 1990s. The 15 American Indian executions since 1973, in many cases, accent the problems endemic to contemporary capital punishment schemes—increasing rates of voluntary executions, botched executions, racist prosecutorial discretion, and ineffective capital defense counsel. In these cases, all the victims were white and the American Indian defendants largely suffered from severe alcoholism, drug abuse, and mental illness. In most cases, defendants came from predictable backgrounds of abject poverty, alcoholic and abusive parents, and violent family histories.

James Allen Red Dog

In March 1993, Delaware's execution of James Allen Red Dog for murder became the first American Indian prisoner executed in the USA since 1976. James Allen Red Dog was a Sioux Indian of the Lakota tribe in Montana. A review of Red Dog's death sentence appeal to the Delaware Supreme Court reveals that his parents raised him in abject poverty on the Fort Peck Sioux Indian Reservation (*James A. Red Dog v. State of*

Delaware, 1992). His father was a heavy drinker who supported his family through gambling, and his mother was a prostitute who also drank alcohol heavily. He had two half-brothers and eight sisters. Red Dog began drinking at a very young age, and the record indicates that as Red Dog grew older he became increasingly aware of his tribal heritage and the 'circumstances surrounding the emasculation and decimation of a once proud Indian nation.' Red Dog developed a personality disorder due to the circumstances surrounding his early childhood.

Prosecutors established during Red Dog's penalty hearing that Montana had convicted him as early as 1973 for the robbery of a pizza parlor in which an accomplice shot and killed the proprietor, William Veseth. Red Dog had turned state's evidence and testified that it was his accomplice that actually fired the gun that killed Veseth. A jury acquitted Red Dog of murder but convicted him of armed robbery. Four years later, Red Dog escaped from the Montana correctional facility, and while serving his sentence for armed robbery, he and an accomplice kidnapped and stabbed to death Levi Aragon and Moses John. Red Dog participated in still another murder of Joseph Ortega while incarcerated at a federal maximum-security prison in Illinois in 1983. Because he provided authorities with information about the murder, the government did not prosecute Red Dog for his role in the crime.

In February 1991, authorities charged Red Dog with the murder of 39-year-old Hugh Pennington (white) and the kidnapping and rape of Pennington's mother. The Pennington's were neighbors and friends of Red Dog's wife, Bonnie Red Dog. After a night of heavy drinking, Red Dog allegedly forced Hugh Pennington into a basement workshop where he bound Pennington's hands and feet with duct tape and electrical cord and cut his throat repeatedly with a knife, nearly decapitating him. Delaware authorities executed Red Dog by lethal injection at the State Correctional Center in Smyrna. Red Dog received final rites from John H. Morsette, a tribal spiritual leader before his execution.

Red Dog's execution was controversial because he not only volunteered for execution, but he was in a federal witness protection program after testifying in 1988 about prison gangs and the American Indian Movement when he killed Pennington and kidnapped and raped Pennington's mother. He repeatedly had said since his sentencing that he wanted to die, and his family had supported his decision. Because of Red Dog's crimes, Senator Joseph R. Biden introduced legislation requiring federal officials to notify states when they place dangerous criminals in their jurisdictions.

Emmett C. Nave

Nave was on parole from the Missouri State Penitentiary after serving 25 years for a 1965 conviction in an unrelated rape case and armed robbery. While on parole in Jefferson City, Nave was convicted of driving while intoxicated and refused to follow treatment for alcohol dependency and was told by his parole officer that she would have to recommend that the court revoke his parole. The next day, November 19, 1983, Nave went on a rampage, killing his white landlady, Geneva Roling, and kidnapping four other women from a Jefferson City hospital's detoxification unit. Nave had

confronted Roling earlier about parking problems, lack of heat in his apartment, and problems with his mail delivery. After killing Roling, Nave ordered his wife to drive him to a hospital where, armed with a rifle, he demanded a shot of Demerol, a pain-killer. After getting an injection, he took four women employees hostage and ordered his wife to drive them to one of the hostage's homes, where he sexually assaulted them. Authorities apprehended Nave after one of the hospital employees injected him with a sufficiently large dose of Demerol to cause him to pass out (Farrow, 1993).

