

## **UNCONQUERED AND UNCONQUERABLE: HISTORICAL CONTEXT OF MCGIRT V. OKLAHOMA**

**DELANIE SEALS  
EAST CENTRAL UNIVERSITY**

### **ABSTRACT**

Decades of oppression and assimilation have largely impacted our modern-day Tribal Governments, which continue to fight for sovereignty and build strong and successful governmental systems. The 2020 United States Supreme Court decision, *McGirt v. Oklahoma*, of which recognized and upheld the existence of the Muscogee (Creek) Nation's Reservation, highlights the continued legal and political resistance of Oklahoma Tribes. The literature review incorporates academic articles examining U.S. treaties, federal plenary power, tribal governance, and major implications and impacts of *McGirt*. The methods used to evaluate these topics involve qualitative research to gather and review both primary and secondary legal resources. This research is continually evolving due to the uncertainty of how *McGirt* will affect both Tribes and the State of Oklahoma. Tracking these changes and potential future impacts will build a better understanding of contemporary legal changes and strengthen the foundation for tribal and federal government relations. Much research uses a holistic lens with general observations and explanations when researching *McGirt* versus examining the intricacies of federal Indian policy leading up to the decision in *McGirt*. This paper aims to not only include general implications of *McGirt*, but also demonstrate how the case is legally impacting the Five Tribes and the Quapaw Nation. This thesis will examine the history of tribal governments; eras

of federal Indian policy; Oklahoma's relationship with Native nations; *McGirt*'s impact on criminal jurisdictional matters; changes resulting from the *McGirt* case in tribal governments; and lastly, current and future legal precedents that are evolving from the case.

*Keywords:* McGirt, tribal government, Indian, law, jurisdiction, reservation, treaty, Oklahoma, court, sovereignty

## INTRODUCTION

United States Supreme Court rulings can feel like faraway decisions that seem to not have an immediate impact on our everyday lives. Most Americans accept the decision without really thinking about how the consequences will affect their daily lives. Many see the decisions from the justices as upholding minority rights or disadvantaged communities. One need only think of *Brown vs. The Board of Education* or *Roe vs. Wade*—where the minority fought to uphold their rights—to confirm this fact. Supreme Court decisions such as *Roe v. Wade*, which seemed to be of concern mainly to a minority of people, resulted in a prodigious cultural, political, and legal change in the United States. Others see the opinions from the Supreme Court as purely textualist, upholding the laws, treaties, resolutions, and legal documents that specify the legislative history of an issue. *Bostock v. Clayton County* is an infamous case where the Court pointed to the Civil Rights Act, which clearly and plainly prohibits discrimination on the basis of sex, to protect the rights of transgender employees from prejudice in the workplace. While the progress of law is slow and often unfavorable to marginalized groups, there always exists an unforeseen win, as seen in the *Bostock* case. With any piece of legislation, policy initiative, or highly precedential case, decades of reformation from advocacy groups is vital. The fight for equality and equity by underrepresented and purposefully excluded communities has never wavered. An often-forgotten minority is Native Americans. Even through mass genocide, assimilation, diminishing populations, stripping of rights, and removal, Indigenous people all over

the United States still stand strong in their roots as resilient people. The fight continues in places such as North and South Dakota with the Dakota Access Pipeline, in Oregon with the Klamath Tribes' water fight, in New Mexico with rights to cultural practices (Schuknecht, 2018), and in Kansas, with Representative Sharice Davids being the second Native woman to be elected to congress in 2018.

The fight continues especially in Oklahoma, a devastating relocation to those in the past, but a place of sentimentality to those in the present. The deeply ingrained perspective of tribal dependence on colonial forces takes away from the historical tenacity of Tribes to gain religious and political sovereignty from the United States. Many Oklahoma tribal nations have formed intricate and successful governmental systems to maintain their sovereignty. Oklahoma Tribes have fought locally, state-wide, and federally to secure their nations and protect their rights as guaranteed by treaties signed by the federal government and tribal leaders. This continuous fight and resistance to cultural and political imperialism has led to revolutionary cases such as the United States Supreme Court *McGirt v. Oklahoma* decision. This case uncovered broken promises of sovereignty made by the federal government with the Muscogee (Creek) Nation in various treaties and statutes. In this case, the Supreme Court upheld the Muscogee Creek Nation Reservation and finally held the government to its word. For some, *McGirt v. Oklahoma* is the case that is leading Oklahoma toward destruction and inevitable chaos, while for others, it is the first step toward sovereignty. The outcome of the *McGirt* decision, while incredibly frustrating, was the beginning of hope for thousands of Indigenous Peoples in Oklahoma. A promise not so broken. This thesis will examine these cultural impacts made by the Supreme Court's recent *McGirt v. Oklahoma* decision. More specifically, this paper will explore congressional enactments, historical and current relationships between Tribes, the State of Oklahoma, and the federal government; opinions from legal professionals facing the impacts of the case; and the political and judicial changes made by the

Chickasaw, Choctaw, Cherokee, Seminole, Muscogee (Creek), and the Quapaw Nation in response to the *McGirt v. Oklahoma* Supreme Court case.

## LITERATURE REVIEW

### ON THE POWER AND LAW: MCGIRT V. OKLAHOMA

Maggie Blackhawk is a professor of law at NYU and a teacher of constitutional law, federal Indian law, and legislation. Her research has been published in the Harvard Law Review, Stanford Law Review, Yale Law Journal, Columbia Law Review, and the Supreme Court Review. In her article, “On the Power and Law: *McGirt v. Oklahoma*,” federal Indian law and the success of *McGirt* is more deeply explored in order to understand the relationship between power and law, as well as examine theories of legal change (Blackhawk, 2021). Blackhawk touches on the “presumption from many Oklahomans that the power of ideology (believing that Native nations cannot govern on a large scale) would limit the operation of law” (Blackhawk, 2021, p. 4-5). The *McGirt* case highlights the fight of marginalized groups to reform United States law, without having to take the long battle of reforming societal thinking. Native people have continued to organize power movements, relying on the use of the law to remedy historical injustices and further secure tribal sovereignty (Blackhawk, 2021, p. 7). The *McGirt v. Oklahoma* case was revolutionary in that it secured the idea of law meaning more than contemporary ideologies. These sentiments were made by the Supreme Court in respect to the *Solem* test. This test comes from the *Solem v. Bartlett* Supreme case where the Court held that “only Congress can divest an Indian reservation of its land and diminish its boundaries, but with clearly evincing an intent to change boundaries before diminishment will be found” *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). In Blackhawk’s essay, she highlights the shift in the Court’s susceptibility to society’s ruling outlook on Native erasure, which ultimately gives Tribes the chance to better leverage the law. In *Oliphant v. Suquamish Tribe*, the Court decided that tribal courts

do not have criminal jurisdiction over non-Indians. *Oliphant*, 435 U.S. 191, 191 (1978). The Court in this case, took a textualist approach in reference to the Treaty of Point Elliott, but still largely relied on “common notions of the day” to undermine tribal sovereignty (Blackhawk, 2021, p. 22). Unlike *Oliphant*, the treaty that the Muscogee (Creek) Nation had made with the U.S. was taken solely as a formal legal text that would formally recognize the sovereignty Creeks had over their lands. Due to this feat, other Tribes, such as the Chickasaw, Choctaw, Cherokee, and Seminole Nations’ treaties were upheld.

