FEDERALISM AND SOVEREIGNTY OF THE TRIBE: THE FALLOUT OF *MCGIRT* AND *COOLEY*

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ABSTRACT

McGirt v. Oklahoma in 2020 has brought to light decades of debate on the sovereignty of the Tribes and the State. Oklahoma, of all states, has the highest concentration of indigenous nations at 38. The founding fathers of the United States created a constitutional republic. One in which the founders sought to expand with the hope of including the indigenous nations. However, the United States lost its foundational and Constitutional moorings by ignoring the Constitutional debates and understanding. This article seeks to analyze the sovereignty that the founders initially designed and influence on government within today's intergovernmental relations to the Tribal Nations.

Key Words: Tribal Sovereignty, Federalism, Covenantal Founding, Representation, State Sovereignty, Cherokee, Creek, Seminole, Choctaw, Chickasaw, Indigenous Nations, Constitutionalism, Oklahoma, and Supreme Court.

FEDERALISM AND SOVEREIGNTY OF THE TRIBE: THE FALLOUT OF *MCGIRT* AND *COOLEY*

In the current political environment, we have seen the rise in the question of sovereignty. Senator Sasse from Nebraska used his time to discuss the Constitution's civics on day one of the hearings for Amy Coney Barrett's nomination. He said that there were fundamental things that all politicians should agree upon; above all is Duncan's discussion of the principle of sovereignty.[1] Howe analyzed Ducan's argument that citizens are interested in local orientation, communitarian faith, and belief that citizens' participation in politics is sufficient and represented the American Revolution.[2] This thought came from the Federalists and Anti-Federalists on their view of the construction of the United States. *Federalist no. 51* shows that within the republic, the power lies with the people through the state and national government, where sovereignty is retained at each level. Sovereignty has been a continual discussion and is argued in modern discussion as state rights. However, sovereignty has always been seen in intergovernmental relations and often overlooks vital roles when dealing with the sovereignty of tribal nations.

The founding fathers were specific when they discussed the sovereignty of nations. The sovereignty given by nature and Nature's God and its restriction within the Constitution prevents the infighting between states on intergovernmental issues by restricting discussions on treaties with foreign nations to the national level, which allows for equal voice amongst the states. The equal sovereign powers can be seen close to home regarding the tribal nations with the first treaty between the United States and the Six Nations of 1794. In this treaty, the Six Nations entered into a treaty designating the boundaries of their sovereign nation and

1 Grant Duncan, "Sovereignty and Subjectivity," *Subjectivity; London* 6, no. 4 (December 2013): 412–14, http://dx.doi.org.ezproxy.liberty.edu/10.1057/sub.2013.10.

2 John Howe, "The Anti-Federalists and Early American Political Thought," *The Journal of American History; Oxford* 83, no. 4 (March 1997): 1383.

mutual agreement with the United States.[3] Amongst the hundreds of treaties that the United States entered into, their fundamental purpose was to represent sovereign states under the title of the United States to other sovereign nations.

This paper seeks to analyze the sovereignty that the founders initially designed and how their dual federal construct has meaning within today's intergovernmental relations and the Tribal Nations. National politics has taken a unique role within the United States, often skewing the founders' factual issues upon the limited federal government. The paper seeks to analyze the question, has national federal policy suppressed state and tribal sovereignty. The article will analyze the foundations of federalism; a sample literature review focusing on federalism, state, and tribal sovereignty; identify sovereignty issues between state and tribe; discuss the citizenry acts; and review the sovereignty of the state and tribe in the twenty-first century.

HISTORICAL FOUNDATIONS OF FEDERALISM

Federalism is found throughout antiquity in various forms. First, there are biblical foundations of federalism. We see that Israel's tribal foundation had many wars that were fought, resulting in the land that the Israelites saw as their own and given by God. This was forcefully taken as the Lord said in Joshua 3:10 (New International Version) that the living God would drive out the Canaanites, Hittites, Hivites, Perizzites, Girgashites, Amorites, and Jebusites. In "Biblical Principles of History and Government," Fischer outlines the Israelite people's covenantal principles in how Christian reformers began to form the federalist theology in the late seventeenth and eighteenth century.[4] The next form of federalism in antiquity is the ancient Greek Republic, also called the city-state. In this, Plato and Aristotle described how a Republic

3 Charles W. Eliot, ed., *American Historical Documents 1000-1904* (Danbury, Connecticut: Grolier Enterprises, 1990), 229–32.

4 Kahlib J Fischer, "Biblical Principles of History & Government" (Master Thesis, Virginia Beach, Va., Regent University, 1998), 49, Blackboard - Liberty University.

functions based on federalist principles in *The Republic*[5] and *The Politics of Aristotle*[6].

The founders of the United States introduced a new radical form of government for its period. They looked to Locke's social compact theory, which described federal power as incorporating the ability for war and peace, creating treaties and alliances, and forming compacts amongst equal partners resulting from a written constitution. According to constitutional delegate Rufus Davis, this thought was conceived in a covenant.[7] Additionally, the process expounded upon the international sovereignty created process at the end of the Thirty-Year War. This process was the signing of the Treaties of Westphalia that created rules recognizing inherent sovereignty.[8] The rules of sovereignty were used to enshrine the new government within the United States' founding documents. Hobbes and Bodin expounded upon the belief that a single authority holds sovereignty and that no other state can claim authority over another. The founding fathers created a unique aspect of sovereignty under sovereignty. So, Blackstone summed this theory up by saying that *imperium in imperio* or an empire within an empire cannot survive.[9]

During the Revolutionary period, the founders declared themselves free, independent, and sovereign states in placing them upon

5 Benjamin Jowett, M.A., *The Dialogues of Plato, Vol. 3 (The Republic, Timaeus, Critias) - Online Library of Liberty*, 3rd ed., vol. 3, 5 vols. (Oxford University Press, 1892), https://oll.libertyfund.org/titles/plato-dialogues-vol-3-republic-timaeus-critias.

6 Benjamin Jowett, M.A., *The Politics of Aristotle, Trans. into English with Introduction, Marginal Analysis, Essays, Notes, and Indices by B. Jowett.*, vol. 2, 2 vols. (Oxford: Clarendon Press, 1885), https://oll.libertyfund.org/titles/aristotle-the-politics-vol-2.

7 David C. Hendrickson, *Peace Pact: The Lost World of the American Founding* (Lawrence: University Press of Kansas, 2003), 22–23.