In June of 1984, a Cole County jury convicted Nave of one count of capital murder, one count of first-degree robbery, three counts of sodomy, and four counts of kidnapping. The trial court sentenced Nave to death for the capital murder of Roling, to life imprisonment for the robbery, to life imprisonment without the possibility of parole for 30 years on each sodomy charge, and to 30 years' imprisonment on each kidnapping charge. On appeal to the US Court of Appeals for the Eighth Circuit, Nave's lawyers challenged his conviction based on ineffective assistance of counsel. Accordingly, Nave claimed that his trial lawyer failed to request a severance of the counts; failed to secure or present evidence of Nave's long history of substance and alcohol abuse and his lack of intent to commit the crimes with which he was charged; failed to perform an adequate voir dire; failed to advise Nave that, under the then-existing Missouri marital privilege, he could bar his wife from testifying against him; failed to present evidence of Nave's prior substance and alcohol abuse at the penalty phase of the trial; failed to object to evidence about the impact of Nave's crimes on the victims; failed to object to the prosecutor's comments regarding the possibility of parole; failed to interview or prepare one of the defense witnesses before calling him to the stand to testify; and failed to present an adequate closing argument at the end of the penalty phase. The Court of Appeals found that the district court erroneously granted Nave's petition for habeas corpus because seven of the claims were procedurally barred and the remaining three claims lack merit (*Nave v. Delo*, 1994, p. 1029). Missouri executed 55-year-old Emmett C. Nave by lethal injection in July 1996 at the Potosi Correctional Center.

Scott Dawn Carpenter

Oklahoma executed 22-year-old Scott Dawn Carpenter by lethal injection for murder in May 1997. Carpenter has the dubious distinction of being the youngest prisoner executed in Oklahoma since the state restored the death penalty in 1977. Carpenter had admitted to killing 56-year-old A. J. Kelley (white) in 1994 in McIntosh County. In early February 1994, Carpenter went to Kelley's grocery store, filled his pickup truck with gasoline, and told Kelley he wanted to buy some minnows. The men went to the back of the store where Kelley kept a minnow tank and where Carpenter stabbed Kelley in the neck. No money was missing from the store's cash register but the gas pump indicated it had dispensed $37 in gasoline. Witnesses saw Carpenter leave the store and reported his vehicle license plate to authorities, who arrested him the same day.

Review of Carpenter's case by the Court of Criminal Appeals of Oklahoma revealed that he had voluntarily forfeited his rights to appeal and in a five-hour hearing, Carpenter

convinced a district judge that he wanted Oklahoma to execute him and that he was competent to make that decision. Evidence shows, however, that Carpenter suffered a brain injury since he was a six-year-old child when a nail struck his right temporal lobe that became infected and resulted in meningitis. From that time until just two months before the murder, Carpenter suffered four other head injuries. Other evidence shows that Carpenter was quiet, easygoing, respectful, cooperative, non-aggressive, pleasant, polite, a good student, and nonviolent. He had no prior arrests or convictions, and regularly attended church with his family. Teachers and fellow students expressed disbelief about Carpenter's crime. Despite these claims, the appeals court found no reason to upset the trial court's findings and affirmed the judgment and sentence (*Carpenter v. Oklahoma*, 1996).

At Carpenter's lethal injection execution, one observer explained that as the drugs took effect, Carpenter began to gasp and shake: 'This was followed by a guttural sound, multiple spasms and gasping for air until his body stopped moving, three minutes later' (Overall & Smith, 1997; Thornburgh, 2006). It took Carpenter 11 minutes to die after injection of the lethal cocktail (Radelet, 2006). Carpenter's execution is controversial because it constitutes a voluntary execution and a severely botched execution. Before his fatal injection, Carpenter apologized in a letter to the victim's family and left a statement saying, 'I tell the young and old do not stray onto the wrong path in life as I did' (*The Atlanta Journal-Constitution*, 1997).

Robert Wallace West, Jr.

