

# Tulsa Law Review

---

Volume 56  
Issue 3 *Special McGirt Issue*

---

Spring 2021

## The Past May Be Prologue, But It Does Not Dictate Our Future: This Is the Muscogee (Creek) Nation's Table

Jonodev Chaudhuri

Follow this and additional works at: <https://digitalcommons.law.utulsa.edu/tlr>



Part of the [Law Commons](#)

---

### Recommended Citation

Jonodev Chaudhuri, *The Past May Be Prologue, But It Does Not Dictate Our Future: This Is the Muscogee (Creek) Nation's Table*, 56 *Tulsa L. Rev.* 369 (2021).

Available at: <https://digitalcommons.law.utulsa.edu/tlr/vol56/iss3/6>

This Article is brought to you for free and open access by TU Law Digital Commons. It has been accepted for inclusion in *Tulsa Law Review* by an authorized editor of TU Law Digital Commons. For more information, please contact [megan-donald@utulsa.edu](mailto:megan-donald@utulsa.edu).

**THE PAST MAY BE PROLOGUE, BUT IT DOES NOT  
DICTATE OUR FUTURE: THIS IS THE MUSCOGEE  
(CREEK) NATION’S TABLE**

Ambassador Jonodev Chaudhuri\*

I. INTRODUCTION..... 369

II. MUSCOGEE (CREEK) NATION’S AMBASSADOR, CHITTO HARJO, PAVED THE WAY FOR  
OUR VICTORY IN *McGIRT* ..... 371

III. THE MUSCOGEE (CREEK) NATION RESERVATION REMAINS TODAY ..... 373

IV. *McGIRT* UNDER ATTACK: THE PARALLELS TO THE FIGHTS AMBASSADOR CHITTO  
HARJO FOUGHT ..... 376

    A. Private “Business” Interests, Then and Now ..... 376

    B. Oklahoma Officials, Then and Now..... 378

    C. There Will Always Be a Mc’Intosh ..... 383

V. THIS IS THE MUSCOGEE (CREEK) NATION’S TABLE ..... 385

I. INTRODUCTION

In *McGirt v. Oklahoma*, the State of Oklahoma asked the United States Supreme Court to judicially dis-establish my Nation’s Reservation, the Muscogee (Creek) Reservation.<sup>1</sup> The Court declined Oklahoma’s invitation, and instead, Justice Gorsuch wrote an epic opinion that my grandchildren will continue to celebrate for generations to come. The first two paragraphs read:

*On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assurances that their new lands in the West would be secure forever. In exchange for ceding “all their land, East of the Mississippi river,” the U. S. government agreed by treaty that “[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians.” Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new*

---

\* Jonodev Osceola Chaudhuri currently serves as the Ambassador for the Muscogee (Creek) Nation. His mother, Jean (Hill) Chaudhuri, dedicated her life to the preservation of the Muscogee (Creek) Nation’s sovereignty and Mvskoke culture. Prior to serving as Ambassador for his Nation, Chaudhuri was nominated by President Obama to serve as the Chairman of the National Indian Gaming Commission.

1. See generally Brief for Respondent, *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020) (No. 18-9526).

and “permanent home to the whole Creek nation,” located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that “[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves.” 1832 Treaty, Art. XIV, 7 Stat. 368.

Today we are asked whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, *we hold the government to its word*.<sup>2</sup>

The ink was hardly dry on Justice Gorsuch’s opus when the State began its campaign to reverse the Court’s decision in Congress. Just seven days after the Court issued its decision, the Attorney General of Oklahoma, Mike Hunter, released his “agreement,” a three-page PDF that purported to be a legislative proposal asking Congress to truncate the authority of the Muscogee (Creek) Nation—and other Oklahoma tribal nations—and effectively neuter the Supreme Court’s decision. Shortly thereafter, Oklahoma Governor Kevin Stitt publicly asked Congress to dis-establish our Reservation altogether. As Ambassador for the Muscogee (Creek) Nation, my celebration of this historic victory was short-lived. Almost immediately, I was working day and night, under the guidance and leadership of Principal Chief, David Hill, and Second Chief, Del Beaver, to protect and preserve our extraordinary victory in the Supreme Court.

Today’s fight to preserve *McGirt* is not without precedent. Truly, our contemporary victory in *McGirt* began with the advocacy of one of our very first Ambassadors, Chitto Harjo. As Justice Gorsuch notes in his majority opinion, the proponents of Oklahoma statehood asked Congress to dis-establish not only the Muscogee Reservation, but also the entire Nation itself. And as Justice Gorsuch noted in his majority opinion, those efforts failed. But the failure of those efforts, beginning over a hundred years ago, was no mere accident. Instead, the failure of those efforts comes as a direct consequence of the advocacy and diplomacy of Chitto Harjo.

The spirit that fueled the advocacy of Ambassador Harjo and many others has been passed down through the generations and remains with our people today. It runs through the blood in our veins. Our Principal Chief David Hill is a direct descendent of Charley Coker, who was part of a group that testified before a select committee of the U.S. Senate, when leaders in Oklahoma asked Congress to eliminate our Reservation and erase us. It was then that Chief Hill’s great-grandfather traveled—alongside the great Chitto Harjo—to Washington D.C. to oppose legislation that would dis-establish our Reservation and destroy our tribal government. And my great-grandfather, Elmer Hill (also known as Mekko Hill) is listed as one of the individuals who worked alongside Chitto Harjo in the 1909 Snake Rebellion, when Creeks stood in solidarity against the ongoing efforts to dis-establish our Reservation and our government following Oklahoma’s statehood two years before.

Sadly, the efforts to dis-establish our Reservation today are nothing more than a repeat of efforts from the past. And just as Chitto Harjo and the Muscogee (Creek) Nation defeated those efforts over a hundred years ago, we will defeat them again today. Our

---

2. *McGirt*, 140 S. Ct. at 2459 (emphasis added).

Nation's victory in the Supreme Court presents an incredible opportunity to discard the dysfunctional policies and practices of the past and replace them a framework of intergovernmental partnership—between the Muscogee (Creek) Nation, the State, and the United States—that allows all, Indian and non-Indian alike, to prosper.

It is a new day in Muscogee (Creek) Nation and in Oklahoma. But we are not out of the woods yet. Although we have defeated the efforts of those who seek to dismantle our victory in *McGirt* so far, there are many battles ahead. It will be critical to remember the battles that our Nation, led by Chitto Harjo, fought just over a hundred years ago.

## II. MUSCOGEE (CREEK) NATION'S AMBASSADOR, CHITTO HARJO, PAVED THE WAY FOR OUR VICTORY IN *MCGIRT*

Our recent victory in the Supreme Court is the direct consequence of generations of Mvskokvlke who sacrificed and fought so we would still have a Nation today. Arguably, no Mvskoke did more to preserve the Nation than Chitto Harjo, one of our very first Ambassadors to the United States.