Blackwell states that, “*McGirt* stands as an example of how the social dimensions of power operate as distinct from power in the context of ordinary partisan politics” (Blackwell, 2021, p. 29). *McGirt* is proof of this shift towards non-partisan Supreme Court rulings –in relation to federal Indian policy– that lean away from contemporary political “liberal” or “conservative” decisions. The idea of Tulsa existing within a reservation did not fit with the “common practice of the day” or the “dominant ideology,” so legal textual arguments were originally placed on the backburner. As Blackwell perfectly summarizes, “in issuing *McGirt*, the Supreme Court breached the taken-for-granted world view that Native nations could not possibly govern a modern city and, in so doing, it offers the opportunity for the legal academy, as well as the public, to further interrogate and possibly unsettle the dominant ideology of Native erasure” (Blackwell, 2021, p. 36). Blackwell’s essay focuses on the importance of tribal nations to continue to advocate for sovereignty through involvement in both the legislative and the judicial branches. The Court’s decision in *McGirt v. Oklahoma* showcases the efforts of Native American advocates to codify their rights into law, instead of primarily focusing on changing dominant ideologies.

*Permanent Homelands Through Treaties with the United States:  
Restoring Faith in the Tribal Nation-U.S. Relationship in Light of  
the McGirt Decision*

Angelique Eagle Woman is a law professor, legal scholar, Chief Justice of the Sisseton-Wahpeton Supreme Court, and the Director of the Native American Law and Sovereignty Institute. She has produced numerous articles on Native American sovereignty and the quality of life for Indigenous peoples. In her essay, “Permanent Homelands Through Treaties with the United States: Restoring Faith in the Tribal Nation-U.S. Relationship in Light of the *McGirt* Decision,” Eagle Woman discusses the history of treaty making with North American Tribes. The beginning of the essay explores the historical precedents which led to the assumed authority of first the British and then the colonists fleeing Britain. The European settlers concluded that Indigenous people were inferior beings who needed the guidance of European settlers. The early settlers justified the invasion by claiming Native peoples’ lands through the idea of Doctrine of Discovery. According to Cornell Law School’s Legal Information Institute, “this Doctrine refers to a principle in public international law under which, when a nation “discovers” land, it directly acquires rights on that land” (“Doctrine,” 2022). After the early Americans seized much of the United States and had formulated the three branches of government the Tribes were left to deal with the U.S. federal government. During this time, Federal Indian policy was largely constructed by the United States Supreme Court. The Marshall Trilogy “provided the framework in United States’ law to undermine the rule of law for tribal governments as denying full property ownership rights, denying full sovereign authority, imposing a ward/guardian relationship, and setting up a tug of war between the federal and state governments, with the U.S. Supreme Court acting as mediator” (Eagle Woman, 2021, p. 671). Similar to the contemporary use of the phrase “guardian and ward” used in guardianship cases, Tribes are reliant on the federal government to be legally and politically accountable for them. Much of the responsibility of the Supreme Court, in relation to federal Indian policy, is to interpret treaties

and congressional enactments in order to gauge Congress' decisions. "The Indian canons of construction assist the Court in the interpretation of these treaties and statutes through three summarizations: treaties are to be construed as the Indians would have understood them; any ambiguities are to be construed in favor of the Indian understanding of the treaty document; and all powers and rights are reserved to a Tribe unless expressly relinquished in a treaty document" (Eagle Woman, 2021, p. 659). The Court is left with the choice of whether or not to utilize these interpretations in their decisions.

In the article, Eagle Woman delves into two cases that the Court has cited to and used in later decisions. The first case is *United States v. Celestine* which "set forth the principle that when Congress has once established a reservation all tracts included within it remain a part of the reservation until separated therefrom by Congress". *United States v. Celestine*, 215 U.S. 278, 285 (1909). The second case is *Mattz v. Arnett*, which "adhered to the legal principle that a congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history". *Mattz v. Arnett*, 412 U.S. 481, 505, 503 (1973). These sentiments from both of these cases played a major role in *McGirt v. Oklahoma*, which also largely relied on historical documents to uphold the Muscogee (Creek) Reservation. Writing the opinion of the Court in the *McGirt* decision, Justice Gorsuch rejected the substitution of stories for statutes offered by the State of Oklahoma (Eagle Woman, 2021, p. 679). Despite Oklahoma's attempt to undermine tribal sovereignty with stories, the Court did not waver in their responsibility to evaluate the written law. Justice Gorsuch stated that "in any event, the magnitude of a legal wrong is no reason to perpetuate it". *McGirt v. Oklahoma*, 591 U.S., 38 (2020). Since the creation of federal Indian law, the precedents created by the Supreme Court have instilled hesitation and fear in tribal nations. The outcome of Supreme Court cases can either sway towards or sway away from treaties that would promote the self-determination of American Indian Tribes. The conclusion of

Eagle Woman's article summarizes the importance of the federal government collaborating with tribal nations, as both governing powers continue their sovereignty and use of power. In the article, Eagle Woman states that "Native Americans have consistently employed the discourse of treaty rights to gain recognition for the land and resource rights that have been wrongfully appropriated from them, to assert sovereign rights, and to compel the federal government to carry through on its trust obligations. Although treaty rights are commonly understood as political rights, they also have fundamental importance to the cultural survival of Native American people. Thus, in many ways, the discourse of treaty rights for Native Americans is responsive to international human rights law, which speaks to the obligation of national governments to ensure the cultural survival of distinctive ethnic groups" (Eagle Woman, 2021, p. 686). Pre-*McGirt*, the federal government's interaction with Tribes consisted of an unbalanced grab of power, which left tribal sovereignty on a rocky path. Post-*McGirt*, the Court upheld the enforcement of treaty rights and redress for the violation of treaty rights throughout American history.

*Restoring Oklahoma: Justice and the Rule of Law Post-McGirt*

Sara Hill has served as the current Attorney General of the Cherokee Nation since 2019 and has worked over a decade for the Nation's Office of the Attorney General. She has spent her entire legal career in Indian Country fighting for a wide range of issues involving Native rights. Her essay, "Restoring Oklahoma, Justice and the Rule of Law Post-McGirt," written largely from her experience as the Attorney General, provides an explanation of tribal and state collaborative efforts pre- and post-*McGirt*. In addition to this, her essay analyzes the challenges *McGirt* presented to Oklahoma tribal nations, and how the federal government could support tribal criminal justice systems in their response efforts to the changes brought on by the case.

This literary analysis will focus on sections three (III) and five (V) of Hill's essay. In section three, Hill discusses the existing struc-

tures, some successful while others not so much, in Indian Country that attempted to bridge the jurisdictional gap between tribal and non-tribal communities. During the termination era, Congress enacted Public Law 280 “to permit states to obtain criminal and civil jurisdiction over Indian Country” (Hill, 2022, p. 566). This Act provided jurisdictional rules and allowed for concurrent jurisdiction between state governments and the federal government. In 1968, PL 280 was amended to force states to ask consent from tribal nations in order to opt into the statute (Hill, 2022, p. 566). This law unraveled into a burdensome problem for state law enforcement due to the lack of funding from the federal government to support the changes enacted in PL 280. The issue Hill found with PL 280 was that it left tribal governments at the mercy of state governments, with few options to address potential issues.

Cross-deputization agreements are another tool that many tribal and non-tribal mixed communities have utilized in Indian Country. As Hill states, “the purpose of cross-deputization agreements is to allow tribal, state, and federal law enforcement officers to operate under the authority of the sovereign having jurisdiction. It provides multi-jurisdictional credentials to law enforcement who are commissioned in both state and tribal law enforcement entities (Hill, 2022, p. 568). The implementation of PL 280 and cross-deputization agreements pre-*McGirt* have been two ways that state and federal law enforcement agencies have worked with tribal agencies, but much work is still needed. The lack of co-operation from particular state agencies has made it difficult for these avenues to function accordingly. Some local law enforcement agencies have been reluctant to enter into cross-deputization agreements with local Tribes due to a lack of intergovernmental communication and reluctance to work with Tribes. However, many non-tribal and tribal police agencies have entered into compacts, such as the recent Chickasaw Nation Law Enforcement Agreement between the Oklahoma District Attorney, District 20, Melissa Handke and the Nation (“Chickasaw Law,” 2023). When cross-deputization agreements are not made, it makes it difficult

for local, state, and tribal (also known as Lighthorse) officers to quickly and efficiently react to 911 calls or traffic stops due to the lack of knowledge of jurisdiction on tribal and non-tribal lands. Hill concludes that it is vital for Oklahoma governmental officials to eradicate misinformation that is spread and distrust that is harbored towards tribal law enforcement agencies.