Texas executed 35-year-old Robert Wallace West, Jr., for the confessed beating and stabbing to death of Deanna Klaus (white) in a Houston hotel in the course of committing or attempting to commit burglary of her motel room. Klaus lived alone in room 312 at the Memorial Park Hotel and worked as a waitress at the motel's restaurant. Shortly after midnight on August 24, 1982, Vickie Stolz and two other residents of the motel were sitting in the motel's breezeway and heard a commotion coming from Klaus's motel room. A few minutes later, West was observed exiting; he walked within four to six feet of Stolz and her companions, then turned and walked up a flight of the motel's stairs; the blue jeans he was wearing appeared to be soaked with blood. Stolz and her companions then looked into room 312, which was in total disarray, and observed the nude body of Deanna Klaus, bloody and bound, lying face down on the bed. Police arrested West later that evening. On appeal to the US Court of Appeals for the Fifth Circuit, West asserted that the court should overrule the District Court's findings based upon ineffective assistance of counsel, *Brady* violations by the prosecution, involuntary confession, and that he had been denied an evidentiary hearing. The Court rejected West's claims and Texas executed him by lethal injection in July 1997 (*West v. Johnson*, 1996).

Daniel Eugene Remeta

Although Remeta was 28 years old when a Florida jury found him guilty of first-degree murder and recommended the trial judge sentence him to death, Remeta had the mental functioning of a 13-year-old child. He was one-quarter Indian and was born

into an impoverished household with a gross annual income of $2,100. Remeta's family lived in a shack-like house in rural Kansas with no running water and broken fixtures. Both of his parents were alcoholics and neglected their children who they let run wild. Remeta's mother drank two-fifths of vodka every day. His father and other extended family members were exceedingly abusive toward Remeta and a younger brother: 'Daniels uncles, while intoxicated, used to come to the Remeta home in the middle of the night, awaken Daniel and his brother and make them fight, often with weapons; the uncles would bet on the outcome' (Henderson, 1989, p. 3). Remeta had been in trouble with the authorities since the age of 13 when he stole bicycles and fishing poles for his younger brothers and officials sent him to a boy reformatory school. Since then, Remeta spent only six months of his life outside a state correctional facility. He became a chronic alcoholic and severe drug abuser.

Police arrested Remeta in Colby, Kansas, on February 13, 1985, following a shootout with local authorities and charged him and a codefendant with the murder of Linda Marvin; Remeta was convicted of capital felony murder and sentenced to death. Within six days, fueled by drugs and alcohol, Remeta had terrorized and gunned down another woman in Arkansas, three men in Kansas, and wounded three others and then boasted about it. Remeta's three-state crime spree began in January 1985 when he left Traverse City, Michigan, with two others, his 18-year-old girlfriend, Lisa Dunn, and Mark Walter. The trio first held up a Michigan convenience store for $275 and then headed south. In early February in Ocala, Florida, Remeta killed Mehrel Reeder and then headed to Waskom, Texas, where the three kidnapped a gas station attendant, Camilla Carroll, took her to some nearby woods and shot her five times. She survived and made her way to authorities. The next day, the three robbed a grocery story in Dyer, Arkansas, for $556 and shot the attendant, Linda Marvin 11 times. Five days later in Kansas, they killed Larry McFarland, a restaurant manager. They then shot and wounded Maurice Christie, manager of the Bartlett & Co. Grain Elevator, and kidnapped two employees, Rick Schroeder and Glen Moore, who Remeta shot in the head leaving them on a dirt road. The violence ended in a gun battle with police in a farmhouse in Atwood, Kansas. Walter was killed in the shootout. Dunn was acquitted of four life sentences and freed. Remeta had the mental age of a child; he ordered snow cones for his final meal. On March 31, 1998, Florida executed 40-year-old Daniel Remeta by electrocution for shooting to death of a white clerk at a convenience store and gas station in February 1985 in Ocala. Authorities executed Remeta using the same electric chair that only months earlier caused flames to shoot out around the head of Pedro Medina as he was put to death and smoke to rise from an electrode attached to Judi Buenoano's leg (also known as the 'Black Widow'). After his electrocution, Remeta was buried in a Native American ceremony in North Florida (Hauserman, 1998; *Remeta v. State*, 1989; *Washington Post*, 1998).