8 Dr Daud Hassan, "The Rise of the Territorial State and The Treaty Of Westphalia," 2006, 66–68.

9 Alison L. LaCroix, *The Ideological Origins of American Federalism* (Cambridge, MA: Harvard University Press, 2010), 12–14.

equal footing within the nations of man.[10] However, these new states understood that they could not survive against England independently, so they created the Articles of Confederation as an alliance with minimal powers modeled after the Continental Congress.[11] After the War of Independence, the founders saw that the current government system lacked the central government to settle early disputes. Shays' Rebellion brought to light many of the issues with the Articles of Confederation's treaty alliance. Washington had suggested that there needed to be a revision and draft of a national government upon separation of powers and federalism.[12] In creating the Constitution, the delegates thought each state should retain its sovereignty and that by entering the "league of friendship," they were ensuring that liberties, defense, and welfare were commonly fought for under a unified front on the international scene.[13]

Madison would describe it as a "compound republic" or a partly federal system and partly national yet not whole. This belief of separate republics within a republic was about dividing power functionally on the national level and spatially across equal sovereigns.[14,15] The states accomplished this by maintaining equality and granting limited powers to the national government.[16] At the time, the states were concerned about trading one tyrant for another. This concern was heard at the convention, where

10 J. B. Shurtleff, *The Governmental Instructor, or A Brief and Comprehensive View of the Government of the United States, and of the State Governments, in Easy Lessons, Designed for the Use of Schools*, 4th edition (New York: Collins, Brother & Co, 1846), 33.

11 Shurtleff, 37; Robert V. Remini, *A Short History of the United States*, Book Club Edition (New York: HarperCollins Publishers, 2008), 54.

12 Fischer, "Biblical Principles of History & Government," 191.

13 Eliot, *American Historical Documents 1000-1904*, 158–59.

14 David Brian Robertson, *Federalism and the Making of America*, Second (New York: Routledge, Taylor & Francis Group, 2018), 36.

15 Louis Fisher and Katy J. Harriger, *American Constitutional Law: Constitutional Structures Separated Powers and Federalism*, 11th edition, vol. 1 (Durham, North Carolina: Carolina Academic Press, 2016), 313.

16 Shurtleff, *The Governmental Instructor, or A Brief and Comprehensive View of the Government of the United States, and of the State Governments, in Easy Lessons, Designed for the Use of Schools*, 40, 42.

Madison assured readers in the *Federalist* that states were distinct and independent sovereigns. He even went as far as to say that the states have an advantage over the federal government.[17] This power was that each state became a sovereign nation, granted limited powers to the national government, and retained full sovereignty. Hence each state is a republican form of government, and the only way a minority can escape is to rebel and form a new nation.

Within Madison's compound republic, the tribes and states are separate from the national, with some overlapping shared authority to the national level. The founders' federal system is designed to protect the rights of the people, which can be seen in how the United States recognized the Tribes.[18,19] Previously we discussed the Treaty of the Six Nations, yet the Constitution discusses the Tribes as independent sovereigns. Article I Section 8 Clause 3 discusses commerce amongst foreign Nations, States, and Indian Tribes set by Congress. Further Article II Section 2 Clause 2 gives the President the authority to enter into treaties with foreign governments. While Article VI Section 2 states that all treaties would become the law of the land.[20] This thought of sovereignty of the state, tribe, and federal government was at the forefront of thought at the end of the eighteenth century.

Nevertheless, how does this federal system of state, tribe, and nation impact today? The Constitution says that states cannot enter into a treaty, alliance, or confederation.[21] To expound, Article I Section 8 Clause 3, Congress is the authority that can regulate commerce

17 Robertson, *Federalism and the Making of America*, 35.

18 Laurence J. O'Toole and Robert K. (Kay) Christensen, eds., *American Intergovernmental Relations: Foundations, Perspectives, and Issues*, Fifth edition (Thousand Oaks, California: CQ Press, 2013), 48–49.

19 Samuel Hutchison Beer, *To Make a Nation: The Rediscovery of American Federalism* (Harvard University Press, 1993), 292.

20 Eliot, *American Historical Documents 1000-1904*, 184–92.

21 Shurtleff, *The Governmental Instructor, or A Brief and Comprehensive View of the Government of the United States, and of the State Governments, in Easy Lessons, Designed for the Use of Schools*, 93, 130.

with foreign nations, States, and the Indian Tribes.[22,23] These two articles in the Constitution enhance or help dictate the case for sovereignty. Fischer discusses that federalism, as defined by the construct within the United States, is a local government unit that works with a national government, thus creating separate but equal powers under covenantal principles.[24] According to Hendrickson's analysis of the term federalism, modern terminology would be considered internationalism or multilateralism.[25]

Based on the historical evidence, sovereignty is inherent within the Constitution. The notion of sovereignty is also inherent within the discussion of nations. To that end, tribal nations have inhabited the United States since before its European discovery. The tribal nations considered themselves sovereign even though their definition did not match what was laid out within the Treaties of Westphalia and philosophers such as Hobbes, Locke, and Blackstone. Over the past 246 years, the United States has argued sovereignty for its people while ignoring the tribal governments' sovereign relations at one point or another. This may be partly due to the movement away from Madison's dual federalism, which recognized each foreign nation, state, and tribe as sovereign.

LITERATURE REVIEW

Before the constitutional convention, Jefferson wrote to Jean Baptiste Ducoigne, a Kaskaskia Chief, in 1781. In the letter, Jefferson tried to convey to the Kaskaskia; the United States sought to instruct in what they knew and learn to help make them wise and wealthy.[26] This letter let the tribe know where the United States felt they could help develop the tribal nation into a more generous

22 Eliot, *American Historical Documents 1000-1904*, 184.

23 Roxanne Dunbar-Ortiz, *An Indigenous Peoples' History of the United States* (Boston, MA: Beacon Press, 2014), 205.

24 Fischer, "Biblical Principles of History & Government," 53.

25 Hendrickson, *Peace Pact: The Lost World of the American Founding*, 22–23.

26 Robert Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century* (New York: Vintage Books, 2006), 71.

nation and equal to the other states. Based on Jefferson's letter, Jefferson's policy followed Madison's thought that the tribe was a sovereign nation and that the Kaskaskia nation would become part of the United States as the nation developed. This literature review will look in-depth at federalism, state sovereignty, and tribal sovereignty's modern interpretation within the republic.

FEDERALISM

Federalism is described as for the public good. Hamilton argued that the Constitution's purpose is to regulate the common concern and preserve tranquility.[27] Bednar describes federalism as having three features: geopolitical division, independence, and direct governance.[28] This form of federalism looks at a traditional approach from what the United States established in 1787. However, federalism is synonymous with Hendrickson's discussion of internationalism and multilateralism in today's political landscape.[29] Bowman addresses federalism in the twenty-first century as being at a crossroads in that it can continue on its centralization course or revert toward the founders' original construct laid out in the *Federalist* and *Anti-Federalist* papers.[30]

Schuck identifies federalism as a system that divides authority into national and sub-national policies that govern individuals. This distinction enhances the thought of nation-building in which the states can be built based upon descent, language, culture, or other aspects. When Schuck discusses constitutionalism, it is in discussion as an instrument of a nation for political, military, or ideological struggles.[31] In Washington's farewell address, he

27 Alexander Hamilton, James Madison, and John Jay, *The Federalist Papers*, ed. Clinton Rossiter (Start Publishing Llc, 2013), 111.