Born in 1846, just a few years after our Nation's forced removal to the far end of the Trail, he fought as a teenager alongside the legendary Opothleyahola, when "loyal" Creeks (mostly full bloods) took the side of the United States and joined the war against the Confederacy and slavery.<sup>3</sup> Although he may not have been at the actual signing of the Treaty of 1866, he was certainly well-aware of it. The United States had promised the loyal Creeks who fought alongside Opothleyahola that, in return for coming to the aid of the United States, the United States would *never* further disturb the Muscogee (Creek) Nation's lands. But after the United States won the Civil War, in 1866, the United States forced the Muscogee (Creek) Nation, effectively at gunpoint, to sign yet another treaty with the United States, ceding a substantial portion of the Reservation at thirty (30) cents an acre.<sup>4</sup> Of course, as Justice Gorsuch noted, in this Treaty, "Congress explicitly restated its commitment that the remaining land would '*be forever set apart as a home for said Creek Nation,*' which it began to reference as '*the reduced Creek reservation.*'"<sup>5</sup>

No doubt this betrayal seared a lasting impression on the young Chitto Harjo. Having fought alongside a group of full-blood Creeks and freed former black slaves to defend the United States against the South and against slavery only to see the government forcibly seize Creek lands, he was given every reason to expect further attacks. True, the Nation had secured a new promise in a Treaty—which under the U.S. Constitution constitutes the "supreme law of the land"—guaranteeing the Nation that their Reservation would remain intact forevermore. But after this, Chitto Harjo knew, rather, he *expected*, further attempts to dis-establish or destroy our Nation's Reservation. Even so, Chitto Harjo knew that the fight to protect what is ours was far from over.

Chitto Harjo was a visionary. He saw very clearly the connection between Christopher Columbus, Andrew Jackson, and the proponents of Oklahoma's statehood to

3. JEAN CHAUDHURI & JOYOTPAUL CHAUDHURI, A SACRED PATH: THE WAY OF THE MUSCOGEE CREEKS 160 (2001).

4. U.S. Treaty with the Creek Nation, art. III, June 14, 1866, 14 Stat. 785.

5. *McGirt*, 140 S. Ct. at 2462 (internal citations omitted) (emphasis added).

eradicate the entire Muscogee (Creek) Nation.<sup>6</sup> As my mother Jean (Hill) Chaudhuri explained:

Chitto Harjo is often translated as Crazy Snake. However, as we have noted, Creek can be easily mistranslated. Harjo, when used with respect rather than contempt, means “visionary” or “with vision,” as in *obanga harjo*, or the vision dance, the early morning dance at the end of the night when the first rays of the sun, which to whites can look wild and crazy.<sup>7</sup>

In 1893, Congress formed the Dawes Commission. In 1898, in response, the Muscogee (Creek) Nation National Council convened a meeting, and with one vote, the National Council rejected the Dawes Commission’s proposition that the United States could successfully wipe out the existence of the Muscogee (Creek) Nation as a separate sovereign.<sup>8</sup>

Two years later, in 1900, Chitto Harjo led a meeting at his ceremonial grounds, Hickory Ground, where Creek citizens decided to remove the chief, Pleasant Porter, because it was clear he was betraying the Nation and working with the Dawes Commission to allot the lands within the Muscogee Reservation. In turn, these citizens voted Chitto Harjo in as the next Principal Chief of the Nation. Led by Chief Harjo, Creek citizens founded a police force, known as Lighthorse (still in existence today) and they organized and opposed Pleasant Porter’s partnership with the United States and their efforts to allot Creek lands.

Undeterred, the proponents of Oklahoma statehood continued to press for the eradication of Tribal Nations in what was then Indian Territory. This time, Congress passed the Curtis Act, and “in an effort to pressure the Tribe to the negotiating table, Congress abolished the Creeks’ tribal courts and transferred all pending civil and criminal cases to the U.S. Courts of the Indian Territory.”<sup>9</sup> To be sure, the Curtis Act of 1898 was a direct affront to the Five Civilized Tribes who had vehemently protested the authority of the Dawes Commission that Congress had created in 1893, as the proponents of the legislation sought to eradicate the Muscogee (Creek) Nation altogether.<sup>10</sup>

Congress, however, elected not to abolish all aspects of the Muscogee (Creek) Nation’s government.<sup>11</sup> The resistance that Chitto Harjo and his followers mounted was too much, and Congress simply could not politically achieve the complete eradication of the sovereign Muscogee (Creek) Nation, and consequently, the Nation maintained many critical aspects of sovereignty, including “the power to collect taxes, operate schools, legislate through tribal ordinances, and, soon, oversee the federally mandated allotment process.”<sup>12</sup>

Chitto Harjo’s leadership no doubt stymied the efforts of those who sought to dismantle the Muscogee government altogether, but proponents of Oklahoma’s statehood continued on. As Congress considered Oklahoma’s request to become a legitimate State,

6. CHAUDHURI & CHAUDHURI, *supra* note 3, at 160.

7. *Id.*

8. ANGIE DEBO, THE ROAD TO DISAPPEARANCE 371 (1941).

9. *McGirt*, 140 S. Ct. at 2478 (internal citations omitted).

10. Judy Kuhlman, *Curtis Act Presages Statehood*, NEWSOK (Apr. 24, 1994), <http://newsok.com/article/2464122>.

11. *See McGirt*, 140 S. Ct. at 2478 (internal citations omitted).

12. *Id.* at 2466.

the United States took the drastic move of re-instating Pleasant Porter—against the will of Creek citizens—and declared Porter the “Chief” of Muscogee (Creek) Nation. As the dissent in *McGirt* noted, Porter was a total sell-out. After the United States placed him in his proper place as their puppet, he immediately trumpeted their message, stating “that ‘all powers over the governing even of our landed property will cease’ once the new state government [of Oklahoma] was established.”<sup>13</sup>

Thus, it was with this background in 1906 that Congress once again considered legislation that would completely and forever eradicate the Muscogee Reservation and the Nation’s government altogether. Chitto Harjo, along with the great-grandfather of our current Chief, David Hill, and several other powerful Mvskoke advocates and leaders, traveled to D.C. to meet with the United States government and to, as Justice Gorsuch puts it, *hold them to their word*. Ambassador Harjo spoke to Congress, stating:

I look to that time—to the treaties of the Creek Nation with the United States—and I abide by the provisions of the treaty made by the Creek Nation with the Government . . . All that I am begging of you, Honorable Senators, is that these ancient agreements and treaties wherein you promised to take care of me and my people, be fulfilled and that you will remove all the difficulties that have been raised in reference to my people and their country and I ask you to see that these promises are faithfully kept. I understand you are the representatives of the Government sent here to look into these things and I hope you will relieve us. That is all I desire to say.

Having heard Ambassador Harjo’s message and having seen the resistance he led at Creek Nation, Congress declined to dis-establish the Muscogee (Creek) Nation’s Reservation, and consequently, the Reservation remains in existence today. At the time of Oklahoma’s statehood, “Congress expressly recognized the Creek’s ‘tribal existence and present tribal government[t]’ and ‘continued [them] in full force and effect for all purposes authorized by law.’”<sup>14</sup>

### III. THE MUSCOGEE (CREEK) NATION RESERVATION REMAINS TODAY

The significance of our Nation’s victory in the Supreme Court cannot be overstated. Oklahoma argued that although Congress had never expressly dis-established the Reservation, the Supreme Court should.<sup>15</sup> The Supreme Court, however, did not. On July 9, 2020, the United States Supreme Court responded to the question of “whether the land these treaties promised remains an Indian reservation for purposes of federal criminal law. Because Congress has not said otherwise, we hold the government to its word.”<sup>16</sup>

First, this decision holds significant meaning to all Mvskokvkle. For us, this decision affirms not just our Reservation, but our continued existence as well. All of the repeated efforts to dis-establish our Reservation—from Chitto Harjo’s time until now—have been grounded in a larger effort to eradicate our Nation. But through it all, we remain. That is why the Court’s decision on July 9 was met with the tears of thousands. For all of us who are alive and here today, this decision is the direct result of the fights our parents, our

13. *McGirt*, 140 S. Ct. at 2496 (Roberts, J., dissenting).