In section five, Hill delves into two options the United States can utilize to support Indian Country and help resolve post-*McGirt* jurisdictional conflicts. The first option is for Congress to fully fund tribal law enforcement on reservations in Oklahoma. Hill proposed the increase in funding in five specific categories: court expansion, tribal prosecution, tribal police, public defense counsel and detention and victim services (Hill, 2022, p. 578-581). The second option is the passage of H.R. 3091, also known as the “Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act,” introduced by Congressman Cole. According to Congress.gov, H.R. 3091, “authorizes the Cherokee and Chickasaw Nation to enter into intergovernmental compacts with Oklahoma for the state to exercise its criminal jurisdiction within Indian Country”. Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act, H.R. 3091, 117, (2022). As of 2023, H.R. 3901 has only been referred to the Subcommittee on Crime, Terrorism, and Homeland Security. As Hill states, this bill will help to “provide the necessary authority for tribal-state agreements on subject matter criminal jurisdiction in the shared interest of both tribal and non-tribal people” (Hill, 2022, p. 584). Congress has a duty to uphold the trust doctrine and support tribal affairs. The *McGirt* case has brought to light the many problems existing in Oklahoma, but with these issues come solutions that have already been formulated amongst tribal nations and the State of Oklahoma. As Hill states in the conclusion of her essay, “Now, Congress, the leaders of the Five Tribes, and the leaders of Oklahoma have a challenge: to remake criminal justice in Eastern Oklahoma and find a balance of tribal and state jurisdiction that works” (Hill, 2022, p. 590). The reformation of criminal jurisdiction in Indian Country has come

with its fair share of ups and downs, but the decision has only highlighted the resilience of tribal nations in times of change. Hill points out, similarly to Justice Gorsuch in his opinion, that the *McGirt* decision did not upend anything, but rather legally concluded facts that we already know. Reservations have always existed in Oklahoma, and the rights of tribal nations written in past treaties have only gained the power and recognition they deserve and have always been owed.

## METHODS

This essay was written with the use of academic articles and through conversations with legal professionals to educate and inform readers about the historical implications leading up to the *McGirt v. Oklahoma* decision and the resulting legal impacts. The methods used to gather this information involved qualitative research using purposive sampling. I spoke with legal and political scholars working through and with these impacts in real life. This included Judges at the Chickasaw or Seminole Nation; Light Horse Police and non-tribal police officers; the Ada City Council; attorneys practicing Indian law; and community activists working to change the stigma associated with this revolutionary case. For a better scope of the legal analysis of this case, primary and secondary legal resources were utilized in the production of this paper.

## PURPOSE

The purpose of this thesis is to track and document criminal jurisdictional matters in Oklahoma surrounding the *McGirt v. Oklahoma* case and the overall political upheaval that has occurred in response to this decision. An analysis of the history leading up to the decision will be provided to offer more context to the developments that led us to where we are now.

## ANALYSIS

### PRE-COLONIAL TRIBAL GOVERNMENTS

Indigenous people, colonialism, assimilation, cultural integration, land and water rights, healthcare practices, and strong governing bodies are embedded in the cultural history of the United States. The impressive civilizations and governing styles of Tribes in the United States is often underwhelmingly showcased in history. The unfortunate and extremely inaccurate story of the “merciless Indian savages” still prevails today and sadly skews the minds of both young and older people in the U.S. Many Tribes had well-developed and well-established governing systems before colonial contact, which is often absent in the tale of America. Historical accounts, such as the Iroquois Confederacy influencing the U.S. Constitution, help form and show that Indigenous governing styles have always and continue to lead the way and inspire great political ideologies and governments, such as the political make-up of the United States of America. Starting off Indigenous history with the arrival of Europeans does a great disservice to the highly impressive and complex governments that existed prior. It is important that history lectures and books shed light on tribal nation’s political systems that have existed since time immemorial. The continuous denial of Indigenous people’s ingenuity and resourcefulness was harmful in the past and continues to harm Tribes present day. In the age of self-determination of American Indian governments, it is important to understand and recognize the long existence of tribal governance in North America. The basis of federal Indian policy and the distinction of American Indians as a “political class” is built upon the idea of perpetuity of tribal governments in the U.S., with many Supreme Court cases upholding these precedents.

### PHASES OF THE FIVE TRIBES’ GOVERNMENTS

#### *Original Governments*

Indigenous resilience, creativity, resourcefulness, and the mas-

tery of intricate and effective governing styles all showcase the pre-colonial political systems of North American Tribes. While the debates about *McGirt* have focused on Oklahoma law recently, the legal discoveries that have been made in the case have been existent since before the state was formed. This part of the paper will highlight the history specifically related to the Five Tribes and the Quapaw Nation's forced migration to the Indian Country and the political pressures that have led to their political success today. Tribal governance has been a rocky path for many Tribes due to colonization and forced assimilation. Because of these things, we have only seen the current colonial government structures that have been imposed on tribal nations. The Cherokee, Muscogee (Creek), Seminole, Chickasaw, Choctaw, and Quapaw Nations had vast, complex governmental and economic structures dating centuries before European arrival. Many of the historical values of tribal governments were individual autonomy, emotional, spiritual, and physical connection to one's homeland, and matriarchal/patriarchal/egalitarian structures.

### *Transitional Governments*

During the sovereign-to-sovereign era, the federal government treated Tribes as sovereign nations and made treaties with them, but this ended due to the Doctrine of Discovery. Soon after, the Government decided to discard these formal relations and move on to their true intentions: removing "Indians" from newly European-owned lands and assimilating the Indians into "non-savage" beings. Early Oklahoma history goes back to the infamous Trail of Tears. According to the Oklahoma Historical Society, "the 'Trail of Tears' refers to the difficult journeys that the Cherokee, Creek, Choctaw, Chickasaw, and Seminole Nations took during their forced removal from the ancestral homelands in the southeast to Indian Territory, or present Oklahoma" (Frank, n.d.c). Hundreds of people died from malnutrition, disease, frostbite, and pure exhaustion (Frank, n.d.c). The hope for these Tribes was the chance to restart and make do with the land they received. The promise given to these Five Tribes by the United States was the last thing

the Tribes held onto in the midst of their deadly circumstances. They fought to maintain the land that was rightfully theirs from white settlers but to no avail. The Trail of Tears sealed the mistrust that Indigenous people felt for both states and the federal government.

European settlers began to encroach on the already small amount of land that Tribes were given after the removal. This was due to parts of reservations being conveniently left for non-Native settlers. The goal for the federal government, and many White settlers, was for the total assimilation of Tribes. This became even more apparent through the passing of the Allotment Act, also known as the Dawes Act of 1877. As stated by the Indian Land Tenure Foundation, “The General Allotment Act gave members of selected tribes permission to select 40 to 160 acres for themselves and their children. The federal government negotiated leftover land to non-Indian settlers, which resulted in 60 million acres being ceded or sold to the government for non-Indian homesteaders and corporations as surplus lands” (“Land Tenure History,” n.d.). Later, the Oklahoma land run led to even more “Indian reservations” being taken from Native people.