28 Jenna Bednar, "Federalism as a Public Good," *Constitutional Political Economy; New York* 16, no. 2 (June 2005): 191, http://dx.doi.org.ezproxy.liberty.edu/10.1007/s10602-005-2235-5.

29 Hendrickson, *Peace Pact: The Lost World of the American Founding*, 22–23.

30 Ann O'M Bowman, "American Federalism on the Horizon," *Publis* 32, no. 2 (2002): 4–5.

31 Peter H. Schuck, "Federalism*," *Case Western Reserve Journal of International Law; Cleveland* 38, no. 1 (2006): 5–7.

describes the citizenry as Americans having the same religion, manners, habits, and political principles.[32] Nevertheless, in "Negotiating Federalism," we find that federalism is a collaborative decision-making process that formalizes collaboration.[33]

Quigley and Rubinfeld address fiscal federalism considering mandates and grants. Federal mandates require states to conform to set requirements before they receive any support. Additionally, intergovernmental grants forced states to follow spending requirements and other stipulations on setting internal funding requirements.[34] Hebert addresses how Congress attaches strings that undercut the founders' dual federalism concept.[35] These strings can be seen in many ways as Congress is trying to usurp power and authority, focusing the population and state on the benefits they receive as entitlements.

Radin and Boase discuss how the United States was designed under

32 Eliot, *American Historical Documents 1000-1904*, 236.

33 Erin Ryan, "Negotiating Federalism," *Boston College. Law School. Boston College Law Review; Newton Centre* 52, no. 1 (January 2011): 5.

34 John M. Quigley and Daniel L. Rubinfeld, "Federalism and Reductions in the Federal Budget," *National Tax Journal; Washington* 49, no. 2 (June 1996): 4–5. enumerating certain powers for the central government, while reserving others for the states. The historical resolution of these tensions has a complex political and economic history. The budget issues that have divided the Clinton Administration and the 104th Congress mirror those of the Reagan initiative in many ways. Rather than making a revision to the New Federalism of the 1980s, the current debate may well signify the beginning of a new period of retrenchment in American federalism. The debate puts the presumptions of the US's entire federalist system under scrutiny and asks whether the current structure of responsibilities is appropriate to the 21st century. There are at least 2 ways in which appeals to federalist principles can affect the revenue requirements at the federal level, the size of the federal deficit and the economic relationship between central and local governments. These include mandates and grants.","container-title":"National Tax Journal; Washington","ISSN":"00280283","issue":"2","language":"English","note":"number-of-pages: 14\npublisher-place: Washington, United States, Washington\npublisher: National Tax Association","page":"289","source":"ProQuest","title":"Federalism and reductions in the federal budget","volume":"49","author":[{"family":"Quigley","given":"John M."},{"family":"Rubinfeld","given":"Daniel L."}],"issued":{"date-parts":[["1996",6]]}},"locator":"4-5"}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

35 F. Ted Hebert, "Federalism Reconsidered and Revitalized," *Public Administration Review; Washington* 57, no. 4 (August 1997): 356.

Madison's checks and balances at the national and state levels.[36] Checks and balances show under Madison's *Federalist no. 39* that the plan to conform to republican ideals was essential and federal, not national, as he reiterates in his writings.[37] Federalism creates fifty sovereign nations, called states, which hold a national government on equal footing, that can handle differences between the sovereigns and address mutual concerns arising from external sources such as other sovereigns. These other sovereigns can be other international governments outside the United States' geographical boundaries or international governments within that boundary, such as the tribal nations.

STATE SOVEREIGNTY

It is a voluntary act that a state enters the Union where each state is considered a sovereign and agrees as such independent and voluntary. *The Federalist* no. 39 described how the new Constitution was neither federal nor national but both.[38] Each state develops within its own geographical boundaries, customs, policies, and people within international law. Korowicz defined state sovereignty as a state or nation with supreme power over its territory and inhabitants and has independence over its authority. Korowicz further expounds upon the concept of sovereignty in expression within the state as being found in everyday life, such as newspapers, books, and other interactions.[39] This discussion of sovereignty by Korowicz is vital in confirming Madison's dual federalism.

The founder thought that the states would have "numerous and indefinite" powers, whereas the federal government is few

36 Beryl A. Radin and Joan Price Boase, "Federalism, Political Structure, and Public Policy in the United States and Canada," *Journal of Comparative Policy Analysis; Abingdon* 2, no. 1 (April 2000): 66.

37 Hamilton, Madison, and Jay, *The Federalist Papers*, 236–43.

38 Hamilton, Madison, and Jay, 240–41.

39 Marek St. Korowicz, "Sovereignty of States in Theory. Universalist and Nationalist Conceptions," in *Introduction to International Law: Present Conceptions Of International Law In Theory And Practice*, ed. Marek St. Korowicz (Dordrecht: Springer Netherlands, 1959), 23, https://doi.org/10.1007/978-94-011-9226-2_2.

and defined.[40] The concept and debate within the constitutional convention reinforced the idea of sovereignty. Even after the Constitution's passage and the Bill of Rights, sovereignty continued to play a role. In the Virginia and Kentucky Resolutions, written by Madison and Jefferson, we see the affirmation that the federal government's power resulted from a compact in which the states were parties, and it was limited. The resolutions resulted in the federal government only allowing the powers authorized within the compact and nothing more. The founders declared that each state is an integral part of both itself and joint within the compact.[41]

Modern interpretations lead to a decentralization of national policies. Anders and Shook discuss the fear that centralized power corrupts the state and people's liberty. Nevertheless, they still instituted a dual sovereign concept.[42] With dual sovereignty, the states are independent sovereigns and can enter into agreements with other sovereigns. However, once the state agrees to the Constitution, they expressly give a national government some of its sovereign rights. One of these rights is the right to negotiate on their behalf for broad concepts such as treaties, alliances, and the right of war. These concepts are enshrined in the Constitution as found in Article I Section 8 Clause 3; Article I Section 8 Clause 10, 1; and Article II Section 2 Clause 2.[43] This concept gives Congress and the Executive branch the ability to create treaties and regulate commerce and disputes between sovereigns.

TRIBAL SOVEREIGNTY

Just as with state sovereignty, tribal sovereignty has a basis found

40 Robertson, *Federalism and the Making of America*, 35.

41 Alfred H. Kelly, Winfred A. Harbison, and Herman Belz, *The American Constitution: Its Origins and Development*, 7th ed., vol. I (New York: W. W. Norton & Co., 1991), 132–34.

42 Kathleen K. Anders and Curtis A. Shook, "New Federalism: Impact on State and Local Governments," *Journal of Public Budgeting, Accounting & Financial Management; Boca Raton* 15, no. 3 (Fall 2003): 468–69, http://dx.doi.org.ezproxy.liberty.edu/10.1108/JPBAFM-15-03-2003-B005.