John Walter Castro

Oklahoma executed 37-year-old John W. Castro by lethal injection on January 7, 1999, for the 1983 shooting to death of Beulah Grace Sissons Cox (white) near Stillwater.

Castro also stabbed to death Rhonda Pappan (white) while robbing the restaurant she owned in Ponca City. In June 1983, Castro entered Hobo-T's restaurant in Ponca City, Oklahoma. He purchased a soft drink, played a video game, and spoke with the employee-manager Rhonda Pappan. Later that same afternoon, Castro returned to the restaurant asking her if they needed any help working in the restaurant. When she turned around to retrieve a job application, Castro pulled an unloaded .25 pistol from his pocket and demanded she open the cash register. While Castro rummaged through the cash register, Pappan pulled a knife on Castro and they struggled wherein Castro stabbed Pappan multiple times killing her. Police apprehended Castro at his home, and after consenting to a search, police found a .25 pistol, bloody clothing, and other evidence of the crime. Castro confessed to Pappan's murder. Authorities convicted Castro of first-degree felony murder and the trial judge sentenced him to death.

While Castro awaited trial on the Pappan killing in the Kay County jail, he told jail inmate Steven Wayne Gregory about a killing he committed in Stillwater. Castro made a map showing the location of the body of Beulah Grace Cox. Hoping to receive a deal from the District Attorney's office, Gregory told an investigator about the map. Gregory lead officers to the area mapped out by Castro and found the skeletal remains of Beulah Grace Cox. When confronted about the killing, Castro admitted several times to different people that he killed Cox. Apparently, Castro killed Cox after she gave him a ride from a bus stop but angered him while they were driving. Castro took the woman into the woods and shot her in the head several times. Castro's conviction for Pappan's murder was later overturned, and he was actually executed for killing Cox, whose car he had stolen at gunpoint and then shot in the head several times. Castro's execution was also botched. With his words, 'Let's do it,' the lethal injection began. Several minutes later, Castro's eyelids fluttered and he said, 'I can feel it,' as the lethal chemicals coursed through his veins. This means that Castro felt the pain associated with lethal chemicals; and is exactly why the method of execution is under investigation in several states (*Castro v. Oklahoma*, 1995; Yates, 1998).

Darrick Leonard Gerlaugh

In January 1980, Darrick Leonard Gerlaugh, Josephe Encinas, and Matthew Leisure hitchhiked from Chandler to Phoenix in Arizona after drinking Jack Daniels whiskey at the residence of Shirley Jones in Mesa. They planned to rob whoever stopped and offered them a ride. Scott Schwartz, who had a leg injury, wore a brace, and used crutches, offered the three a ride. At gunpoint, the three ordered Schwartz to drive to a deserted location on the outskirts of Mesa. Gerlaugh had Encinas and Leisure hold Schwartz on the road while he drove the car over him several times. Gerlaugh positioned the left rear tire on Schwartz's body and revved the engine so the spinning wheel would kill him. Still alive, Gerlaugh and Leisure stabbed Schwartz 30–40 times in the head, neck, and shoulders with a screwdriver. They left Schwartz's body in a field, robbed him of $36, and left in his car. Juries convicted Gerlaugh and Encinas of Schwartz's murder in a joint trial and the court sentenced Gerlaugh to death while Encinas received a life sentence. Leisure pleaded guilty to first-degree murder and received a life sentence. On

appeal to the US District Court for the District of Arizona, Gerlaugh's attorneys raised 50 issues relating to the guilt phase of his trial, post-conviction relief proceedings, and challenges to his death sentence, none of which the Court accepted as legitimate legal claims and affirmed the conviction and death penalty. On February 3, 1999, Arizona executed 38-year-old Gerlaugh by lethal injection for his participation in the kidnapping, robbery, and murder of Schwartz (white) (*Gerlaugh v. Lewis*, 1995; *Gerlaugh v. Stewart*, 1997; *State v. Gerlaugh*, 1982, 1983, 1985).