14. *McGirt*, 140 S. Ct. at 2466 (internal citations omitted).

15. Brief for Respondent, *McGirt*, 140 S. Ct. 2452 (No. 18-9526).

16. *McGirt*, 140 S. Ct. 2452, 2459.

grandparents, and all of our ancestors have fought for the last five hundred years. It is because of *them* that we are still here today.

The Court's decision, as emotional as it is, is also practical. The decision creates new opportunities to *increase* public safety for all within Creek Nation's borders. The state of Oklahoma's arguments before the Supreme Court that a decision in Muscogee (Creek) Nation's favor would *decrease* public safety have been proven to be nothing more than hyperbolic rhetoric lacking actual concrete data.<sup>17</sup> The Supreme Court's decision does not change the status of Oklahoma's criminal jurisdiction over the vast majority of crimes committed within Oklahoma's borders. Instead, the Court's decision only affects criminal jurisdiction over crimes committed by Indians on reservation lands. And now, because of the Court's decision, there are *two* sovereigns (the United States and the Muscogee (Creek) Nation) with the power to prosecute, instead of one.

Immediately following our victory in the Supreme Court, the Nation ramped up staffing for our Nation's law enforcement, the Muscogee Lighthorse. Our Nation has committed an additional two million in funding to Lighthorse, hired twenty-five new officers, and added fifteen new investigators and dispatchers.<sup>18</sup> Prior to the Court's decision, we had an Intergovernmental Cross-Deputization Agreement with the United States and virtually all of the counties and municipalities within the Reservation, including both the City and County of Tulsa.<sup>19</sup> Since the Court's decision, we have deepened our partnerships and cooperative agreements with both the State and the United States. Then U.S. Attorney in the Northern District of Oklahoma, Trent Shores, recently reflected on this partnership, stating:

In partnership with the Tulsa County District Attorney's Office and the Muscogee (Creek) Nation, my office has worked relentlessly to ensure every victim of violent crime experiences a measure of justice and that no case falls through the cracks. With three sovereigns – tribal, state, and federal – communicating and coordinating, I believe we have a blueprint for success in the criminal justice arena in the post-*McGirt* world.<sup>20</sup>

The Supreme Court's decision paves the way for all three sovereigns—the State, Muscogee (Creek) Nation, and the United States—to collaborate in a more effective way to ensure the safety of all Oklahomans, Indians, and non-Indians alike.

This is especially true for our Native women, who face the highest rates of violence in the United States.<sup>21</sup> This is in large part due to the fact that in 1978, the United States

17. Rebecca Nagle, *Oklahoma's Suspect Argument in Front of the Supreme Court*, THE ATLANTIC (May 8, 2020), <https://www.theatlantic.com/ideas/archive/2020/05/oklahomas-suspect-argument-front-supreme-court/611284/>.

18. Joseph Holloway, *Muscogee Creek Nation Investing Millions In Lighthorse Police Department*, NEWS ON 6 (Sept. 30, 2020), <https://www.newson6.com/story/5f746d9210991b0c17a80d5a/-muscogee-creek-nation-investing-millions-in-lighthorse-police-department>.

19. See *Intergovernmental Cross-Deputization Agreement Between The United States, The Muscogee (Creek) Nation, And Political Subdivisions Of The State Of Oklahoma*, MUSCOGEE (CREEK) NATION, <http://www.mcnsn.gov/wp-content/uploads/Attorney%20General/Intergovernmental%20Cross%20Deputization%20Agreements.pdf> (last visited Apr. 20, 2021).

20. The United States Attorney's Office Northern District of Oklahoma, *Tulsa Man Pleads Guilty to Voluntary Manslaughter in Indian Country*, U.S. DEP'T OF JUSTICE (Nov. 17, 2020), <https://www.justice.gov/usao-ndok/pr/tulsa-man-pleads-guilty-voluntary-manslaughter-indian-country>.

21. See *United States v. Bryant*, 136 S. Ct. 1954, 1959 (2016); see also André B. Rosay, *Violence Against*

Supreme Court eliminated tribal criminal jurisdiction over crimes committed by non-Indians on tribal lands.<sup>22</sup> However, as the United States Department of Justice has since noted, the majority of violent crimes committed against Native victims are committed by non-Indians.<sup>23</sup> Thus, the Supreme Court's decision in *Oliphant* effectively left Tribal Nations unable to prosecute the majority of violent crimes committed against their citizens.

In 2013, Congress sought to address this crisis, and in re-authorizing the Violence Against Women Act ("VAWA"), Congress restored tribal criminal jurisdiction over non-Indian perpetrated crimes of domestic violence, dating violence, and violations of protective orders.<sup>24</sup> Importantly, Congress tethered its restoration of tribal criminal jurisdiction to lands that constitute "Indian country" as defined by 18 U.S.C. § 1151.<sup>25</sup> And thus, as Sarah Deer and Mary Kathryn Nagle have explained:

A "reservation" constitutes "Indian country" under federal law, and thus the judicial disestablishment of an entire reservation would render a Tribal Nation unable to fully exercise the criminal jurisdiction that Congress restored. Here, if Oklahoma succeeded in its effort to disestablish the Muscogee Nation's Reservation, Native-women victims calling the Muscogee Nation's law enforcement—the Lighthorse Police—would be questioned about the legal status of the individual parcel of land where she is being beaten or abused. Is the land in trust? Is it non-Indian fee land? The woman would have to answer all of these just so the Nation's law enforcement could determine whether it had jurisdiction to even respond to her call for help. A Native woman's right to protection by her Nation's law enforcement is intrinsically tied to the continued existence of her Nation's Reservation.<sup>26</sup>

The Supreme Court's decision in *McGirt* constitutes a victory for Native women. The Court's decision is also a victory for economic development and innovation. The continued existence of a reservation is not harmful to the economic growth of the state that shares the reservation's borders. Indeed, it can be a catalyst for growth. Take for instance the Salt River Pima-Maricopa Indian Community, whose reservation borders the suburban communities of Scottsdale and Mesa, Arizona—and whose reservation is just a few miles from the urban metropolis of Phoenix. Salt River's Reservation is home to an incredible economic boom, with a multitude of non-Indian owned businesses that continue to attract millions of consumers, despite the fact that these businesses are located on a reservation. Like any sovereign, tribal nations encourage and seek commerce through intergovernmental agreements that address any and all issues from taxation to regulation, and we understand the importance of working with all public and private partners to ensure the shared prosperity of those who live and work within our borders. Muscogee (Creek) Nation has led the way in Oklahoma, employing thousands in some of Oklahoma's most rural, and often economically depressed, areas. The Supreme Court's affirmation of our

---

*American Indian and Alaska Native Women and Men*, 277 NAT'L INST. OF JUST. 1, 2 (2016), <https://www.ojp.gov/pdffiles1/nij/249822.pdf>.

22. See *Oliphant v. Suquamish*, 435 U.S. 191, 210 (1978).

23. Rosay, *supra* note 21, at 4 (concluding that 97% of Native women victims of violence have had a least one non-Native perpetrator).

24. Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, 127 Stat. 121.

25. *Id.* § 904(a)(3) (codified at 25 U.S.C. § 1304(a)(3)).

26. Mary Kathryn Nagle (Cherokee) & Sarah Deer (Mvskoke), *McGirt v. Oklahoma: A Victory for Native Women*, GEO. WASH. L. REV. ON THE DOCKET (July 20, 2020), <https://www.gwlr.org/mcgirt-v-oklahoma-a-victory-for-native-women/>.

Reservation borders provides an opportunity for my Nation to play an even greater role in ensuring that businesses in Oklahoma can continue to expand and grow in a way that brings prosperity to all.

The notion that tribal nations and Oklahoma cannot co-exist is a false narrative that originated from the politics at the time of Oklahoma's statehood. This narrative has been repeatedly proven false for over a hundred years as it has been consistently proven that the existence of the Muscogee (Creek) Nation, and all tribal nations, is a *good* thing for Oklahoma. And with the Court's decision in *McGirt*, the opportunities to expand our beneficial impacts to the state and Oklahoma citizens only grows.

All in all, the Supreme Court's decision in *McGirt* presents an enormous opportunity for partnerships and collaborations that will result in greater economic prosperity and public safety for all. But even beyond the practical, the decision creates an opportunity to heal the wounds of the past.

Despite the historic nature of this victory and the opportunities it presents, within one week of the Court's decision, detractors began to announce their proposals to reverse the Court's decision. To be sure, such proposals mirror those that Chitto Harjo historically defeated. None of the proposals are new, and a review of history reveals that preserving the Court's decision in *McGirt* today will require continued adherence to the wisdom and advocacy of Chitto Harjo, as well as our Mvskoke ancestors who came before us to make today possible.

#### IV. *McGIRT* UNDER ATTACK: THE PARALLELS TO THE FIGHTS AMBASSADOR CHITTO HARJO FOUGHT

The attacks on the Supreme Court's decision in *McGirt* are not new. Instead, they merely revive the aggression against the Muscogee Reservation, as well as entire Nation, from the time of Oklahoma's statehood.

##### A. Private "Business" Interests, Then and Now

Chitto Harjo fought against the Dawes Act and the allotment of the Muscogee (Creek) Nation Reservation.<sup>27</sup> And although the desire to take Creek lands was very much rooted in non-Native commercial interests, and profits, the proponents of the various Allotment Acts proclaimed their goal was the civilization of the Indian, which was characterized as necessitating the intervention of Congress since:

[The Indians] have got as far as they can go, because they own their land in common. . . . [T]here is no enterprise to make your home any better than that of your neighbors. There is no selfishness, which is at the bottom of civilization. Till this people will consent to give up their lands, and divide them among their citizens so that each can own the land he cultivates, they will not make much more progress . . .<sup>28</sup>

Although the stated goal of the Allotment Acts was the "civilization" and forward

27. DEBO, *supra* note 8, at 376.

28. D.S. OTIS, THE DAWES ACT AND THE ALLOTMENT OF INDIAN LANDS 10–11 (1973) (quoting Statement of Senator Henry L. Dawes at the Third Annual Meeting of the Lake Mohonk Conference (1885), *reprinted in* BOARD OF INDIAN COMMISSIONERS, BOARD OF INDIAN COMMISSIONERS ANNUAL REPORT (1886), *reprinted in* H.R. Exec. Doc. No. 1, pt. 5, 49th Cong. 1st Sess. 819, 840).

“progress” of the American Indian, the reality was that these Acts provided access for non-Indian companies to valuable resources located on tribal lands.<sup>29</sup> Specifically in 1905, the tribal lands in what was soon to become the State of Oklahoma were valued at more than \$4.3 billion worth of coal, in addition to timber, agriculture, and significant tribal oil and gas resources.<sup>30</sup> The Curtis Act not only opened up 13,110,532 acres of tribal lands for white settlement,<sup>31</sup> it also opened up access to billions of dollars’ worth of resources to non-Indian coal, timber, oil, gas, and agricultural industries.<sup>32</sup>

However, because of Chitto Harjo’s efforts, and those of other Mvskoke advocates, Congress never completed industry’s requested task. Although Chitto Harjo could not prevent the passage of the Curtis Act, he did succeed in preventing the dissolution of Creek Nation’s government, as well as the Muscogee Reservation. As Justice Gorsuch wrote, for the majority: “Despite these additional incursions on tribal authority, however, Congress expressly recognized the Creek’s ‘tribal existence and present tribal government[t]’ and ‘continued [them] in full force and effect for all purposes authorized by law.’”<sup>33</sup>

Today, the efforts to dis-establish our Reservation echo the past. When the continued existence of the MCN Reservation was squarely before the Supreme Court, “Oklahoma farmers, ranchers, oil and gas developers, and business owners” filed an *amicus* brief asserting that a decision affirming the reservation would threaten “economically destructive confusion and controversy” and would further “undermine legal foundations underlying private property and investment, creating significant risk and uncertainty.”<sup>34</sup> Essentially, oil and gas, agriculture, and other industries argued that the continued sovereign existence of a Tribal Nation would threaten economic development and access to resources. Sound familiar?

Now that the Muscogee (Creek) Nation has won in the Court, and there is no question that our Reservation remains in existence, opponents are attempting a modern-day version of promoting “civilization” to justify their attacks. The Oklahoma Council of Public Affairs (“OCPA”) has urged Congress to formally dis-establish our Reservation. On October 8, 2020, they wrote to Oklahoma’s Congressional Delegation, stating that “[f]or the sake of unity, fairness and equal treatment under the law, Congress must act and disestablish the reservations in Oklahoma to provide certainty and fairness for all

---

29. OTIS, *supra* note 28, at 17–18 (noting that during the time of the Allotment Acts, “frequent allusions to the fact that the Indians were of course making no use of natural resources which should be developed in the interests of civilization.”).

30. Brief of *Amicus Curiae* Historians, Legal Scholars, and Cherokee Nation in Support of Petitioner at 11, *McGirt*, 140 S. Ct. 2452 (No. 18-9526) (citing Charles Reid (AR). 40 Cong. Rec. 1257 (1906) (Mr. Reid); 40 Cong. Rec. 3213, 4390–92 (1906) (Sen. LaFollette)).

31. ANGIE DEBO, *THE RISE AND FALL OF THE CHOCTAW REPUBLIC* 903 (1934).

32. 40 Cong. Rec. 1257 (1906) (statement of Mr. Reid); 40 Cong. Rec. 3213, 4390–92 (1906) (statement of Sen. LaFollette); DEBO, *supra* note 8, at 197, 368; LOUIS WELSH ET AL., *A HISTORY OF THE GREATER SEMINOLE OIL FIELD 6–7* (1981); *Oil Fields Are Best in the World*, OKLAHOMAN, Mar. 26, 1905, at 1; *History of Allotment*, INDIAN LAND TENURE FOUND., <https://www.iltf.org/resources/land-tenure-history> (last visited Dec. 14, 2020) (describing Congress’s interest in Indian lands for settlement purposes, including “railroads, mining, forestry and other industries”).

33. *McGirt*, 140 S. Ct. at 2466.