43 Eliot, *American Historical Documents 1000-1904*, 184–89.

within international law. However, the United States has decades of treaty evidence recognizing the tribes as sovereigns, even as they subjugate the tribes to the modern state concept. Treaties that date from the period of the Revolutionary War have guaranteed sovereignty rights to the tribes. In the commerce clause, the Constitution shines the first light in that the tribal nations are sovereign entities.[44] Madison utilized examples of the difference in federal, state, and tribal authority in that states could not make agreements amongst each state or with the tribe that could lead to war requiring other states to become involved.

Additionally, Madison thought in *Federalist no 42* that the tribes would be sovereigns as the states were. They would be absolute sovereigns to the state and have partial sovereignty within the Federal government, and that there needed to be a reconciliation of the partial sovereignty so that they would have representation legislatively.[45] The recognization found in *Cherokee v. Georgia* (1831), where the Court defined the Cherokee as "domestic dependent nations," is expounded upon in *Worcester v Georgia* (1832), which dictated that the state had no right to enter the Cherokee nation's territory.[46,47] The Supreme Court set precedence in *Worcester v. Georgia* (1832) conferring sovereignty in that the tribes were independent and excluded from regulation and taxation.[48] These two cases caused concern amongst the states and provided the reasoning for Andrew Jackson to implement the Trail of Tears in the name of national security.

In the early eighteenth century, Secretary of War Henry Knox believed that the tribes are foreign nations and not subject to any

44 Algeria R. Ford, "The Myth of Tribal Sovereignty: An Analysis of Native American Tribal Status in the United States," *International Community Law Review* 12, no. 4 (2010): 397; Eliot, *American Historical Documents 1000-1904*, 184.

45 Hamilton, Madison, and Jay, *The Federalist Papers*, 265.

46 Jill Lepore, *These Truths: A History of the United States* (New York: W. W. Norton & Co., 2018), 214–16.

47 Lawrence M. Friedman, *A History of American Law*, 3rd edition (New York: Simon & Schuster, 2007), 386–87.

48 Ford, "The Myth of Tribal Sovereignty," 398.

state.[49] This view reinforced the Court's opinion. However, it also created tensions not seen since the constitutional convention. The Jackson administration insisted upon a unified Georgia and Constitution by placing the Cherokee and other Indian interests as second-class citizens. Jackson feared that recognizing the tribes as sovereigns would create a series of independent nations/republics within state boundaries that would cause open war. Jackson's fear of chaos and inability to handle a diverse international construct caused him to demand the Cherokee, Creek, Seminole, Choctaw, and Chickasaw's forced removal from lands east of the Mississippi.[50]

Today all treaties are originally housed at the State Department, with the original tribal treaties transferred to the Smithsonian due to their age.[51,52] The 1833 Muskogee Creek and United States Treaty promised the Muskogee Nation that no state or territory would pass laws over the tribes as they would be allowed to govern themselves. This was upheld recently in *McGirt v. Oklahoma* (2020), which referenced the 1832 treaty Article XIV establishing national boundaries and that under the Indian Removal Act of 1830, the tribes hold the legal land titles. Then *United States v. Cooley* (2021) affirmed tribal sovereignty by allowing tribal officers to arrest and detain non-tribal citizens.[53] The Supreme Court's recent rulings show the United States needs to understand its basic founding principles and sovereignty premise is maintained.

Recent Supreme Court rulings and current treaties impact every state as they become the law of the land under the Constitution.

49 Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century*, 92.

50 Paul Johnson, *A History of the American People* (New York: Harper Perennial, 1999), 350–51.

51 Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century*, 92.

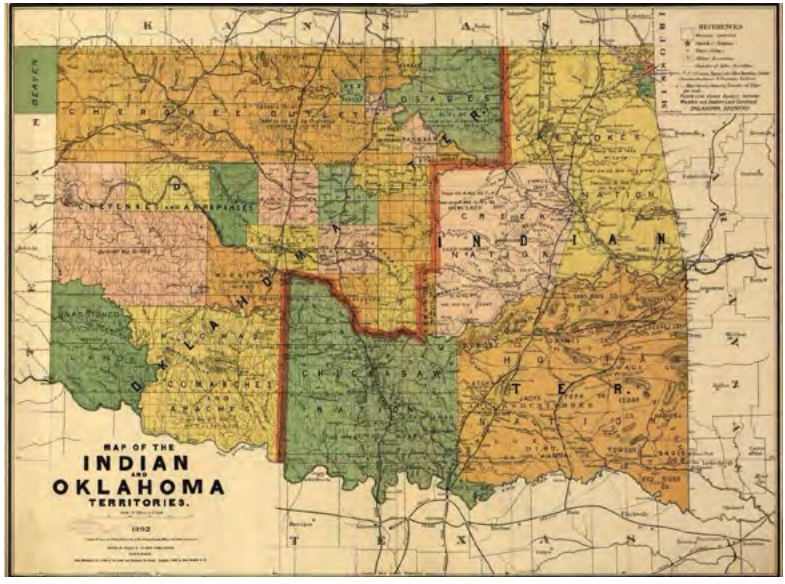
52 Nora McGreevy, "Hundreds of Native American Treaties Digitized for the First Time," *Smithsonian Magazine*, October 15, 2020, https://www.smithsonianmag.com/smart-news/hundreds-native-american-treaties-digitized-and-online-first-time-180976056/.

53 Breyer, "United States v. Cooley," June 2021, 13.

Concerning the tribal nations, Oklahoma's future as a state had the most interaction with tribal nations than any other, even after its founding in 1907, and maintains consistent public policy interactions. However, at the end of 1892, the Oklahoma Indian territorial map in Figure 1[54] shows numerous tribal associations throughout the modern state. This territorial map is essential as, according to the *McGirt* ruling, the lands revert to tribal sovereignty. Before *McGirt,* the tribal governments relied on the state for judicial review and law enforcement of non-tribal citizenry. Additionally, the state and the tribes continually argue over taxation and other policy issues such as water ownership, child support, and citizenship. These issues required the federal government through the BIA and Supreme Court to intercede on several occasions.

54 "Map of the Indian and Oklahoma Territories.," image, Library of Congress, Washington, D.C. 20540 USA, accessed October 16, 2020, https://www.loc.gov/resource/g4021e.ct000224/.

Figure 1. "Map of the Indian and Oklahoma Territories.," image, Library of Congress, Washington, D.C. 20540 USA, accessed October 16, 2020, https://www.loc.gov/resource/g4021e.ct000224/.