Domingo Cantu

Texas executed Domingo Cantu by lethal injection on October 28, 1999. Cantu had a violent history; his trial revealed that police had tied Cantu to thefts in school beginning at age 12 and he had been arrested as a young teenager for taking money from vending machines. Cantu had convictions for burglary by his mid-teens and spent two years in prison for probation violations. At 20 years old he raped and fatally beat 94-year-old Suda Eller Jones at her Oak Cliff home where she had lived since 1928. Reportedly, Cantu grabbed Jones in the front yard of her home while she watered her flowers and dragged her across her patio into the back yard. He hauled the 97-pound woman over a chain link fence and beat, raped, and sodomized her. Cantu inflicted extensive injuries to Jones including eight fractured ribs, penetration of the victim's vagina with a large piece of wire causing severe lacerations, and repeated slamming of her head into the pavement. Police arrested Cantu moments after the crime and found him covered with blood and feces and wreaked of alcohol. Expert psychiatric testimony characterized Cantu as having an antisocial personality and would constitute a continuing threat to society. At trial, one witness claimed that hours before his killing of Ms Jones, Cantu had assaulted her at a bus stop and tried to pull down her pants. Cantu testified that the night before killing her he had injected cocaine more than 10 times. Other evidence showed that Cantu's personality was drastically altered from sniffing paint and other inhalants since the age 13 or 14.

Cantu was half-Hispanic and half-Apache who called himself 'an American Indian warrior held hostage in my homeland' and claimed that he would not 'lay down systematically for this barbarity and madness called justice.' Despite the rhetoric, lawyers successfully petitioned for DNA analysis of the clothes Cantu wore the day of the Jones killing. The tests showed conclusively that Cantu was the murderer despite his claims of innocence. At his execution, Cantu spoke German, Spanish, and English in his final statement. On appeal to the Court of Criminal Appeals of Texas, Cantu raised 34 points of trial error. All of them were dismissed and the conviction and execution were affirmed. The US Supreme Court also rejected Cantu's claims (*Cantu v. State*, 1992; Graczyk, 1999a, 1999b).

Darrell 'Young Elk' Rich

California executed Darrell 'Young Elk' Rich (Cherokee) by lethal injection at San Quentin State Prison on March 15, 2000 for the 1981 first-degree murders of three white women and a young white girl; 19-year-old Annette Fay Edwards, 17-year-old

Patricia Ann Moore, 26-year-old Linda Diane Slavic, and 11-year-old Annette Lynn Salix in a savage, summer-long rampage that terrorized rural Shasta County. After raping and beating young Annette, Rich flung her while still alive from a 105-foot bridge where she lived long enough to curl into a fetal position in the muddy gravel before she died. Rich was also convicted of 15 other counts of rape, sodomy, and kidnapping. Rich had a history of violence and heavy drinking since he was 17 years old. Rich embraced his American Indian ancestry and adopted the name 'Young Elk.' He wore a ritual white feather with black edges draped on his chest. He spent his final day visiting with relatives and Leonard Williams and Henry Adams, his American Indian spiritual advisers. San Quentin officials refused to allow Rich into a sweat lodge located in the prison's exercise yard fearing it would pose a security risk since it takes several hours to conduct and requires the use of hot rocks and a shovel. Predictably, California Deputy Attorney General Carlos Martinez referred to the ceremonial cleansing in the sweat lodge a ruse (O'Hare et al., 2006, pp. 586–587; *People v. Rich*, 1988).

James Glenn Robedeaux

Oklahoma Department of Corrections put James Robedeaux to death by lethal injection on June 6, 2000, for the slaying of his girlfriend Nancy Rose Lee McKinney (white) in September 1985. In November 1978, Robedeaux pleaded guilty to strangling to death his first wife, Linda Sue Robedeaux, in March of that year. A court convicted him of second-degree murder and sentenced him to 25 years in prison with 15 years suspended. In February 1983, Robedeaux received an additional year in prison for escaping when he failed to return to Oklahoma City Community Treatment Center on July 27, 1982 and released in September 1984. In November 1985, police charged Robedeaux with attempting to kill his second wife, Doris M. Robedeaux. Authorities charged Robedeaux with first-degree murder in December 1985 for killing Nancy McKinney alleging that he beat the woman to death in Oklahoma City. Apparently, Robedeaux murdered and dissected McKinney's body after a fight between the two. A maintenance man in the complex where the two shared an apartment called police after noticing bloodstains on the carpet and floor. Police found McKinney's body parts scattered in three counties in central Oklahoma—a left leg, a skull, and an arm. Robedeaux killed McKinney and used a saw and knife or machete to dissect her.