The hostility towards Indigenous land ownership led to these actions being allowed with no repercussions. In other states, the U.S. government attempted to cripple Tribes less through violence, and more through statutory and judicial precedent. Or as Walter E. Echohawk calls it the “Courts of the Conqueror.” The divided territory seemed to be a jagged split between Native Americans and settlers. “The federal government cleared the way for statehood in 1898 with the Curtis Act, which announced that tribal governments would be abolished in March 1906 and forced the Five Tribes to accept the allotment law from which they’d been exempt” (Blakemore, 2020). With growing antagonism from White settlers, the push for the unassigned areas of “Indian territory” to become state-led areas resulted in the birth of the State of Oklahoma in 1907. Generations passed, and the Tribes were forced to

assimilate as usual, leading the debates of land ownership to die off. The broken promise from the federal government continued to be broken for generations to come. The atrocities committed by the government have only been mended enough to keep Tribes at bay, but not to truly heal the deep wounds from years of forced removal and continual assimilation. Through congressional acts and legal precedents, such as the Marshall Trilogy, Oklahoma Tribes had to adapt to colonial governmental structures and leadership styles. The Oklahoma Indian Welfare Act of 1936 helped Tribes adopt constitutions and build up their governments. Oklahoma Indian Welfare Act, 25 U.S.C. § 5210-5210 (1936). While the IRA had some good aspects, such as the idea of restoring land to Tribes and promoting tribal sovereignty, it also pressured Tribes to assimilate, yet again, to the U.S. idea of a “proper” governmental structure. In the end, the Indian Reorganization Act simply gave the illusion of choice to tribal nations.

Along with the IWA, the Indian Civil Rights Act of 1968 extended some basic Constitutional rights from the Bill of Rights to tribal citizens in relation to tribal governments. According to the U.S. Department of Indian Affairs, “in 1975, Congress enacted the Indian Self-Determination and Education Assistance Act, promoting greater autonomy and responsibility over contractual programs managed by the Secretary of the Interior. Tribes finally had involvement in controlling federal services to ensure target delivery to the needs and desires of the local communities” (“Self-Determination,” n.d.). In the end, the growing pressure to adopt the settler’s way of governing led the majority of Tribes to adopt written constitutions and develop governments similar to the White settlers.

### *Contemporary Governments*

As mentioned earlier, the Marshall Trilogy reaffirmed tribal sovereignty and federal trust responsibility through historic court cases. The first case is *Johnson v. McIntosh* (1823) which generally states that private citizens cannot purchase land from Tribes; the

second case is *Cherokee Nation v. Georgia* (1831) which states that Tribes are “domestic dependent nations;” and lastly, the third case is *Worcester v. Georgia* (1832) which states that only the federal government can deal with Tribes and that state law has no force. The federal government’s plenary power over tribal affairs can be seen as a paternalistic relationship (guardian/ward relationship). *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903). Tribes can be federally recognized by an act of Congress, the Department of Interior through administrative procedure, or a court decision. Along with this, as seen in the Marshall Trilogy, the federal government also has power over Tribes on land rights, negotiation, and overall Indian affairs. Ultimately, the federal government has supreme authority over tribal nations. The Marshall trilogy set in stone this looming dominant power that congress has, which in turn, recoils most of the trust that Indigenous people have for the government. Instead of being a body of power that can be seen as a beacon of hope towards genuine tribal sovereignty, it’s seen as a threat.

For tribal nations to retain the sovereignty they rightly deserve, Congress enacted legislation to afford tribal governments more power over tribal affairs and people. Public Law 280 provides limited criminal and civil jurisdiction to tribal governments over tribal members within their reservations. Tribes were able to elect their own chiefs and administer programs in their communities. The passage of the 1978 Indian Child Welfare Act (ICWA) is extremely important for tribal people, especially for Native children. It provides a layer of protection to try and prevent Native children from being wrongfully removed from their culture and community. It has given Tribes the right to intervene and/or transfer jurisdiction during a case. Lastly, the Indian Gaming Regulatory Act passed in 1988, helped to create a regulatory framework and gave tribal nations the opportunity to distinguish their gaming facilities from non-tribal. Native people have had almost everything stripped of them, so congressional enactments like Public Law 280, ICWA, and the Indian Gaming Regulatory Act have helped give back some power and reassurance to Tribes. The Cherokee, Mus-

cogee (Creek), Seminole, Chickasaw, Choctaw, and the Quapaw Nation have Legislative (Tribal Counsel/Legislative), Executive (Governor/Chief/Chairman), and Judicial (tribal courts) branches similar to the United States government. While these contemporary governmental structures tell a sad tale of political and cultural assimilation by White settlers, they also show the dedication to striving for more autonomy in order to protect their culture, lands, and people. *McGirt v. Oklahoma* only strengthened the power of tribal governments in Oklahoma.

## TREATIES

### *Antecedent Treaties*

Before the lethal and arduous journey, rightfully named the Trail of Tears, the Indian Removal Act forced Tribes into treaties to secede their lands in exchange for land in Indian Territory. Chiefs, Min-kos, and tribal diplomats from the Cherokee, Muscogee (Creek), Seminole, Chickasaw, Choctaw, Quapaw Nations all signed treaties with the federal government. The Cherokee Nation signed the Treaty of New Echota “gave the Cherokees five million and land in present-day Oklahoma in exchange for their 7 million acres of ancestral land” Treaty of New Echota, 7 Stat. 478, 388 (1835). The Removal Treaty (1832) was signed by the Muscogee (Creek) Nation. “The Muscogee leadership exchanged the last of the cherished Muscogee ancestral homelands for new lands in Oklahoma Indian Territory (“Muscogee History,” n.d.). In addition to this treaty with the Muscogee Creek Nation, an 1856 Treaty promised that “no portion” of Creek lands would ever be embraced or included within, or annexed to, any Territory or State,” and that the Creeks would have the “unrestricted right of self-government,” with “full jurisdiction” over-enrolled Tribe members and their property”. Treaty with Creeks and Seminoles, Art. IV, Aug. 7, 1856, 11 Stat. 700. 1856). The Seminole Nation signed the Treaty of Payne’s Landing (1832) that forced Seminoles to “relinquish the lands in the Territory of Florida, and emigrate to the country assigned to the Creeks, west of the Mississippi river”. Treaty With the Seminole, 7 Stat. 368, 344 (1832). The Chickasaw Nation re-

settled to Indian Territory among the Choctaws after signing the Treaty of Doaksville (1837).

The Choctaws moved in similar fashion to the Chickasaws. The Choctaws signed the Treaty of Dancing Rabbit Creek (1830) in which “the Choctaw nation ceded their lands east of the Mississippi River; and moved beyond the Mississippi River”. *Treaty With the Choctaw*, 7 Stat. 333 (1830). Lastly, the Quapaw Nation signed “the Treaty of 1833 which relinquished Quapaw claim to their land on the Red River in exchange for 150 sections of land west of the state line of Missouri, in Indian Territory, which would become modern-day Oklahoma and Kansas” (Bandy, n.d.). At the time, the signing of these treaties signified the forced displacement of Indigenous people from their homelands. Native people fought physically and legally to retain their original lands, but European dominance became too powerful. They trekked into unknown and unfamiliar territory to build back their nations and keep their history, culture, language, traditions, and people alive. The history behind the assimilation of these tribal nations highlights the adoption of Eurocentric ways by Oklahoma Tribes. Today, these treaties have paved the way for successful tribal governments. Despite these sorrowful implications, without the signing of these treaties by the Five Tribes and the Quapaw Nation, their tribal sovereignty, criminal jurisdiction, and reservations would not have been upheld by the Supreme Court.