IMPLICATIONS OF SOVEREIGNTY

Barton discusses the founding philosophy of the founding fathers. He points to the concept of divided power from Montesquieu, Washington, and Hamilton, where the Bible in Jeremiah 17:9 discusses that a will naturally gravitates towards corruption.[55] The gravitation toward corruption is essential when we focus on how the founders sought to establish the law. An example is Jefferson, who focused upon Blackstone's works that said civil laws could not contradict the laws of nature or God.[56] The laws of nature are essential when we look at the Constitution, allowing the ability to add states to the national government. In Article IV, section 3, subsection 1, we see how Congress can admit new states into the Union as long as they form a republican form of government.[57] In Jefferson's letter to the Kaskaskia, one can infer that the founders were looking toward enhancing the Union and bringing the indigenous people into the Union.[58] Founder Samuel Adams put forth that all men were bound to the supreme creator's authority within the laws of nature.[59]

Five years after Jefferson's letter to the Kaskaskia, the Indian Ordinance of 1786 formalized the basis of land dealings between Tribal Nations and the United States. In this treaty, the principles

55 David Barton, *Original Intent: The Courts, the Constitution, & Religion*, 5th edition (Aledo, TX: WallBuilder Press, 2011), 221.judicial activism, and separation of church and state. A substantial appendix encompasses full texts of the founding documents, biographical sketches of numerous Founders, and extensive reference notes.","edition":"5th edition","event-place":"Aledo, TX","ISBN":"978-1-932225-26-6","language":"English","number-of-pages":"560","publisher":"WallBuilder Press","publisher-place":"Aledo, TX","title":"Original Intent: The Courts, the Constitution, & Religion","title-short":"Original Intent","author":[{"family":"Barton","given":"David"}],"issued":{"date-parts":[["2011",7]]}},"locator":"221"}],"schema":"https://github.com/citation-style-language/schema/raw/master/csl-citation.json"}

56 Barton, 223.

57 Eliot, *American Historical Documents 1000-1904*, 191.

58 Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century*, 71.

59 Barton, *Original Intent*, 230.

of sovereignty and the right of soil or land were established.[60] After the Revolutionary War, the Treaty of the Six Nations (1794) was negotiated between the President of the United States, with Thomas Pickering acting in negotiations, and the nations of the Mohawks, Oneidas, Onondagas, Cayugas, Senecas, and Tuscaroras. This treaty was the peace treaty defining lands and territories of the tribes that fought against the Colonies during the War of Independence. This acknowledges land within New York and Pennsylvania that would fall under their national sovereignty, provided they do not sell the land later. Additionally, it promised that the United States would not interfere with nations, tribes, or families of Indians that resided outside of those lands.[61]

These three documents show how the founders sought to establish international relations with the tribes to protect their state and national security. The legality of these treaties allowed the United States to be the mediator between the state and tribe in question. This also led to the development of the Department of State to conduct international negotiations with the tribes that the United States claimed as land territory. In 1820 the United States had conducted over two hundred treaties with the different Indian nations.[62] However, as the United States expanded, those elected to represent the states did not exercise appropriate statesmanship by honoring the treaties. The military has a saying that the best-laid plan cannot survive the first contact. The same can be said regarding how the United States has treated the tribal nations. Treaties such as the 1830 Cherokee Treaty, 1832 Muskogee Creek Treaty, 1856 Creek Treaty, 1856 Seminole Treaty, and 1866 Creek Treaty outlined the ever-changing national boundaries. The Supreme Court ruled that only Congress can alter the terms of a treaty, according to *South Dakota v Yankton Sioux* (1998). While states interact and respect the tribal nations within their

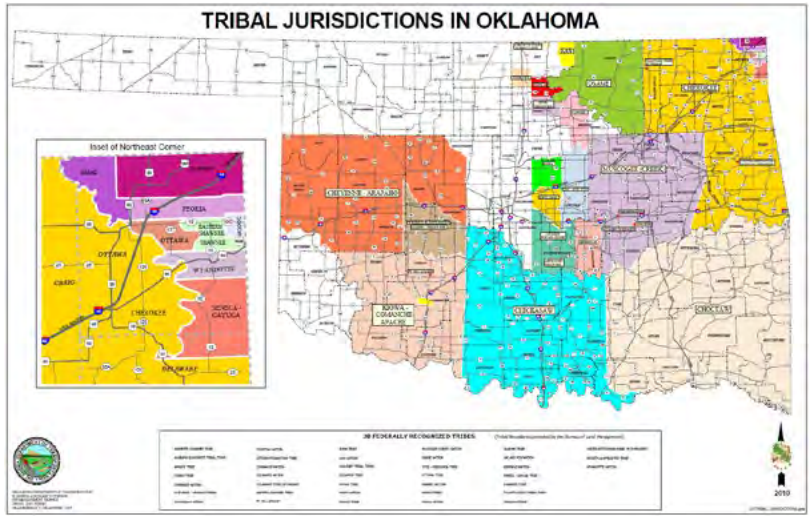
60 Larry Schweikart and Michael Allen, *A PAtriot's History of the United States: From Columbus's Great Discovery to the War on Terror* (New York: Penguin Group, 2007), 104.

61 Eliot, *American Historical Documents 1000-1904*, 229–32.

62 Hendrickson, *Peace Pact: The Lost World of the American Founding*, 265.

current state boundaries, the overarching relationship is the tribal nation with the United States and not the tribal nation with the state. Oklahoma is a prime example of this relationship. Within the state, 38 federally recognized tribes have substantial national boundaries, as indicated in figure 2.[63]

Figure 2. Bureau of Land Management. "Tribal Jurisdictions in Oklahoma." Oklahoma Department of Transportation, 2010. https://www.ok.gov/health2/documents/map_tribal_jurisdictions.pdf.



CITIZENRY ACTS

One of the founding concepts of sovereignty is the ability to determine territory, as we have seen. Another is the ability of the people to have a common thread that ties them together. In his farewell address, Washington addressed this amongst the United States as having the same cultural ties of religion, manners, habits, and principles.[64] These same principles can be applied to tribal nations even today. In the 1820s, John Payne argued that the tribes

63 Bureau of Land Management, *Tribal Jurisdictions in Oklahoma* (Oklahoma Department of Transportation, 2010), https://www.ok.gov/health2/documents/map_tribal_jurisdictions.pdf.

64 Eliot, *American Historical Documents 1000-1904*, 236.

had a written language, schools, churches, laws, employment, and a constitution.[65]

However, the United States Congress treated the tribal nations as domestic dependent nations that the Supreme Court ruled in 1832 and disregarded their interests.[66] This can be seen with the passage of the 1871 Indian Appropriation Act. This act allowed Congress to halt all treaty-making with the Tribes and treat them as genuinely domestic dependent nations just as the states were being treated. The 1871 act effectively said the United States would no longer acknowledge the independent sovereignty of the Tribes.[67] Then in 1887, the Dawes Severalty Act authorized Native Americans the right of United States citizenship. However, it also allowed the federal government to divide Indian lands into allotments.[68] With the Indian Citizenship Act of 1924, Congress granted fiat citizenry to all tribal members.[69] We find that since the Marshal Court ruled the Cherokee as "dependent domestic nations," the federal government has increasingly treated them on an uneven playing field.