34. Brief of *Amici Curiae* Environmental Federation of Oklahoma at 2, 3, 9, *McGirt*, 140 S. Ct. 2452 (No. 18-9526).

Oklahomans . . .<sup>35</sup> Today's opponents use new terms like "unity" and "fairness"—but the underlying goals of those who seek dis-establishment remain the same. The OCPA claims to be "a free-market think tank that works to advance principles and policies that support free enterprise, limited government, individual initiative and personal responsibility,"<sup>36</sup> but their controlling authority is clear. Their Board of Directors is comprised of industry executives who believe their business interests will profit from the dis-establishment of the Muscogee Reservation.

Our opponents, however, are not the only ones channeling the past. In response to the OCPA's demand for dis-establishment, Muscogee (Creek) Nation Principal Chief David Hill stated:

We have been asked to respond to the Oklahoma Council on Public Affairs' letter to the Oklahoma congressional delegation. Honestly, we are grateful for the OCPA letter. Finally, someone is telling the truth about the real motives behind legislation to address *McGirt*. We have said all along that legislative efforts to undermine *McGirt* would harm Indian nations but now it's clear that the full goal of those pushing legislation is the eradication of sovereignty and the ultimate disestablishment of reservations. We will fight so that not one iota of the sovereignty, treaty rights, and jurisdiction affirmed in *McGirt* is surrendered through legislation. We stand with hundreds of other tribes across the nation when we say, "see you on the battlefield!"<sup>37</sup>

Sound familiar? Just 114 years ago, Chief Hill's great-grandfather, Charley Coker, stood before Congress with Chitto Harjo, and in response to the coal, cattle, and oil industry interests who sought the dis-establishment of the Muscogee Reservation,<sup>38</sup> Coker and Harjo reminded the United States that the United States had given its word: "[A]s long as the sun shone and the sky is up yonder these agreements will be kept . . . [A]s long as the sun rises it shall last; as long as the waters run it shall last as long as grass grows it shall last . . ."<sup>39</sup>

Just as commercial interests could not eradicate us 114 years ago, they continue to be unsuccessful in their efforts to eradicate the Muscogee (Creek) Nation today.

#### *B. Oklahoma Officials, Then and Now*

At the time of Oklahoma's statehood, hardly anyone was more interested in eradicating the Muscogee (Creek) Reservation than officials from the State of Oklahoma. The proponents of Oklahoma's statehood claimed the continued existence of tribal governments threatened the viability of Oklahoma as a State, and thus asked Congress to pass the Curtis Act as "an act for the protection of the people of the Indian Territory," and many said this was a "unilateral action by the United States that signaled the end of the

---

35. Ray Carter, *Tulsa charter students face huge funding gap*, OCPA (Dec. 11, 2020), <https://www.ocpathink.org/post/tulsa-charter-students-face-huge-funding-gap>.

36. *Id.*

37. Kristin Wells, *Tribal Leaders Say OCPA's Request Tries To 'Erode Tribal Sovereignty'*, NEWS9 (Oct. 9, 2020, 9:40 PM), <https://www.news9.com/story/5f811f0f9ca3af0c201bd34f/tribal-nation-leaders-say-ocpas-request-tries-to-erode-tribal-sovereignty>.

38. DEBO, *supra* note 8, at 367.

39. *Id.* at 55 (quoting Chitto Harjo).

tribal governments.”<sup>40</sup> Those who sought legislation to fully dis-establish Muscogee (Creek) Nation’s Reservation and government saw the continued existence of tribal governments in Oklahoma as a “menace to the civilization and advancement of the Indian and destructive of the very spirit of American liberty.”<sup>41</sup>

Unfortunately, the same rhetoric is being used by Oklahomans today. On October 23, 2020, Governor Stitt echoed the assimilationist sentiments expressed at the time of Oklahoma’s statehood, proclaiming that the Muscogee (Creek) Nation Reservation must be dis-established because:

Rolling out one set of rules, regardless of your race, your gender, where you live in the state of Oklahoma—we believe that’s just a fairness issue to be a successful state . . . We have to have one set of rules to regulate eastern Oklahoma and western Oklahoma.<sup>42</sup>

On July 20, Oklahoma Governor Kevin Stitt created The Oklahoma Commission on Cooperative Sovereignty, a commission that does not include a single leader from any one of Oklahoma’s thirty-nine federally recognized tribes. Instead, the commission is comprised entirely of oil and business executives. Like the Dawes Commission of just over a hundred years ago, Governor Stitt’s Commission lacks anyone who understands the connection between tribal sovereignty and public safety, or the safety of Native women.

Governor Stitt is not the only Oklahoma official looking to reverse the Supreme Court’s decision in *McGirt*. One week after the Supreme Court announced that Muscogee (Creek) Nation won *McGirt*—and Oklahoma lost—the Oklahoma Attorney General Mike Hunter announced he had reached an “agreement” with the Five Tribes (Muscogee (Creek) Nation, Seminole Nation, Chickasaw Nation, Choctaw Nation, and Cherokee Nation) that would effectively nullify Oklahoma’s loss before the Supreme Court.

Under Hunter’s agreement (known as the “Agreement in Principle” or the “AIP”),<sup>43</sup> the State of Oklahoma stated that Oklahoma and the Five Tribes would ask Congress to pass a law limiting tribal civil jurisdiction over non-Indians to only those situations where the non-Indian has a “consensual relationship, such as contracts” with the Tribe, mirroring the Supreme Court’s 1981 decision in *Montana v. United States* which limited the civil jurisdiction of Tribal Nations over non-Indians on tribal lands.<sup>44</sup> Such a limitation would also conflict with Section 905 of VAWA 2013 Title IX which clarified that tribal courts have full civil jurisdiction to issue and enforce protection orders involving any person to protect victims of domestic and sexual violence.

The AIP sought to achieve many legal realities that would, if passed into law, render the Supreme Court’s decision in *McGirt*, a nullity. For instance, the AIP would also effectively render Oklahoma a PL-280 State, as the AIP asks Congress to cede criminal

---

40. FRANCIS PAUL PRUCHA, *THE GREAT FATHER: THE UNITED STATES GOVERNMENT AND THE AMERICAN INDIANS* 157 (1984).

41. 42 Cong. Rec. 449 (1908) (statement of Rep. Carter).

42. Carmen Forman, *Stitt: ‘One set of rules’ needed for tribes, state following McGirt decision*, EXAMINER-ENTERPRISE (Oct. 23, 2020, 10:44 AM), <https://www.examiner-enterprise.com/story/news/2020/10/23/stitt-one-set-rules-needed-tribes-state-following-mcgirt-decision/3742897001/>.

43. Patrick B. McGuigan, *Hunter and five tribal leaders release ‘agreement in principle’ on state/tribal jurisdiction*, CITY SENTINEL (July 16, 2020), <https://city-sentinel.com/2020/07/hunter-and-five-tribal-leaders-release-agreement-in-principle-on-state-tribal-jurisdiction/>.