During a preliminary hearing in February 1986, Lisa Gail Austin testified that Robedeaux had told her at a club about Nancy's killing; that he killed her, buried her, and cut her up. When they returned home, Robedeaux was drunk and mad and that he choked Austin and pushed her down some stairs. Police arrested Robedeaux. At his trial for the murder of Nancy, the jury took only 90 minutes to convict Robedeaux. During the punishment phase, after hearing evidence of other attacks on women, including his first wife's murder, the jury recommended the death penalty. A defense psychiatrist testified that he believed Robedeaux did not know what he was doing during the violent attacks because of his alcohol problem that was worsened by diabetes. He said that

when a person with diabetes drinks it causes tremendous problems, and that a person in those circumstances could be in a semi-coma much of the time. The Oklahoma Pardon and Parole Board voted 4–0 to deny a recommendation of clemency (Mullen, 2000; *Robedeaux v. State*, 1993, 1995).

Dion Athanasius Smallwood

Oklahoma executed Dion Smallwood by lethal injection on January 18, 2001 for the murder of 68-year-old Lois Frederick. Smallwood killed Frederick after an argument concerning Frederick's daughter, Terry Jo (white), who was Smallwood's girlfriend. Frederick had disapproved of her daughter's relationship with Smallwood because he was excessively abusive to Terry Jo. On the day of the killing, Smallwood entered Frederick's home where Terry Jo had moved to after leaving Smallwood; he entered the house uninvited looking for Terry Jo. When Frederick tried to call the police, Smallwood beat Frederick in the head with a croquet mallet. After cleaning the house of blood, Smallwood took Frederick's body to her car, drove a few miles away, and then burned her body in the car after dousing it with gasoline. A jury convicted Smallwood of first-degree murder and the trial judge sentenced him to death. At a clemency hearing, a psychologist claimed she had diagnosed Smallwood with a bipolar disorder (manic depression) with deep swings of emotion from depression to a euphoric mania. Smallwood had not been on any psychotropic medications or in any sort of treatment while incarcerated on Oklahoma's death row. 'This psychiatric disturbance when of the severity of that of Dion, disrupts all areas of functioning, relationships, occupational, social, and often requires hospitalization to prevent harm to self or others. Dion never had this necessary treatment.' The psychologist claimed that had he received treatment, 'it is unlikely that his situation would have created the intense symptoms he experienced that culminated in the death of Mrs. Fredericks … [noting that Smallwood] clearly suffers from the additional severe complicating array of problems of his unfortunate life circumstances.' Interestingly, the psychologist found in her practices that as much as 16% of people incarcerated in state prisons have bipolar disorder, and on death row, the number may be as high as 30% while only 1–2% of the general population has bipolar disorder. His childhood was marked by poverty, violence, abuse, deprivation, and parental abandonment. His father (Native American) and mother (Hispanic) suffered from mental problems, and his oldest brother has been diagnosed with paranoid schizophrenia and manic depression. The US Supreme Court rejected Smallwood's application for stay of execution of sentence of death and his petition for a writ of habeas corpus. On appeal, Smallwood raised issues concerning, among others, the peremptory challenge of a black female juror and that police violated his *Miranda* rights. The court held for the conviction and sentence. In his final statement, he said: 'To the victims of this case, if you didn't hear me before, hear me now. I'm sorry. This [execution] doesn't change anything. It just creates more victims. I am truly sorry' (*In Re Dion Smallwood*, 2001; see also Amnesty International, 2000, 2001; *Associated Press*, 2000; *Smallwood v. Gibson*, 1999; *Smallwood v. State*, 1995, 1997).