SOVEREIGNTY OF STATE AND TRIBE IN THE TWENTY-FIRST CENTURY

As with any sovereignty, the average citizen expects the government to mainly; protect life, property, laws of marriage, inheritance, chartering and control of businesses, banking institutions, insurance, enforce laws, punish crimes, ensure public education, and create other societal aspirations.[70] God created man in his image, and as Locke discusses in the compact social theory, a man joins society for security. Locke further discusses that laws are created under natural law and for the betterment of man

65 Lepore, *These Truths: A History of the United States*, 214.
66 Lepore, 215.
67 Dunbar-Ortiz, *An Indigenous Peoples' History of the United States*, 142.
68 Lepore, *These Truths: A History of the United States*, 337.
69 Lepore, 408.
70 David Saville Muzzey, *The American People*, 1st edition (Boston: Ginn & Company, 1929), 169.

through the divine interface.[71] Today, many tribes refer to the 1887 Dawes commission as the base for determining tribal citizenry and those who are not. However, the forced removal throughout the nineteenth century by assimilation of those not on reservation land into the local states has allowed many tribes not to acknowledge citizens that were not on or removed from the 'roles.' This disregarded those of indigenous heritage by not allowing them to seek their heritage just because they did not leave their lands in the east. Dunbar-Ortiz addresses some of this in the notion of "blood quantum" to qualify as indigenous.[72] However, the theory of "blood quantum" was derived for the Dawes Rolls and requires proof of lineage to the various Indian registration rolls and not valid DNA measurements which may show mixed-race or non-indigenous relations.

In the summer of 2020, the Supreme Court heard *McGirt v Oklahoma*'s case (2020). This case challenged that Oklahoma's state did not have the authority to try tribal citizens within the state court if the crime occurred on reservation land. Oklahoma argued that the reservations ceased after the formation of the state in 1907, as tribal chiefs were amongst those who formed the state constitution. However, the Court found in favor of McGirt and ruled that reservations were never abolished and that the tribal nations are sovereign.[73] This ruling calls into question the ambiguity of Oklahoma's state, as it effectively ruled that 19 million acres are now tribal land in which state jurisdiction becomes unclear as millions of non-native citizens live and own homes within the reservations.[74] The Smithsonian article announcing the new

71 Barton, *Original Intent*, 224.

72 Dunbar-Ortiz, *An Indigenous Peoples' History of the United States*, 170.

73 Ronald Mann, "Opinion Analysis: Justices Toe Hard Line in Affirming Reservation Status for Eastern Oklahoma," SCOTUSblog, July 9, 2020, https://www.scotusblog.com/2020/07/opinion-analysis-justices-toe-hard-line-in-affirming-reservation-status-for-eastern-oklahoma/.

74 Mann; Jack Healy and Adam Liptak, "Landmark Supreme Court Ruling Affirms Native American Rights in Oklahoma," *The New York Times*, July 11, 2020, sec. U.S., https://www.nytimes.com/2020/07/09/us/supreme-court-oklahoma-mcgirt-creek-nation.html.

database of tribal treaties acknowledges the Supreme Court case and caveated that "no land changed hands."[75]

The new decision has caused unresolved issues within Oklahoma's state due to the Court noting that the selling of land does not alter sovereignty.[76] This calls into question many civil expectations that a citizen would have. For instance, before the 2020 Supreme Court ruling, the state of Oklahoma's government oversaw all the regulations from environmental to commerce unless there were federal guidelines, such as with the gaming commission. However, *The Oklahoman* raises the concern of whether the state can now legally regulate the oil and gas industry, which is prevalent within the reservations that have been deemed sovereign. New cases that challenge the sovereignty and federal relations are rising through Courts even as this article is typed. If ruled in favor of the plaintiff, as with *McGirt v Oklahoma* and *United States v Cooley*, the new legal cases will continue to question the legal right of non-Indians on reservation land.[77] Additional research into the federalist construct, independent sovereignty of the tribe, and how the rights of tribal and non-tribal members will be impacted across the United States.

DISCUSSION

Today sovereign tribal nations continue to battle for recognition. The latest Court rulings bring to light new areas that must be addressed, and according to James 3:17, it can be accomplished with wisdom, peace-loving, consideration, and mercy while being impartial and sincere. The *McGirt* and *Cooley* rulings are just the

75 McGreevy, "Hundreds of Native American Treaties Digitized for the First Time."

76 Dominga Cruz, Sarah Deer, and Kathleen Tipler, "Analysis | The Oklahoma Decision Reveals Why Native Americans Have a Hard Time Seeking Justice," *Washington Post*, July 22, 2020, https://www.washingtonpost.com/politics/2020/07/22/oklahoma-decision-reveals-why-native-americans-have-hard-time-seeking-justice/.

77 Jack Money, "Oklahoma's Authority to Regulate Oil and Gas Activity Is in Question after McGirt Decision," Oklahoman.com, October 15, 2020, https://oklahoman.com/article/5673962/oklahomas-authority-to-regulate-oil-and-gas-activity-is-in-question-after-mcgirt-decision/.

tip of what needs to be addressed. As news agencies have alluded to, there are issues within the sovereign lands, such as native versus non-native. Before the ruling, the non-tribal citizenry believed they lived there legally and with terms of good faith. Parents bought land and raised families on land that is now reservation land and a sovereign nation. However, the tribal nations do not see them as citizens but as invaders or usurpers. If the national boundaries revert to the boundaries discussed in *McGirt,* then the land rights discussion must also be addressed. The national government must address this new crisis that is rising in the courts. The implications to rulings in the future could see the tribal nations receive their full international sovereignty, including their borders, and see a displacement of millions of non-tribal Americans within a foreign territory. Nevertheless, agreements would need to be reached as tribal citizens also live on non-tribal land across the United States.

In addition to the land rights question, questions arise from the *McGirt* ruling in the form of the non-tribal and tribal citizenry. The 1924 Indian Citizenry Act recognized all indigenous as citizens of the United States yet did not give each tribe a voice within Congress's halls but integrated their representation within the existing states. Does this mean that the tribal nations should receive representation in the Senate and House, just as the Constitution dictates for sovereign states? If so, how does the current allocation of representation validate or invalidate the sovereignty of tribal nationality, let alone the states' sovereignty?

The Supreme Court and Congressional acts show that the Tribes should now be states since they have met the Constitution's requirements and recognition by the federal government and its agencies. Should each tribe, therefore, receive at least one representative and two senators, as the Constitution dictates? According to the *Federal Register,* over 574 tribal entities are recognized by the United States even if half of the tribes were at the point to form their republic, as required in Article IV and ordered under the Indian Reorganization Act (IRA) of 1934; there would

be an increase of 574 senators.[78] If all 574 tribes were eligible, it would increase the Senate by 1,148 votes.[79] Simultaneously, the House of Representatives would increase to a minimum of 624 as each tribe and state would have at least one representative. The allocation of the House of Representatives would have to change fundamentally to accommodate the influx of new representation since the Permanent Apportionment Act of 1929 limited the number of representatives to 435, with each sovereign state receiving at least one representative.[80]

In terms of elections, the sudden increase of electoral votes and congressional votes within Congress would change the country's political dynamics. It would be vital that America return to the federalist and moral foundations that have been eroded over the last century and a half. While the founding fathers provided a solid biblical foundation for relating and interacting with the tribal nations, their successors have failed the country and the Divine Orator. The federalism model Madison put forth in dual federalism has been lost through the progress of Manifest Destiny that Jackson, Monroe, and others put forth.[81,82] The trampling of the divine rights promised by God and enshrined in the Declaration of Independence, Constitution, and Bill of Rights needs to be addressed within the soul of everyday Americans.