## RESERVATION PRECEDENTS

### *Indian Country Defined*

As defined by the federal law, Indian Country is described as the following:

“All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and

whether within or without the limits of a state; and all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same". Indian Country Defined, 18 U.S. C. § 1151 (1948). Shortly after the founding of the United States, the government began making treaties with Tribes to move/contain Indigenous people to make room for European settlement. In an effort to allot Native Americans' land, the federal government created two types of allotment lands in Oklahoma. Restricted lands and trust lands have a "title to which is held by the United States in trust for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation; and (ii) "trust or restricted interest in land" or "trust or restricted interest in a parcel of land" means an interest in land, the title to which interest is held in trust by the United States for an Indian tribe or individual, or which is held by an Indian tribe or individual subject to a restriction by the United States against alienation" Indian Land Consolidation, 25 U.S.C. § 2201 (4)(i) (2004). Restricted lands are lands that were assigned to citizens of the Five "Civilized" Tribes and include Eastern Oklahoma. An individual Native person holds title to the property, but there exist restrictions on the title, such as restrictions against alienation, taxation, and sales, and leases must be approved by the Department of Interior Rights-of-Way Through Indian Lands, 25 U.S.C. § 331 (1925). These restrictions were created by the Stigler Act of 1947, which aimed to change the laws governing the heirs of allottees. Trust lands were assigned to members of other Tribes, which was relevant throughout the United States, and the western part of Oklahoma. Trust land differs from restricted in that title is held by the federal government with beneficial interest also held by an individual Native person. Due to the guardian-ward relationship, much of Indian Country is under the control of the Federal Government.

*Supreme Court Cases*

The idea of reservations still existing in Oklahoma seemed to many as a fairytale, but cases such as *Solem v. Bartlett* which upheld the notion that for a reservation to be disestablished, Congress must show clear intent to do so. *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). The Supreme Court case arose from a lower court case involving John Barlett, a Cheyenne River Sioux tribal member, who was convicted of attempted rape in the South Dakota state court. The point of controversy was whether the Cheyenne River Act (1908), which opened up the reservation to homesteading, diminished the reservation. The case was taken to the Federal District Court where they held that the reservation was not diminished, meaning that the State lacked jurisdiction to prosecute him. In addition to this, the court found that the federal courts had exclusive jurisdiction. Major Crimes Act, 18 U.S.C. § 1153, 679 (1885). In 1984, a writ of certiorari was written to the Supreme Court for final review of the case. In a unanimous decision from the Supreme Court, the Court affirmed the Federal District Court and the Court of Appeals decisions. The Supreme Court held that Congress has ultimate authority of Indian reservation; opened reservation lands for sale to non-Indians do not express congressional purpose to diminish" *Solem v. Bartlett*, 465 U.S. 463, 463 (1984). The opened parts of the Cheyenne Reservation had retained their Indian character since 1908. *Bartlett* set a precedent for courts, when reviewing reservation status, to not substitute societal beliefs and stories for statutes with concrete language. This sentiment was largely expressed in *McGirt v. Oklahoma*.

The precedents in the *Solem v. Bartlett* case led to the *Nebraska v. Parker* case in which the Supreme Court came to similar conclusions. In 2006, the Omaha Tribe amended its Beverage Control Ordinance and sought to subject Pender retailers to the amended ordinance. Similarly to South Dakota, Pender retailers alleged that they were not in reservation boundaries. "Pender sought declaratory relief and a permanent injunction prohibiting the Omaha Tribe from asserting its jurisdiction over the disputed land" *Nebraska*

*v. Parker*, 577 U.S. 481, 1 (2016). In 2016, the Supreme Court held that the Omaha Act of 1882 did not diminish the Omaha Indian Reservation. The opinion in *Nebraska v. Parker* was similar to the opinion in *Solem v. Bartlett*. Again, they upheld that only Congress could diminish a reservation with clear intent to do so. In addition to this, the Court held that “historical evidence cannot overcome the text of the 1882 Act, which lacks any indication that Congress intended to diminish the reservation” *Nebraska v. Parker*, 577 U.S. 481, 2 (2016). The Court made a point, once again, to put statutory text at the forefront.

### MCGIRT V. OKLAHOMA CASE

The *McGirt v. Oklahoma* case highlights the shift in the approach to Supreme Court cases concerning federal Indian law. Throughout this essay, the history of tribal governments, treaties, and Supreme Court precedents have been explored. The purpose of highlighting these important moments in federal Indian policy showcase how *McGirt* is not just a case that came out of nowhere. For generations, individual Native Americans scholars, activists, tribal leaders, and Native attorneys have been fighting for the Supreme Court to finally uphold treaties that secure tribal sovereignty—sovereignty that has existed since time immemorial. Cases concerning American Indians have historically been led on an unsteady ledge of trust and distrust in the federal government. The *McGirt* case presented the chance for the Supreme Court to uphold the treaties, and overall, Trust Doctrine, made by the federal government and Oklahoma Tribes. The question of reservation status and the legality of state jurisdiction over tribal members originate from the case *Murphy v. Royal*. Patrick Dwyane Murphy, a member of the Muscogee (Creek) Nation was tried in an Oklahoma state court in which he was charged and convicted of murder and ultimately sentenced to death *Murphy v. Royal*, 875 F.3d 896 (2017). Through exhaustion of various Oklahoma courts, Murphy was appealed to the United States Court of Appeals Tenth Circuit. The Tenth Circuit concluded: (1) Murphy’s action originally had only been under the jurisdiction of the federal government due to

the Major Crimes Act because of his status as an American Indian, (2) the crime did in fact occur on Creek Reservation, which had not been disestablished according to the *Solem* test, and (3) the federal courts had sole jurisdiction over Murphy. *Murphy v. Royal*, 875 F.3d 896, 1-2 (2017). In the Tenth Circuit conclusion, the judges agreed that the case deserved further review before the Supreme Court. The case later developed in *Carpenter v. Murphy* before the Supreme Court. During the proceedings of the case, Justice Gorsuch had to recuse himself because he had previously considered the case when he was a judge on the U.S. Tenth Circuit Court of Appeals. The Court decided to issue no decision in the *Carpenter v. Murphy* case. In 2019, the U.S. Supreme Court granted certiorari to the *McGirt v. Oklahoma* case to settle the questions presented in the *Murphy* case.

The case began with a man by the name of Jimcy McGirt who was convicted by an Oklahoma court for three sexual assault offenses. Similarly to *Murphy*, McGirt argued that the State of Oklahoma did not have jurisdiction over him due to his status as an American Indian –enrolled in the Seminole Nation– and his crimes being committed in Indian Country (Creek Reservation). As discussed earlier, under the Major Crimes Act, any major crime (murder, kidnapping, rape, etc.) involving a Native American on or off congressionally recognized reservations must be prosecuted in federal courts Major Crimes Act, 18 U.S.C. § 1153, 679 (1885). McGirt’s case heavily relied on the MCA, in which the federal government has the ultimate authority over major crimes involving Native Americans. Through a textualist lens, Justice Gorsuch pointed to the Treaty of 1832 in which the United States promised the Creeks a permanent homeland west of the Mississippi in exchange for their lands in the East. Treaty with the Creeks, 7 Stat. 368 (1832). A patent in 1852 was granted to the Creeks to secure their status as residents of the land. The Indian Removal Act of 1830 only furthered the U.S.’s commitment towards treaties with Natives by stating “that the U.S. will forever secure and guarantee to them... the country so exchanged to them”. Indian Removal Act, §3, 4 Stat.