44. *Montana v. United States*, 450 U.S. 544 (1981).

jurisdiction over Indian perpetrated crimes committed in “Indian country” to Oklahoma that are, in non PL-280 jurisdictions, reserved for tribal nations and the federal government. Many tribal sovereignty advocates quickly criticized this aspect of the AIP,<sup>45</sup> as tribal nations in PL-280 states have consistently, across the board, stated that PL 280 created a legal framework that decreases safety in tribal communities and has, since its passage by Congress in 1954, created significant problems for tribal nations in PL-280 states.<sup>46</sup>

Although Attorney General Hunter claimed he had reached an agreement with the Five Tribes, it became clear rather quickly that he had not. On July 17, 2020, Seminole Nation Chief Chilcoat responded to AG Hunter’s proposed agreement, stating that: “To be clear, the Seminole Nation has not been involved with discussions regarding proposed legislation between the other four tribes and the State of Oklahoma. Furthermore, the Seminole Nation has not engaged in any such discussions with the State of Oklahoma, including with the Attorney General, to develop a framework for clarifying respective jurisdictions and to ensure collaboration among tribal, state and federal authorities regarding the administration of justice across Seminole Nation lands.”<sup>47</sup>

Soon after Chief Chilcoat’s statement, Muscogee (Creek) Nation Chief David Hill reiterated these sentiments, stating, “Muscogee (Creek) Nation is not in agreement with the proposed Agreement-in-Principle released by the State of Oklahoma yesterday.”<sup>48</sup> Chief Hill acknowledged that collaboration and intergovernmental agreements among the State of Oklahoma, the Tribes, and the federal government would be critical following *McGirt*, but also noted that such collaboration “does not require congressional legislation.”<sup>49</sup>

Attorney General Hunter seems to have abandoned his AIP, and has since moved onto other legislative “proposals.” No doubt the abandonment of the AIP was the result of the advocacy of many Native women advocates who quickly spoke out and expressed their concerns that the AIP, if enacted into law, would bring harm to Native women and impede the ability of Tribal Nations to keep them safe.<sup>50</sup> On October 21, 2020, Attorney General Hunter announced his latest sovereignty-sacrificing proposal, outlining a three-page plan for Congress that once again invites Congress to limit tribal sovereignty by making Oklahoma essentially a PL-280 State, thereby granting Oklahoma the jurisdiction the

---

45. Rebecca Nagle, *Q&A: Lauren King on What the Five Tribes’ Agreement-in-Principle Means for Oklahoma*, NATIVE NEWS ONLINE (July 20, 2020), <https://nativenewsonline.net/sovereignty/q-a-lauren-king-on-what-the-five-tribes-agreement-in-principle-means-for-oklahoma>.

46. See, e.g., Brent Leonhard, *Returning Washington P.L. 280 Jurisdiction to Its Original Consent-Based Grounds*, 47 GONZAGA L. REV. 663, 695 (2011) (“P.L. 280 is a product of the federal government’s historic policy of actively terminating tribes . . .”).

47. Acee Agoyo, *No ‘surrender’: Muscogee (Creek) Nation stands firm on sovereignty after historic Supreme Court win*, INDIANZ (July 20, 2020), <https://www.indianz.com/News/2020/07/20/no-surrender-muscogee-creek-nation-stand.asp>.

48. Letter from David W. Hill to Muscogee (Creek) Nation Citizens (July 17, 2020) (available at <https://www.mcn-nsn.gov/wp-content/uploads/2020/07/Letter-proposed-agreement-in-principal-with-State.pdf>).

49. *Id.*

50. Mary Kathryn Nagle, *With all due respect Mr. Attorney General, protecting sovereignty isn’t a ‘hobby’*, INDIAN COUNTRY TODAY (last updated July 30, 2020), <https://indiancountrytoday.com/opinion/with-all-due-respect-mr-attorney-general-protecting-sovereignty-isnt-a-hobby>.

Supreme Court just determined Oklahoma had been illegally exercising. Because of the tremendous failings of Public Law 280, Congress amended the statute in 1968 to require tribal consent before a state may assume jurisdiction over a tribal nation's land.<sup>51</sup> Unsurprisingly, no tribe has since consented to state jurisdiction under this 1968 amendment. Many tribal leaders from tribes in states that are subject to Public Law 280 have expressed surprise that any tribe in Oklahoma would ask, in effect, to be a PL-280 state, given how harmful this jurisdictional transfer has been to the Tribes located in the six PL-280 States.

Almost immediately after Attorney General Hunter issued his latest "proposal" for post-*McGirt* legislation on October 21, 2020, Chief Batton of the Choctaw Nation stated:

We oppose Oklahoma Attorney General Mike Hunter's proposal for congressional action following the Supreme Court's ruling in *McGirt v. Oklahoma*, because it is premature and may prove to be unneeded. We welcome, however, his proposal for additional dialogue. Before we discuss legislation at the national level, we must first lay the foundation for a future framework. The Five Tribes are already doing this through our individual sovereignty commissions, dialogue with elected officials and state agencies, and in partnership with the federal government. We are making substantial progress. We should take the necessary time to reason together through these issues and avoid repeating past mistakes in federal legislation regarding Indian Country.<sup>52</sup>

Seminole Nation echoed the Choctaw Nation's sentiments, stating:

While the Seminole Nation appreciates the sentiment of consensus building and intergovernmental cooperation upon which we believe Attorney General Mike Hunter's proposal was premised, we oppose the recommendation for Congressional authorization of state-tribal criminal jurisdiction compacts. By way of example, the Seminole Nation, like all the Five Tribes, already has a state-tribal agreement on criminal justice in the area of policing through cross-deputization. These intergovernmental agreements demonstrate the effectiveness of existing state-tribal government-to-government cooperation and coordination, absent Congressional action. Further, any legislation enacted by Congress will deeply erode tribal sovereignty. There is simply no basis to request Congressional action because the law is clear under *McGirt*. It is the responsibility of the federal government to handle certain crimes committed in Indian country by Indians. Any legislation providing the State with rights to exercise criminal jurisdiction on-reservation will come at the expense of other important attributes of sovereignty. For these reasons, the Seminole Nation opposes federal legislation relating to state-tribal criminal jurisdiction compacts.<sup>53</sup>

And, of course, Muscogee (Creek) Nation held its ground, stating:

We have yet to examine the details of Attorney General Mike Hunter's latest request for federal legislation responding to the *McGirt* decision, but we have still not found any

---

51. Indian Civil Rights Act of 1968, Pub. L. No. 90-284, § 401(a), 82 Stat. 77, 78 (codified as amended at 25 U.S.C. § 1321(a) (Supp. IV 2010)); Carole E. Goldberg, *Public Law 280: The Limits of State Jurisdiction over Reservation Indians*, 22 UCLA L. REV. 535, 539, 546, 549 (1975). The tribal consent provision requires a majority vote of the tribe's citizens. 25 U.S.C. § 1326 (2006).

52. *Choctaw Nation responds to Oklahoma Attorney General's letter*, CHOCTAW NATION (Oct. 21, 2020), <https://www.choctawnation.com/news-events/press-media/choctaw-nation-responds-oklahoma-attorney-generals-letter>.

53. *Seminole Chief Chilcoat Pushes Back on Hunter's Jurisdiction Proposal*, MCCARVILLE REPORT, <http://mccarvillereport.com/archives/53985> (last visited Feb. 28, 2021).

compelling evidence demonstrating such a federal response is necessary. At first look, it appears that what AG Hunter is proposing already exists under federal law. P.L. 280, allows for the transfer of subject matter jurisdiction to the state. But the historical record shows that tribes that have voluntarily relinquished their authority have found themselves trapped and unable to ever recover their sovereignty.<sup>54</sup>

As a matter of law, tribal nations *already* have a mechanism, through Public Law 280, for inviting the state to share concurrent criminal jurisdiction by requesting a special election from the Department of Interior either through tribal council request or by referendum request of at least twenty percent of the tribe's adult citizenry.<sup>55</sup> After the Secretary receives the request, the governing regulation requires an election and a majority of enrolled citizens must vote to opt-in to sharing criminal jurisdiction with the state. Each tribal nation has the ability to invoke this opportunity and request to share jurisdiction with the state. This law has been in place since 1968. Contrary to Attorney General Hunter's representations, federal legislation is not necessary to achieve concurrent state jurisdiction.