CONCLUSION

This paper has raised issues concerning the incorporation of the tribal nations into the federalist construct of the United

78 "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs," Federal Register, January 30, 2020, https://www.federalregister.gov/documents/2020/01/30/2020-01707/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of.

79 Dunbar-Ortiz, *An Indigenous Peoples' History of the United States*, 215.

80 "The Permanent Apportionment Act of 1929 | US House of Representatives: History, Art & Archives," accessed October 16, 2020, https://history.house.gov/Historical-Highlights/1901-1950/The-Permanent-Apportionment-Act-of-1929/.

81 Lepore, *These Truths: A History of the United States*, 199.

82 Kagan, *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century*, 181.

States under the ICA, IRA, Supreme Court, and Congressional recognition. Previously the tribes were considered sovereign independent nations, as guaranteed them under natural law, in which the founding fathers sought for them to take their sovereign place amongst the world. Chief Justice John Jay stated that "natural law was given by the Sovereign of the Universe to all mankind."[83] Nevertheless, the Supreme Court under Marshal ruled them to be domestic dependent nations subordinate to the United States in 1832. Subsequent rulings and congressional actions led to the tribes receiving citizenry status but without governmental representation. The question raised with recent Court rulings is how to allow the tribes to regain their rightful internationally recognized sovereignty or become sovereign states as indicated by the Marshal court, which declared the tribes' domestic sovereign nations.

Further research into whether the tribes should be given statehood or territory status must be debated and brought before the American people. Questions as to whether the state of Oklahoma is valid could also rise. According to Figure 1 and Figure 2, much of the Oklahoma land claimant falls under reservation land and needs to be appropriately addressed per the *McGirt v. Oklahoma (2020)* and *United States v. Cooley* (2021) ruling. The Supreme Court ruling also raises sovereignty concerns for tribes in other states such as the Lakota, Ypik, Navajo, Seneca, Crow, and many others. Additionally, the citizenry's representation is called into question on being duly represented at the federal level, with each sovereign's voice being heard appropriately.

This paper sought to address the suppression of tribal sovereignty through national policy, yet through the analysis of Congress and the Supreme Court rulings and historical actions, we see more questions instead of answers. However, as noted, much of the national government has tried to implement federalist policies while ignoring fundamental sovereignty. With the implementation

83 Barton, *Original Intent*, 231.

of *McGirt* and *Cooley,* the question of representation of the tribe within Congress must be addressed. Additionally, once the sovereignty issue has been adequately adjudicated, the citizenry of non-tribal members within the Tribal nations must be addressed. The Treaties of Westphalia delineate national sovereignties and the rights of the citizenry. Recently, issues have arisen within the Cherokee Nation of Tahlequah regarding the Freedmen and their tribal rights to vote and run for office. Whether the Tribes become states or independent nations, the citizenship of all people living on tribal lands needs to be addressed. Citizenship needs to be addressed because the Supreme Court ruling states that the Tribes have sovereign jurisdiction within their borders, affecting non-tribal citizens who do not have a vote on the council. States will have the most significant impact as the Tribes become sovereign due to state citizens in tribal jurisdiction having no vote within the tribal councils. In the case of Oklahoma, figure 2 shows the majority of the state belongs to tribal nations, as the jurisdiction map of 2010 shows. This impact of representation will place neighbors on edge as laws and jurisdiction outcomes can be changed without the required representation. This is an area that requires further policy analysis both within state and tribal governments.

BIBLIOGRAPHY

Anders, Kathleen K., and Curtis A. Shook. "New Federalism: Impact on State and Local Governments." *Journal of Public Budgeting, Accounting & Financial Management; Boca Raton* 15, no. 3 (Fall 2003): 466–86. http://dx.doi.org.ezproxy.liberty.edu/10.1108/JPBAFM-15-03-2003-B005.

Arai, Susan, and B. Dana Kivel. "Critical Race Theory and Social Justice Perspectives on Whiteness, Difference(s) and (Anti) Racism: A Fourth Wave of Race Research in Leisure Studies." *Journal of Leisure Research; Urbana* 41, no. 4 (Fourth Quarter 2009): 459–72. http://dx.doi.org.ezproxy.liberty.edu/10.1080/00222216.2009.11950185.

Barton, David. *Original Intent: The Courts, the Constitution, & Religion*. 5th edition. Aledo, TX: WallBuilder Press, 2011.

Bednar, Jenna. "Federalism as a Public Good." *Constitutional Political Economy; New York* 16, no. 2 (June 2005): 189–205. http://dx.doi.org.ezproxy.liberty.edu/10.1007/s10602-005-2235-5.

Beer, Samuel Hutchison. *To Make a Nation: The Rediscovery of American Federalism*. Harvard University Press, 1993.

Bowman, Ann O'M. "American Federalism on the Horizon." *Publis* 32, no. 2 (2002): 21.

Breyer. "United States v. Cooley," June 2021, 13.

Bureau of Land Management. "Tribal Jurisdictions in Oklahoma." Oklahoma Department of Transportation, 2010. https://www.ok.gov/health2/documents/map_tribal_jurisdictions.pdf.

Cruz, Dominga, Sarah Deer, and Kathleen Tipler. "Analysis | The Oklahoma Decision Reveals Why Native Americans Have a Hard Time Seeking Justice." *Washington Post*, July 22, 2020. https://www.washingtonpost.com/politics/2020/07/22/oklahoma-decision-reveals-why-native-americans-have-hard-time-seeking-justice/.

Dunbar-Ortiz, Roxanne. *An Indigenous Peoples' History of the United States*. Boston, MA: Beacon Press, 2014.

Duncan, Grant. "Sovereignty and Subjectivity." *Subjectivity; London* 6, no. 4 (December 2013): 406–23. http://dx.doi.org.ezproxy.liberty.edu/10.1057/sub.2013.10.

Eliot, Charles W., ed. *American Historical Documents 1000-1904*. Danbury, Connecticut: Grolier Enterprises, 1990.

Fischer, Kahlib J. "Biblical Principles of History & Government." Master Thesis, Regent University, 1998. Blackboard - Liberty University.

Fisher, Louis, and Katy J. Harriger. *American Constitutional Law: Constitutional Structures Separated Powers and Federalism*. 11th edition. Vol. 1. 2 vols. Durham, North Carolina: Carolina Academic Press, 2016.