412 (1830). In the Treaty of 1856, “Congress promised that no portion of the Creek Reservation shall ever be embraced or included within, or annexed to, any Territory or State, and within their lands with exceptions, the Creeks were to be secured in the unrestricted right of self-government, with full jurisdiction over-enrolled Tribe members”. Treaty with Creeks and Seminoles, 11 Stat. 700 (1856). While historical documents accounting the physical and political boundaries of the Creek Nation, the phrase “reservation” was not included in early documents, but inferred in contemporary times. In a 5-4 decision, the Supreme Court concurred with the ruling of the lower Tenth District Court. In the opinion, written by Justice Gorsuch, the Court stated the iconic quote, “On the far end of the Trail of Tears was a promise,” which solidified and upheld the not-so-forgotten treaties made by the U.S. between the Muscogee (Creek) Nation. *McGirt v. Oklahoma*, 591 U.S., 1 (2020). An agreement was made amongst the Supreme Court that while the contents of Jimcy McGirt’ actions are clearly deplorable, the questions regarding the sovereignty and existence of the Creek Reservation were the real concerns in the case. The Creek Nation joined as amicus curiae for similar reasons and ultimately because the interests of *McGirt* were equally the interests of the tribe. The Supreme Court, however, agreed that despite the missing word, “reservation,” in treaties and statutes, the Creek Nation has always been regarded as such. The Court rejected the State of Oklahoma’s arguments that the Creek Reservation was never established in the first place. The Court emphasized the sole power of Congress to establish or diminish a tribe’s reservation through a clear expressed intent to do so *Nebraska v. Parker*, 577 U. S. 481, 2 (2016). The State of Oklahoma claimed that the Creek Reservation was abolished with the creation of allotments, that Oklahoma has historically maintained jurisdiction over Natives for serious crimes, and that Oklahoma Enabling Act transferred jurisdiction over tribal nations. In his opinion, Justice Gorsuch, made rebuttals that further proved the continuity of the Creek Reservation. Gorsuch stated, “The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that

reservation. It has sometimes restricted and other times expanded the Tribe's authority. But Congress has never withdrawn the promised reservation. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right" *McGirt v. Oklahoma*, 591 U.S., 12 (2020).

The Court's decision solidified the reservation status of the Muscogee (Creek) Nation, which in turn, reaffirmed the power that the Muscogee Nation have always had. The Court's opinion stated what was already known: the State of Oklahoma had been illegally exercising criminal jurisdiction over tribal members on the Creek Reservation. *McGirt* paved the way for further rulings from the Oklahoma Court of Criminal Appeals in which the reservations of the Chickasaw, Choctaw, Seminole, Cherokee, and Quapaw Nations were upheld. The Chickasaw Nation's subsequent case was *Bosse v. State*; Choctaw Nation was *Sizemore v. State*; Seminole Nation was *Grayson v. State*; Cherokee Nation was *Hogner v. State*; and lastly, for the Quapaw Nation, it was *State v. Lawhorn* that upheld their reservation. *McGirt* proved revolutionary in the recognition of the continued existence of Tribes in Oklahoma and the sovereignty they still exert.

### *Further Appeals*

As expected, appeals to the *McGirt* decision were made in order to undo the "damage" caused by the case. For the State of Oklahoma, the case opened a Pandora's box that needed immediate remedies. In my interview with the Senior Associate General Counsel for the Chickasaw Nation, Meredith Turpin, I asked about cases that evolved from *McGirt* and how they have impacted the Court's decision. She stated that two big cases following *McGirt* were *Matloff v. Wallace* and *Oklahoma v. Castro-Huerta McGirt* (Turpin, personal communication, 2023). *Matloff* was brought on by the State of Oklahoma, more specifically, Mark Matloff, the

District Attorney of Pushmataha County, to prohibit the vacating and granting of post-conviction relief of Clifton Parish. Parish had been charged in 2012 of second-degree felony murder, and filed for post-conviction relief on grounds supported in. Judge Wallace ordered this relief based on two things, (1) Parish being an American Indian, and (2) the crime had occurred on Choctaw Reservation (upheld in *Sizemore*). *Matloff v. Wallace*, 497 P.3d 686, OK CR (2021). *Matloff* found that reservation status, and the resulting jurisdictional shift, should not be applied retroactively. As stated by Turpin, “after the *Wallace* decision was issued by the Oklahoma Criminal Court of Appeals (OCCA) and limited the retroactivity of *McGirt*’s application, the only cases eligible for dismissal were cases that had not exhausted the appeals process” (Turpin, personal communication, 2023). The points raised by *Wallace*’s side, regarding fairness, in the case of jurisdictional effects, were not valid in this case. This means that cases that were at the post-conviction relief stage were no longer eligible for *McGirt* related relief. “This narrowed the number of cases that were being dumped into the federal and/or tribal systems and eased the backlog that they were trying to work through on top of the new cases coming in” (Turpin, personal communication, 2023). She further stated that “during that intermediary time period, Oklahoma filed approximately 55 petitions for certiorari to the U.S. Supreme Court, asking that *McGirt* be overturned or limited in some way, and out of those cases, *Castro-Huerta* was granted” (Turpin, personal communication, 2023). Following the denial of certiorari for Parish’s case, the Court opted to take up one of Oklahoma’s appeals to the *McGirt* decision”: *Castro-Huerta* (Case, 2023, p. 95). *Castro* is a case that caused disruption in the short-lived celebration of *McGirt*. In 2015, “respondent Victor Manuel Castro-Huerta was charged by the State of Oklahoma for child neglect and sentenced to 35 years of imprisonment”. *Oklahoma v. Castro-Huerta*, 597 U.S., 1 (2022). In the same manner as Jimcy McGirt, Victor Castro-Huerta challenged his conviction by the State of Oklahoma, which he alleged had no jurisdiction in his case. “Castro-Huerta argued that the federal government

had exclusive jurisdiction to prosecute him (a non-Indian) for a crime committed against his stepdaughter (a Cherokee Indian) in Tulsa (Indian Country), and that the State, therefore, lacked jurisdiction to prosecute him". *Oklahoma v. Castro-Huerta*, 597 U.S., 2 (2022). The Court reaffirmed that Indian Country is a part of a State. Due to the General Crimes Act, which extends federal law to Indian Country, still allowing state jurisdiction within the state (which includes Indian Territory). Laws Governing, 18 U. S. C. §1152 (1948). Turpin stated that "once the Court found that the State had concurrent jurisdiction over crimes by non-Indians against Indians, *Castro-Huerta*, and the twelve or so other cases with those same facts, were eligible for their state convictions to stand" (Turpin, personal communication, 2023).

### MCGIRT'S IMPACT ON CRIMINAL JURISDICTIONAL MATTERS

In 2021, affirmed, by the Court of Criminal Appeals, the reservation of the Chickasaw Nation. In my research to see the effects of the *McGirt* case on tribal nations, I asked Meredith Turpin what the immediate impacts of *Bosse* were on the Chickasaw Nation. Turpin stated that, "When *Bosse* was decided, many criminal cases that involved an Indian victim and/or Indian defendant began filing for dismissals, and most of them were granted. The Nation, the U.S. Attorneys, the FBI, and the State prosecutors tried to get the cases being dismissed sent to the federal government or the Tribes, so that anyone who was set to be released was already being charged by the correct jurisdiction. A few cases had statute of limitations issues, or prosecutors declined to take due to evidence issues, but for the most part, the majority of the cases were picked up and taken by either the federal government or the Tribes" (Turpin, personal communication, 2023). Intergovernmental collaboration was key for agencies to adapt to the changes brought on by *McGirt*. In Turpin's work, she has seen the backlog of cases thinning, with cases coming in [to the Chickasaw Nation] that are being filed correctly, depending on where the crime took place, the nature of the crime, the Indian status of the victim