Terrance James

Mark Allen Berry was strangled to death around 4:30 a.m. on February 6, 1983, in the Muskogee City-Federal Jail. Federal authorities had arrested Terrance James, Mark Allen Berry, and Dennis Brown for theft of government property and incarcerated them in the Muskogee City-Federal Jail. Brown and James believed that Berry was responsible for their arrest. On February 5, 1983, co-defendant Sammy VanWoundenberg joined a discussion between the two about Berry. VanWoundenberg apparently urged them to strangle Berry and hang him to make the death appear to be a suicide. VanWoundenberg provided a wire from a broom and demonstrated how to use it to strangle Berry. The next morning, Brown got Berry to play cards with him, and when they were playing, James walked up behind Berry, wrapped the wire around his neck, and strangled him while Brown held Berry's feet and placed his hand over his mouth. VanWoundenberg warned James and Brown that someone was coming, so they pulled Berry into that inmate's cell and continued the strangulation. After Berry appeared to be dead, appellant, Brown and VanWoundenberg hung Berry's body in a shower stall. Oklahoma authorities executed Terrance James by lethal injection for murder in May 2001 (*James v. State*, 1987).

Jerald Wayne Harjo

An Oklahoma jury convicted Jerald Wayne Harjo (a Seminole Indian) of first-degree murder for the strangulation killing of 64-year-old Ruth Porter, an elementary school secretary and acquaintance of the defendants. On an evening in January 1988, Harjo had been drinking heavily when he entered Ms Porter's bedroom to search for the keys to her car. Ms Porter awoke suddenly as Harjo entered her bedroom, startling the defendant who struggled with Harjo, put a pillow over her face, strangled her with his hands, and allegedly burned her pubic hair with a cigarette lighter. Investigators believe that Harjo raped Porter but this assertion never came forward at the trial. After killing Ms Porter, petitioner took the keys to her Mustang and drove it to his brother's home. Harjo confessed to murder after two hours of questioning during his trial, wrote a letter of remorse to the jury although the trial court disallowed the statement.

There was considerable evidence that the 'torture' of Porter was not in keeping with Harjo's personality, but the trial court did not allow to admit much of the mitigating evidence and therefore could not provide jurors with a better perspective on Harjo's character and history. Harjo's attorneys believed that if the court had allowed the mitigating evidence the jury would not have sentenced Harjo to death. Evidence showed that Harjo was a good employee, was honorably discharged from the National Guard, and proved himself an excellent prisoner in the county jail. Harjo had a low IQ and found it difficult to verbalize his feelings. There is a history of alcohol addition in the Harjo family and Jerald himself suffered from fetal alcohol syndrome.

Henry Lee Hunt

North Carolina authorities executed Henry Lee Hunt, a Lumbee Indian, by lethal injection on September 12, 2003 for the 1984 murders of Jackie Ransom and Larry Jones;

murders he most likely did not commit. A Robeson County Superior Court jury convicted Hunt of the 1984 slaying of Jackie Ransom for $2,000 at the direction of Ransom's wife, Dottie Ransom, who planned to cash in her husband's $25,000 insurance policy. Shortly thereafter, Hunt killed police informant Larry Jones who informed the police about Ransom's killing. Elwell Barnes, also convicted of the murders, died of natural causes in prison in 2001. Barnes' brother, A. R. Barnes, pleaded guilty to a lesser charge of conspiracy and served seven years and eight months in prison. Dottie Ransom pleaded guilty to conspiracy. She was married to Jackie Ransom and Rogers Locklear at the same time. Rogers Locklear also pleaded guilty to conspiracy. Dottie Ransom is the only person involved in the case that remains alive.