This pre-existing ability to transfer tribal jurisdiction to the state begs the question: why are Oklahoma leaders pursuing new legislation to authorize something that is already allowed? The answer lies in the process. Attorney General Hunter has likely made the wise calculation that neither the tribal citizens of the Muscogee (Creek) Nation, nor the citizens of any other tribal nation, will vote to cede their nation's sovereignty to the State of Oklahoma. So, a mechanism must be created to circumvent the will of tribal citizens and enable a deal with more pliable tribal leaders, as was done with Porter Pleasant so many years ago. The hidden harm from this proposal, however, would come if the State of Oklahoma succeeded in getting it passed into law because the federal government would have a new excuse to *not* fund tribal law enforcement. Attorney General Hunter claims that, under his proposal, participation would be voluntary, not mandatory. But participation will become mandatory once the federal government uses Hunter's PL-280 proposal as a basis to refuse funding for tribal governmental institutions. This is currently the case in many PL-280 States where the Bureau of Indian Affairs currently refuses to provide funding for tribal law enforcement on the basis that the state currently provides law enforcement on tribal lands—even though the state devotes precious little attention and resources to tribal public safety.

Just as Chitto Harjo led Mvskoke citizens to take a stand against the Dawes Commission, today, Principal Chief David Hill has led the great Muscogee (Creek) Nation in its stand against any legislative proposal or action that might eliminate the sovereignty affirmed by the Supreme Court. And just as Chitto Harjo had to face tribal leaders who were willing to sacrifice our Nation's sovereignty, today, Chief Hill has had to work around—and despite—some contemporary tribal leaders who have been willing to go along with the State of Oklahoma's agenda to reverse our victory in the Supreme Court.

---

54. Randy Krehbiel, *Oklahoma AG suggests federal law to let tribes share jurisdiction with state after McGirt ruling*, TULSA WORLD (Oct. 22, 2020), [https://tulsa-world.com/news/state-and-regional/govt-and-politics/oklahoma-ag-suggests-federal-law-to-let-tribes-share-jurisdiction-with-state-after-mcgirt-ruling/article\\_0f85fe60-0e20-11eb-9f8e-2becfd72c34e.html](https://tulsa-world.com/news/state-and-regional/govt-and-politics/oklahoma-ag-suggests-federal-law-to-let-tribes-share-jurisdiction-with-state-after-mcgirt-ruling/article_0f85fe60-0e20-11eb-9f8e-2becfd72c34e.html).

55. Indian Civil Rights Act of 1968, Pub. L. No. 90-284, § 401(a), 82 Stat. 77, 78 (codified as amended at 25 U.S.C. § 1321(a) (Supp. IV 2010)).

*C. There Will Always Be a Mc'Intosh*

William Mc'Intosh is famous in the Muscogee (Creek) Nation because he was a traitor. Leaders like him were dubbed “cooperative chiefs” by the British because they would play double-agents between the Creeks and the British, often ceding large parcels of Creek land that the Nation never agreed to cede.<sup>56</sup> As for Mc'Intosh himself, he joined forces with General Andrew Jackson and recruited a faction of Muscogee (Creek) Nation (known as the “Lower Creeks,” they were mostly mixed bloods) to fight alongside General Jackson and attack the Upper Creeks (who were mostly full bloods).<sup>57</sup> This became known as the Battle of Horseshoe Bend, which was a slaughter, truly a massacre.<sup>58</sup>

William Mc'Intosh's “greatest betrayal of Creek values was in the Treaty of Indian Springs in 1824.”<sup>59</sup> As Mvskoke historian and cultural scholar Jean (Hill) Chaudhuri explains: “McIntosh was not authorized by the Creek political system to enter into this treaty, which would transfer another huge amount of Creek territory out of Creek hands . . . . McIntosh's Indian name—Tustenugee Hutkee—was strangely symbolic, as it means ‘the white warrior.’”<sup>60</sup>

To the British and to the Americans, McIntosh was a “cooperative chief.” But to the Mvskoke, he was a traitor. Without the proper authority to do so, he sacrificed large swaths of our Nation. Today, “McIntosh” refers to a tribal leader who is willing to sacrifice the sovereignty of a Tribal Nation without proper authority and for personal gain.

Slightly less than one hundred after the signing of the Treaty of Indian Springs, Pleasant Porter earned the title of “McIntosh” for his eagerness to serve as Muscogee (Creek) Nation's Chief at the pleasure of the United States, and not the Mvskoke People. In 1900, the citizens of Muscogee (Creek) Nation elected Chitto Harjo as Principal Chief, and they also elected a Second Chief, an advisory council of twelve, a legislative body of two houses, and a judicial tribunal.<sup>61</sup> Chief Harjo insisted that the Dawes Commission had no authority to take Creek lands, and he vowed to stop any Congressional disestablishment of the Muscogee (Creek) Nation government.<sup>62</sup> Chief Harjo spoke out against allotment and encouraged Mvskokvke to resist allotment.<sup>63</sup> Porter, however, fought back.

Pleasant Porter saw Harjo's acts as an infringement on what he believed to be his authority—although what he perceived to be authority came from the United States, and not our Mvskoke People or Mvskoke law. Porter called on the United States Marshal for protection, and he advocated for Chief Harjo's arrest.<sup>64</sup> Chief Harjo was indeed arrested, but he never stopped fighting for the sovereignty of our Nation.

When the proponents of Oklahoma's statehood argued that Congress should dis-

---

56. CHAUDHURI & CHAUDHURI, *supra* note 3, at 141.

57. *Id.* at 144–45.

58. *Id.* at 145.

59. *Id.* at 147.

60. CHAUDHURI & CHAUDHURI, *supra* note 3, at 147.

61. ANGIE DEBO, *THE STILL THE WATERS RUN* 53 (1940).

62. *Id.* at 53–54.

63. *Id.* at 55.

64. *Id.* at 55–56.

establish the Muscogee Reservation and the Muscogee government, Porter *agreed*. He did not fight back. He did not stand for the inherent sovereignty of Muscogee (Creek) Nation, our inherent right to govern, or our inherent right to exist. He mimicked the rhetoric of those seeking to destroy us. While Chitto Harjo and Charley Coker were in Congress testifying against dis-establishment, Porter was parroting proponents of Oklahoma statehood. Stunningly, he went so far as to acknowledge that Oklahoma's "un-wavering aim" was to "wipe out the line of political distinction between an Indian citizen and other citizens of the Republic" so that the Muscogee (Creek) Nation could be "absorbed and become a part of the United States," and ultimately, cease to exist.<sup>65</sup>

Even in the face of this mortal threat, Porter surrendered, stating "[i]t would be difficult, if not impossible to successfully operate the Creek government now."<sup>66</sup> And in contrast to Chitto Harjo, Charley Coker, and many other Mvskokvlke who told the Senate that under no circumstances would the Muscogee (Creek) Nation government cease to exist, ("Chief") Porter told the Senate that "[i]t's not so much a question of capacity as it is of time"<sup>67</sup> until the Muscogee (Creek) Nation would no longer exist.