and the defendant. Similar to the Chickasaw Nation, the Cherokee, Choctaw, Seminole, Quapaw, Muscogee (Creek) Nations all were tasked with overcoming the challenges of more power to prosecute and convict tribal members. She discussed the quickly adapted changes made to the Chickasaw Nation District Court and prosecutor's office in response to the decision. "The Chickasaws had previously been preparing for the onslaught of changes that could have potentially, and did come, from the affirming of Creek Reservation, and later the Chickasaw Reservation" (Turpin, personal communication, 2023). She mentioned proudly that the Nation had already been working to expand its code, such as creating new traffic codes, expanding its team of prosecutors, and adding law enforcement personnel. She further stated that "the [Chickasaw] Nation has added a full-time district judge in addition to the part-time judge it always had; created a detention administration team to handle the Nation's new and growing inmate population, entered into scores of jurisdiction-sharing agreements with various municipalities, counties, and state agencies to ensure effective law enforcement responses throughout the reservation, and entered into detention agreements to house our adult and juvenile inmates" (Turpin, personal communication, 2023). Other tribal legislatures had also developed new tribal codes and updates to offenses, statute of limitations, and victim's rights provisions and services in response to the expansion of their criminal jurisdiction in Indian Country. For the Chickasaw Nation specifically, Turpin stated that "one mechanism that has helped is the integrated crimes provision, which lets the Nation adopt state law when the tribal code is inadequate" (Turpin, personal communication, 2023). The *McGirt* decision has led to more communication and collaboration between tribal, state, and federal police departments than ever before. Turpin supported this by pointing out the "Nation's many cross-commission agreements with different agencies, from municipal police departments to Sheriff's offices, to State agencies" (Turpin, personal communication, 2023). A cross-deputization agreement allows the agency's officers to enforce tribal law in Indian country. Turpin mentioned the Deputation Agreement "that was

entered into between the United States Bureau of Indian Affairs (BIA), the State, and the Tribes to allow state and tribal officers to obtain a Special Law Enforcement Commission” (Turpin, personal communication, 2023). She further stated that “with a SLEC, a state or tribal officer can act as federal law enforcement, similar to a BIA agent, in Indian country” (Turpin, personal communication, 2023). One of the issues to come from *McGirt* was the absence of facilities to house Natives prosecuted by their Tribes. Chrissi Ross Nimmo, deputy attorney general for the Cherokee Nation, wrote in the Oklahoma Bar Journal that because the Cherokee Nation had no jailing facilities, “they had to contract with several county jails and juvenile detention facilities for both pre-trial and post-conviction incarceration of the Nation’s arrestees and inmates” (Nimmo, 2022, p. 14-15). The Chickasaw Nation has also entered into many detention agreements with various counties to allow their adult inmate population to be housed in county detention facilities. For juveniles, the Chickasaws have contracts with Sac and Fox and other juvenile detention facilities. They have also entered into an agreement immediately after *Bosse* with the state to give it authority to continue handling cases involving deprived Indian children in state court. Other tribal nations have also continued, as well as entered into, intergovernmental agreements with local police departments, jails, prisons, and agencies to further fill potential jurisdictional gaps in Indian Country.

## DISCUSSION

### MISINFORMATION AND CONTROVERSY

#### *Political Outbursts and Lawlessness*

Despite the legality and historical and monumental impact of the Court’s decision, many Oklahoma government officials see this decision as regressive. The Stitt Administration riddled the news with “half-truths, exaggerations, and outright lies, all while obfuscating the reality that any real challenge *McGirt* poses to the people of Oklahoma is rooted in his own administration’s policies and reluctance to negotiate on equal ground with tribal governments”

(Maxey, 2021). The first example I want to point to is the criminal justice system. Because of these fears being spread amongst different news outlets, “fear of mass murderers and rapists being let free has led to mass panic” (Maxey, 2021). “The ADEPA limits the petitions for habeas corpus which means that less than 10 percent of offenders could even qualify for relief” (Maxey, 2021). In a Washington Post’s article over *McGirt* writer, Annie Gowen, “breathlessly repeats the state’s concerns”, acting almost as an advocate for the Stitt Administration (Maxey, 2021). For Governor Stitt, the disinformation that he spreads was less about the factual basis of these claims, but more about the popularity he could gain. Stitt misconstruing the outcomes of the *McGirt* case serves his purpose of crippling the Tribes and to maintain power over them. The spread of disinformation has led to police departments to refuse assistance from Tribes such as the Ada Police Department with the Chickasaw Nation. It is only the beginning of these tensions, but the possibility of it growing is worrisome. It is extremely important for people to research and think for themselves, but unfortunately, we live in an era where mass spread of misinformation through the media makes this difficult. The *McGirt v. Oklahoma* case has the potential to mold Oklahoma into a great state, built on the intergovernmental partnerships between Tribes and the state. A collaboration is what is needed, but instead, we are left with dissent and a refusal of engagement from political administrations with Tribes. This will only lead us down a slow, frustrating, and arduous path towards change.

## **CONCLUSION AND THE PATH FORWARD**

The primary focus of this essay has been the history of the tribal, state, and federal criminal jurisdiction. With tribal courts and governments gaining more responsibility, the realization of the potential of this reclaim of power is exciting. Despite genocide, assimilation, and many other horrors of American colonization, Oklahoma Tribes have made strong developments over the years to build and mold their governments. Currently, tribal officials,

legislators, and legal professionals are working on policy to fill the jurisdictional gaps to address the need for a division of labor between the Tribes, the State, and the federal government. One example is possible “amendments to federal law to expand Oklahoma Tribes’ ability to punish serious offenses, or for the U.S. attorney’s offices to cross-designate state or tribal prosecutors as special assistant U.S. attorneys, enabling them to prosecute cases involving Native American defendants or victims in federal court” (Gordon & Baker-Shenk, 2021, p. 3). These developments will be revolutionary for Oklahoma Tribes to regain a sense of inclusion and respect in the judicial system. Like many Tribes in Oklahoma (even those not included with the five federally recognized Tribes), the focus on bettering their people and their land has always been clearly visible. This is where the discussion leans towards the other possibilities that can come from the *McGirt* ruling, such as climate change and environmental policies, land and water rights, healthcare facility collaborations, rehabilitation program partnerships with local governments, and many other issues. Another possibility is the discussion surrounding the rights of tribal citizens who are living and working on Native land having to not pay income taxes. In the eyes of non-tribal members, this potential outcome appears to cripple the Oklahoma State government even more, but to others this is not the case. This potential outcome will potentially positively affect the “Indian territories” where Tribes already fund a majority of the economic developments. There is hope for a better Oklahoma, but this dream is dependent on the collaboration of tribal governments with the State of Oklahoma. *McGirt* was the beginning for a vast array of possibilities for Oklahoma Tribes. As Meredith Turpin stated, “the political landscape between Tribes and the State has been rocky since *McGirt* and its progeny, but there is hope that it can, and will, continue to heal” (Turpin, 2023). The Chickasaw’s motto, the “Unconquered and Unconquerable Nation,” exemplifies perseverance, resourcefulness, and strength of Oklahoma Tribes to solidify their sovereignty and rights. The *McGirt* ruling has and will continue to prove to be revolutionary to the future of Oklahoma and Indian territory.

## REFERENCES

*About the Nation.* (n.d.). The Cherokee Nation. Retrieved from <https://www.cherokee.org/about-the-nation/#:~:text=Originally%20located%20in%20the%20southeastern,was%20discovered%20in%20our%20homelands>.