Hunt's legal team claims that North Carolina officials have been unable or unwilling to explain many of the facts surrounding Hunt's case—that Hunt passed two polygraph examinations regarding the murders; that his co-conspirator, Elwell Barnes, offered an affidavit that he, his brother A. R. Barnes, and others committed both murders and that Hunt had nothing to do with either murder; that the State Bureau of Investigation and the Lumberton Police Department destroyed case records that may well have backed Hunt's claim of innocence; that prosecutors withheld crucial information from the defense at trial that would have seriously challenged the credibility of the state's case against Hunt; that the state refused to turn over all of the evidence in its possession despite repeated requests and a Superior Court order compelling the State to produce the materials; that the state relied upon falsified evidence by Jerome Ratley who admittedly participated in the murder of Larry Jones, but who prosecutors never charged with the crime; that there is no physical evidence tying Hunt to either crime; that prosecutors introduced a shovel they claimed Hunt had used to bury one of the victims, but the jury never learned that the soil found on the shovel did not match the soil in which the victim had been buried; and that Hunt's trial lawyers put on none of the evidence that tended to show innocence since they did not know the evidence existed (*Hunt v. Lee*, 2002; *Hunt v. North Carolina*, 1988, 1990; *State v. Hunt*, 1992, 1994, 1997, 2003).

Clarence Ray Allen

California executed the oldest American Indian prisoner, Clarence Ray Allen, a Choctaw Indian, by lethal injection in January 2006 at San Quentin State Prison for killing of four white people. Prosecutors claim Allen masterminded the murders of three potential witnesses against him in 1982 while serving a life sentence at Folsom State Prison for the murder of a young woman in 1974. Billy Hamilton, the man who actually carried out the three witness murders, also received a death sentence. At the time of Allen's execution, he was 76 years old with advanced heart disease, confined to a wheelchair, and blind because of diabetes. Lawyers complained that Allen's physical condition deteriorated over his detention on death row because Allen did not receive proper medical care at San Quentin; it is noteworthy that a deplorable lack of proper medical care to prisoners in California's prisons moved Senior US District Judge Thelton Henderson recently to take over the state's prison health care system (*Sacramento Bee*, 2006).

Lawyers reportedly challenged Allen's murder trial because key witnesses against Allen later recanted their testimony, appellate courts concluded that Allen's legal representation fell below minimum standards, and that the judge and prosecutor in the case committed numerous mistakes. California Supreme Court Justice Broussard, for instance, found that the jury instructions at Allen's trial prejudiced his sentence. As a result, the state prosecutors' case against Allen depended upon unreliable informant witnesses, race, ineffective assistance of counsel, and other serious mistakes made at trial. Yet, California Governor Arnold Schwarzenegger sternly denied a clemency request for Allen. Some commentators found California's execution of Allen unacceptable given his age, health, inadequate representation, and a prejudiced jury (Death Penalty Focus, *Clarence Ray Allen*; National Coalition to Abolish the Death Penalty, 2006; *People v. Allen*, 1986; Solomon, 2006).

Concluding Remarks

The historical record is clear; death penalty jurisdictions have exposed American Indians to lethal sanctioning when Indians challenged the US government's policies and campaigns to annihilate tribal people through deliberate contact with virulent diseases and violent military conquest, and the forceful removal and relocation from sacred tribal territories to inhospitable reservations. The blatant hypocrisy of our national leadership appeared again most recently when after more than 500 years of massacres, forced relocation of tribes, attempts to wipe out Indian languages and cultures, ethnic cleansing, the violent brutalization of children in boarding schools, and the elimination of traditional tribal governments, the head of the federal Bureau of Indian Affairs (BIA) apologized for the agency's 'legacy of racism and inhumanity' to American Indians (Yamamoto, 1997). To Kevin Gover (2001), this legacy of racism and inhumanity has resulted in

> the high rates of alcoholism, suicide, and violence in Indian communities. Never again will we attack your religions, your languages, your rituals or any of your tribal ways. Never again will we seize your children, nor teach them to be ashamed of who they are. Never again. (p. 163)

Gover (a Pawnee Indian himself) made it clear, however, that he was apologizing for the BIA and not the national government. Gover's apology cannot suffice for the BIA's complicity in the genocidal atrocities suffered by American Indians (Jackson, 2000; Kraus, 2000). Apologies by government officials to its wrongs inflicted upon American Indians are inadequate while the USA continues its marginalization of American natives. Gover's contrition rings hollow to an indigenous people decimated by generations of economic, political, and social neglect.

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