Ford, Algeria R. "The Myth of Tribal Sovereignty: An Analysis of Native American Tribal Status in the United States." *International Community Law Review* 12, no. 4 (2010): 397–412.

Friedman, Lawrence M. *A History of American Law*. 3rd edition. New York: Simon & Schuster, 2007.

Hamilton, Alexander, James Madison, and John Jay. *The Federalist Papers*. Edited by Clinton Rossiter. Start Publishing Llc, 2013.

Hassan, Dr Daud. "The Rise of the Territorial State and The Treaty Of Westphalia," 2006, 12.

Healy, Jack, and Adam Liptak. "Landmark Supreme Court Ruling Affirms Native American Rights in Oklahoma." *The New York Times*, July 11, 2020, sec. U.S. https://www.nytimes.com/2020/07/09/us/supreme-court-oklahoma-mcgirt-creek-nation.html.

Hebert, F. Ted. "Federalism Reconsidered and Revitalized." *Public Administration Review; Washington* 57, no. 4 (August 1997): 354–58.

Hendrickson, David C. *Peace Pact: The Lost World of the American Founding*. Lawrence: University Press of Kansas, 2003.

Howe, John. "The Anti-Federalists and Early American Political Thought." *The Journal of American History; Oxford* 83, no. 4 (March 1997): 1383.

Federal Register. "Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs," January 30, 2020. https://www.federalregister.gov/documents/2020/01/30/2020-01707/indian-entities-recognized-by-and-eligible-to-receive-services-from-the-united-states-bureau-of.

Johnson, Paul. *A History of the American People*. New York: Harper Perennial, 1999.

Jowett, M.A., Benjamin. *The Dialogues of Plato, Vol. 3 (The Republic, Timaeus, Critias) - Online Library of Liberty*. 3rd ed. Vol. 3. 5 vols. Oxford University Press, 1892. https://oll.libertyfund.org/titles/plato-dialogues-vol-3-republic-timaeus-critias.

———. *The Politics of Aristotle, Trans. into English with Introduction, Marginal Analysis, Essays, Notes, and Indices by B. Jowett.* Vol. 2. 2 vols. Oxford: Clarendon Press, 1885. https://oll.libertyfund.org/titles/aristotle-the-politics-vol-2.

Kagan, Robert. *Dangerous Nation: America's Foreign Policy from Its Earliest Days to the Dawn of the Twentieth Century*. New York: Vintage Books, 2006.

Kelly, Alfred H., Winfred A. Harbison, and Herman Belz. *The American Constitution: Its Origins and Development*. 7th ed. Vol. I. II vols. New York: W. W. Norton & Co., 1991.

Korowicz, Marek St. "Sovereignty of States in Theory. Universalist and Nationalist Conceptions." In *Introduction to International Law: Present Conceptions Of International Law In Theory And Practice*, edited by Marek St. Korowicz, 23–50. Dordrecht: Springer Netherlands, 1959. https://doi.org/10.1007/978-94-011-9226-2_2.

LaCroix, Alison L. *The Ideological Origins of American Federalism*. Cambridge, MA: Harvard University Press, 2010.

Lepore, Jill. *These Truths: A History of the United States*. New York: W. W. Norton & Co., 2018.

Mann, Ronald. "Opinion Analysis: Justices Toe Hard Line in Affirming Reservation Status for Eastern Oklahoma." SCOTUSblog, July 9, 2020. https://www.scotusblog.com/2020/07/opinion-analysis-justices-toe-hard-line-in-affirming-reservation-status-for-eastern-oklahoma/.

Library of Congress, Washington, D.C. 20540 USA. "Map of the Indian and Oklahoma Territories." Image. Accessed October 16, 2020. https://www.loc.gov/resource/g4021e.ct000224/.

Matias, Cheryl E., Kara Mitchell Viesca, Dorothy F. Garrison-Wade, Madhavi Tandon, and Rene Galindo. "'What Is Critical Whiteness Doing in OUR Nice Field like Critical Race Theory?' Applying CRT and CWS to Understand the White Imaginations of White Teacher Candidates." *Equity & Excellence in Education* 47, no. 3 (July 3, 2014): 289–304. https://doi.org/10.1080/10665684.2014.933692.

"McGirt v. Oklahoma, 140 S. Ct. 2452 | Casetext Search + Citator." Accessed October 16, 2020. https://casetext.com/case/mcgirt-v-oklahoma.

McGreevy, Nora. "Hundreds of Native American Treaties Digitized for the First Time." *Smithsonian Magazine*, October 15, 2020. https://www.smithsonianmag.com/smart-news/hundreds-native-american-treaties-digitized-and-online-first-time-180976056/.

Money, Jack. "Oklahoma's Authority to Regulate Oil and Gas Activity Is in Question after McGirt Decision." Oklahoman.com, October 15, 2020. https://oklahoman.com/article/5673962/oklahomas-authority-to-regulate-oil-and-gas-activity-is-in-question-after-mcgirt-decision/.

Muzzey, David Saville. *The American People*. 1st edition. Boston: Ginn & Company, 1929.

O'Toole, Laurence J., and Robert K. (Kay) Christensen, eds. *American Intergovernmental Relations: Foundations, Perspectives, and Issues*. Fifth edition. Thousand Oaks, California: CQ Press, 2013.

Quigley, John M., and Daniel L. Rubinfeld. "Federalism and Reductions in the Federal Budget." *National Tax Journal; Washington* 49, no. 2 (June 1996): 289.

Radin, Beryl A., and Joan Price Boase. "Federalism, Political Structure, and Public Policy in the United States and Canada." *Journal of Comparative Policy Analysis; Abingdon* 2, no. 1 (April 2000): 65–89.

Remini, Robert V. *A Short History of the United States*. Book Club Edition. New York: HarperCollins Publishers, 2008.

Robertson, David Brian. *Federalism and the Making of America*. Second. New York: Routledge, Taylor & Francis Group, 2018.

Ryan, Erin. "Negotiating Federalism." *Boston College. Law School. Boston College Law Review; Newton Centre* 52, no. 1 (January 2011): 1–136.

Schuck, Peter H. "Federalism*." *Case Western Reserve Journal of International Law; Cleveland* 38, no. 1 (2006): 5–12.

Schweikart, Larry, and Michael Allen. *A PAtriot's History of the United States: From Columbus's Great Discovery to the War on Terror*. New York: Penguin Group, 2007.

Shurtleff, J. B. *The Governmental Instructor, or A Brief and Comprehensive View of the Government of the United States, and of the State Governments, in Easy Lessons, Designed for the Use of Schools*. 4th edition. New York: Collins, Brother & Co, 1846.

"The Permanent Apportionment Act of 1929 | US House of Representatives: History, Art & Archives." Accessed October 16, 2020. https://history.house.gov/Historical-Highlights/1901-1950/The-Permanent-Apportionment-Act-of-1929/.