Bandy, E. (n.d.). Who was Saracen? *Quapaw Nation*. Retrieved from <https://www.quapawtribe.com/598/Saracen>

Blackhawk, M. (2021). On Power and the Law: McGirt v. Oklahoma. *The Supreme Court Review*. Retrieved from [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3846344](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3846344)

Blakemore, E. (2020). Sequoyah, the U.S. State That Almost Existed. *National Geographic*. Retrieved from <https://www.nationalgeographic.com/history/article/sequoyah-american-state-almost-existed>

Case, A. (2023). State Ex Rel. Matloff V. Wallace: Reversing Course on Subject Matter Jurisdiction. *University of Oklahoma College of Law Digital Commons*. Retrieved from <https://digitalcommons.law.ou.edu/cgi/viewcontent.cgi?article=1765&context=ailr>

*Chickasaw Law Enforcement Commission Agreement.* (2023). Oklahoma Secretary of State. Retrieved from <https://www.sos.ok.gov/gov/tribal.aspx>

Cherokee Nation and Chickasaw Nation Criminal Jurisdiction Compacting Act, H.R. 3091, 117, (2022).

*Cherokee History.* (n.d.). Intertribal Council of the Five Civilized Tribes. Retrieved from <http://www.fivecivilizedTribes.org/Cherokee.html>

*Doctrine of Discovery.* (2022). Legal Information Institute. Retrieved from [https://www.law.cornell.edu/wex/doctrine\\_of\\_discovery](https://www.law.cornell.edu/wex/doctrine_of_discovery)

Eagle Woman, A. (2021). Permanent Homelands Through Treaties with the United States: Restoring Faith in the Tribal Nation-U.S. Relationship in Light of the McGirt Decision. *Mitchell Hamline Law Review*, 47(2). Retrieved from <https://open.mitchellhamline.edu/cgi/viewcontent.cgi?article=1246&context=mhhr>

Frank, K. A. (n.d.a). Five Civilized Tribes. *Oklahoma Historical Society*. Retrieved from <https://www.okhistory.org/publications/enc/entry.php?entry=FI011>

Frank, K. A. (n.d.b). Seminole. *Oklahoma Historical Society*. Retrieved from <https://www.okhistory.org/publications/enc/entry.php?entry=SE011>.

Frank, K. A. (n.d.c). Trail of Tears. *Oklahoma Historical Society*. Retrieved from <https://www.okhistory.org/publications/enc/entry.php?entry=TR003>

General Crimes Act, 18 U. S. C. §1152 (1948).

Gordon, S. & Baker-Shenk, P. (2021). High Court's McGirt Ruling Will Not Lead to Disaster. Retrieved from <https://www.hklaw.com/-/media/media/files/insights/publications/2021/09/highcourtsmcgirtrulingwillnotleadtodisaster.pdf?la=en>

Herrera, A. (2020). U.S. Supreme Court Sides With Tribes In Stunning 5-4 Ruling. *KGOU*. Retrieved from <https://www.kgou.org/politics-and-government/2020-07-09/u-s-supreme-court-sides-with-Tribes-in-stunning-5-4-ruling>

Hill, E. S. (2022). Restoring Oklahoma: Justice and the Rule of Law Post-McGirt. *Tulsa Law Review*, 57(3). Retrieved from <https://digitalcommons.law.utulsa.edu/cgi/viewcontent.cgi?article=3283&context=tlr>

Indian Country Defined, 18 U.S.C. § 1151 (1948)

Indian Land Consolidation, 25 U.S.C. § 2201 (4)(i) (2004)

Indian Removal Act, §3, 4 Stat. 412 (1830)

## UNCONQUERED AND UNCONQUERABLE

Laws Governing, 18 U. S. C. §1152 (1948)

*Land Tenure History*. (n.d.). Indian Land Tenure Foundation. Retrieved from <https://iltf.org/land-issues/history/>

Lone Wolf v. Hitchcock, 187 U.S. 553 (1930) Major Crimes Act, 18 U.S.C. § 1153 (1885)

Matloff v. Wallace, 497 P.3d 686, OK CR (2021) Mattz v. Arnett, 412 U.S. 481, 505 (1973)

Maxey, R. (2021). The Dangers of the McGirt Misinformation Campaign. *Law Journal for Social Justice*. Retrieved from <https://lawjournalforsocialjustice.com/2021/10/22/the-dangers-of-the-mcgirt-misinformation-campaign/>

McGirt v. Oklahoma, 591 U.S. (2020) Murphy v. Royal, 875 F.3d 896 (2017) *Muscogee History*. (n.d.) Intertribal Council of the Five Tribes. Retrieved from <http://www.fivecivilizedTribes.org/Muscogee-History.html>

Nebraska v. Parker, 577 U.S. 481 (2016)

Nimmo, R. C. (2022). Impact of McGirt. *Oklahoma Bar Journal*. Retrieved from <https://www.okbar.org/barjournal/march-2022/>

Oliphant v. Suquamish Indian Tribe, 435 U.S. 191 (1978)

Oklahoma Indian Welfare Act, 25 U.S.C. § 5210-5210 (1936)

Oklahoma v. Castro-Huerta, 597 U.S. (2022)

Rights-of-Way Through Indian Lands, 25 U.S.C. § 331 (1925)

*Self-Determination*. (n.d.). United States Department of Indian Affairs. Retrieved from <https://www.bia.gov/regional-offices/great-plains/self-determination>

Schuknecht, C. (2018). School District Apologizes For Teacher Who Allegedly Cut Native American Child's Hair. *NPR*. Retrieved from <https://www.npr.org/2018/12/06/673837893/school-district-apologizes-for-teacher-who-allegedly-cut-native-american-childs->

Solem v. Bartlett, 465 U.S. 463 (1984)

*The Chickasaw Nation Elementary Student Curriculum.* (2010). [PDF file]. Chickasaw Nation. Retrieved from <https://www.chickasaw.net/CMSPages/GetFile.aspx?GUID=7ee2d92c-7c27-4022-b0bd-728e7fd56def>

*The Five Civilized Tribes.* (n.d.). National Park Service U.S. Department of Interior [PDF]. Retrieved from <https://www.nps.gov/ocmu/learn/historyculture/upload/Accessible-Five-Civilized-Tribes.pdf>

*The Treaty of New Echota and the Trail of Tears.* (2016). North Carolina Department of Natural and Cultural Resources. Retrieved from <https://www.ncdcr.gov/blog/2015/12/29/the-treaty-of-new-echota-and-the-trail-of-tears>

Thompson, L. (2016). Indian Reorganization Act (1934). *The Living New Deal*. Retrieved from <https://livingnewdeal.org/glossary/indian-reorganization-act-1934/>

Treaty of Doaksville, 11 Stat. 573 (1837)

Treaty of New Echota, 7 Stat. 478 (1835)

*Treaty with the Choctaws.* (n.d.). Mississippi Band of Choctaw Indians. Retrieved from <https://www.choctaw.org/aboutMB-CI/history/treaties1830.html>

Treaty With the Choctaws, 7 Stat. 333 (1830)

Treaty with the Creeks, 7 Stat. 368 (1832)

Treaty with Creeks and Seminoles, 11 Stat. 700 (1856)

*Treaty with the Seminoles, 1832.* (n.d.). Oklahoma State University Libraries Tribal Treaties Database. Retrieved from <https://treaties.okstate.edu/treaties/treaty-with-the-semi-nole-1832-0344>

United States v. Celestine, 215 U.S. 278 (1909)

*Quapaw* (2023). Encyclopedia of Arkansas. Retrieved from <https://encyclopediaofarkansas.net/entries/quapaw550/#:~:text=The%20Quapaw%20are%20members%20of,-Jacques%20Marquette%20and%20Louis%20Joliet>

Wilkins, E. D. (2017). American Indian Politics and the American Political System. Rowman and Littlefield Publishers.