Although Porter remained in place as the puppet Chief selected by the United States—and not the Mvskoke People—Chief Harjo ultimately won. Our Reservation remains intact today, due to his tireless efforts.

Just as Chitto Harjo defended our sovereignty until his death in 1911, today, our Chief—elected by the Mvskoke People—continues to stand against any efforts to diminish the sovereignty of the Muscogee (Creek) Nation. Thankfully, he has not stood alone. In response to the Oklahoma Attorney General's repeated pleas to "fix" Indian Country's victory in *McGirt*, Choctaw Chief Batton has stated that the Choctaw Nation "oppose[s] Oklahoma Attorney General Mike Hunter's proposal for congressional action following the Supreme Court's ruling in *McGirt v. Oklahoma*, because it is premature and may prove to be unneeded."<sup>68</sup> Likewise, the Seminole Nation has consistently opposed efforts to reverse the Supreme Court's decision in *McGirt*, most recently stating that:

There is simply no basis to request Congressional action because the law is clear under *McGirt*. It is the responsibility of the federal government to handle certain crimes committed in Indian country by Indians. Any legislation providing the State with rights to exercise criminal jurisdiction on-reservation will come at the expense of other important attributes of sovereignty. For these reasons, the Seminole Nation opposes federal legislation relating to state-tribal criminal jurisdiction compacts.<sup>69</sup>

And, of course, Muscogee (Creek) Nation held its ground, stating that the Nation still has "not found any compelling evidence demonstrating such a federal response is necessary."<sup>70</sup> As history reminds us, the "tribes that have voluntarily relinquished their

---

65. *McGirt*, 140 S. Ct. at 2472 (citing P. Porter & A. McKellop, Printed Statement of Creek Delegates, reprinted in Creek Delegation Documents 8–9 (Feb. 9, 1893) (quoting Senate Committee Report)).

66. *McGirt*, 140 S. Ct. at 2472 (citing App. To Br. for Resp't (Message to Creek National Council (May 7, 1901)), reprinted in *The Indian Journal* (May 10, 1901)).

67. DEBO, *supra* note 8, at 377.

68. *Choctaw Nation*, *supra* note 52.

69. *Seminole Chief Chilcoat Pushes Back*, *supra* note 53.

70. Krehbiel, *supra* note 54.

authority have found themselves trapped and unable to ever recover their sovereignty.<sup>71</sup> Principal Chief David Hill has been unwilling to do that.

Just as William Mc'Intosh and Pleasant Porter were willing to sacrifice sovereignty, so too are a handful of tribal leaders today. Instead of opposing those who seek to reverse or undo *McGirt* and proudly standing for sovereignty, some tribal leaders have worked directly with the Oklahoma leaders to draft sovereignty-sacrificing proposals. When called to question for their positions, they have caricatured the capitulating sentiments of Pleasant Porter, claiming "it would be 'naïve' for anyone to think that Congress won't react to *McGirt* in some fashion."<sup>72</sup> Thus, the tribal leaders who have refused to stand in solidarity with the Muscogee (Creek) Nation have justified their acquiescence to Oklahoma's proposals on the notion that Congress *will inevitably* pass harmful post-*McGirt* legislation, and "[s]o the only question for" for some tribal leaders is whether they "want a seat at the table o[r] whether [they] want to be on the menu."<sup>73</sup> According to one Chief who has advocated for legislation that would undo *McGirt*: "I don't want to be on the menu. I want to have a seat at the table."<sup>74</sup>

#### V. THIS IS THE MUSCOGEE (CREEK) NATION'S TABLE

If there is to be a discussion of the Supreme Court's conclusion that our Reservation remains in existence, there is only one table hosting that conversation, and that is the Muscogee (Creek) Nation's table. And although we were called "naïve" for believing that we could stand for sovereignty and overcome any efforts to diminish our victory in the Supreme Court, that is precisely what we have done. Despite all the threats, despite all the statements last summer that if we did not acquiesce to some sacrifice of sovereignty in one form or another our Reservation would be dis-established altogether, we remained steadfast in our stand for sovereignty.

And because of that, we have won the respect of some of the highest United States officials, as well as Members of Congress—from both sides of the aisle. For instance, on October 23, 2020, Muscogee (Creek) Nation Chief David Hill, Second Chief Del Beaver, Press Secretary Jason Salsman, and I met with the United States Attorney General William Barr to discuss these efforts to undo *McGirt*. We explained our efforts to Attorney General Barr, and he agreed that legislation, at this time, would be unwise, and agreed that the proper course of action is to fully fund the Muscogee (Creek) Nation's law enforcement, the Lighthorse, to ensure public safety on the Muscogee Reservation.<sup>75</sup>

We have also met with bipartisan Members of Congress who wholeheartedly reject the premise that stopping harmful legislation is "naïve." In fact, while the State of Oklahoma and a small, tiny group of tribal leaders have advocated for legislation to undo aspects of *McGirt*, the vast majority of Tribal Nations and tribal organizations have stood

71. *Id.*

72. Agoyo, *supra* note 47.

73. *Id.*

74. *Id.*

75. *Muscogee Creek Nation Leaders Return From Nation's Capital After Tribal Jurisdiction Discussion*, THE BULL, <http://www.thebulltulsa.com/story/5f94ec85bfe7566909503304/muscogee-creek-nation-leaders-return-from-nations-capital-after-tribal-jurisdiction-discussion> (last visited Mar. 11, 2020).

with the Muscogee (Creek) Nation in opposition to any such efforts.<sup>76</sup> This opposition has led to several Members informing their party leadership—on both sides of the aisle—that they will not tolerate any proposed legislation that reverses the Supreme Court’s decision in *McGirt*.

There will always be Mc’Intoshes in Indian Country; that is a reality. But it is 2020, not the 1800s and not the turn of the twentieth century, when the United States’ backward policies placed Mc’Intoshes in a position of power to undermine the best interests of their own tribal nations. Today, we have strong allies in the executive, legislative, and judicial branches of the United States federal government. Our allies understand that it would be harmful to the interests of all Americans, Indians and non-Indians alike, for the United States to dis-establish a tribal nation and/or its reservation. The past may be the prologue, but it does not dictate our future. This is a new day in the United States.

It has been over a hundred years since Chitto Harjo walked the Muscogee Reservation. But his spirit, his *Poyyfekev* is alive and well. His stand for sovereignty saved our Reservation, and our Nation, when Oklahoma became a State in 1907. And today, his legacy lives on in the leadership exhibited by Chief David Hill who has remained steadfast in his stand for sovereignty. Justice Gorsuch was right. There was a promise at the far end of the Trail of Tears. And thanks to the Muscogee (Creek) Nation’s current leadership, we will not let a small group of Mc’Intoshes destroy it. It is, after all, *not our* promise. It is a promise that belongs to the generations of Mvskokvlke who will come after us. This is *their* Reservation. And it shall be so for: “[A]s long as the sun shone and the sky is up yonder these agreements will be kept . . . [A]s long as the sun rises it shall last; as long as the waters run it shall last as long as grass grows it shall last . . . .”<sup>77</sup>

---

76. Agoyo, *supra* note 47.

77. DEBO, *supra* note 8, at 55 (quoting Chitto Harjo).