SUPREME COURT OF THE UNITED STATES

No. 21–429

OKLAHOMA, PETITIONER *v.* VICTOR MANUEL CASTRO-HUERTA

ON WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

[June 29, 2022]

JUSTICE GORSUCH, with whom JUSTICE BREYER, JUSTICE SOTOMAYOR, and JUSTICE KAGAN join, dissenting.

In 1831, Georgia arrested Samuel Worcester, a white missionary, for preaching to the Cherokee on tribal lands without a license. Really, the prosecution was a show of force—an attempt by the State to demonstrate its authority over tribal lands. Speaking for this Court, Chief Justice Marshall refused to endorse Georgia's ploy because the State enjoyed no lawful right to govern the territory of a separate sovereign. See *Worcester* v. *Georgia*, 6 Pet. 515, 561 (1832). The Court's decision was deeply unpopular, and both Georgia and President Jackson flouted it. But in time, *Worcester* came to be recognized as one of this Court's finer hours. The decision established a foundational rule that would persist for over 200 years: Native American Tribes retain their sovereignty unless and until Congress ordains otherwise. *Worcester* proved that, even in the "[c]ourts of the conqueror," the rule of law meant something. *Johnson's Lessee* v. *McIntosh*, 8 Wheat. 543, 588 (1823).

Where this Court once stood firm, today it wilts. After the Cherokee's exile to what became Oklahoma, the federal government promised the Tribe that it would remain forever free from interference by state authorities. Only the Tribe or the federal government could punish crimes by or against tribal members on tribal lands. At various points

in its history, Oklahoma has chafed at this limitation. Now, the State seeks to claim for itself the power to try crimes by non-Indians against tribal members within the Cherokee Reservation. Where our predecessors refused to participate in one State's unlawful power grab at the expense of the Cherokee, today's Court accedes to another's. Respectfully, I dissent.

I

A

Long before our Republic, the Cherokee controlled much of what is now Georgia, North Carolina, South Carolina, and Tennessee. See 1 G. Litton, History of Oklahoma at the Golden Anniversary of Statehood 91 (1957) (Litton). The Cherokee were a "distinct, independent political communit[y]," who "retain[ed] their original" sovereign right to "regulat[e] their internal and social relations." *Santa Clara Pueblo* v. *Martinez*, 436 U. S. 49, 55 (1978) (internal quotation marks omitted).

As colonists settled coastal areas near Cherokee territory, the Tribe proved a valuable trading partner—and a military threat. See W. Echo-Hawk, In the Court of the Conqueror 89 (2010). Recognizing this, Great Britain signed a treaty with the Cherokee in 1730. See 1 Litton 92. As was true of "tributary" and "feudatory states" in Europe, the Cherokee did not cease to be "sovereign and independent" under this arrangement, but retained the right to govern their internal affairs. E. de Vattel, Law of Nations 60–61 (1805); see *Worcester*, 6 Pet., at 561. Meanwhile, under British law the crown possessed "centraliz[ed]" authority over diplomacy with Tribes to the exclusion of colonial governments. See C. Berkey, United States–Indian Relations: The Constitutional Basis, in Exiled in the Land of the Free 192 (H. Lyons ed. 1992).

Ultimately, the American Revolution replaced that legal framework with a similar one. When the delegates drafted

the Articles of Confederation, they debated whether the national or state authorities should manage Indian affairs. See 6 Journals of the Continental Congress, 1774–1789, pp. 1077–1079 (W. Ford ed. 1906). The resulting compromise proved unworkable. The Articles granted Congress the "sole and exclusive right and power of . . . regulating the trade and managing all affairs with the Indians." Art. IX. But the Articles undermined that assignment by further providing that "the legislative right of any state[,] within its own limits," could not be "infringed or violated." *Ibid.* Together, these provisions led to battles between national and state governments over who could oversee relations with various Tribes. See G. Ablavsky, Beyond the Indian Commerce Clause, 124 Yale L. J. 1012, 1033–1035 (2015) (Ablavsky). James Madison later complained that the Articles' division of authority over Indian affairs had "endeavored to accomplish [an] impossibilit[y]; to reconcile a partial sovereignty in the Union, with complete sovereignty in the States." The Federalist No. 42, p. 269 (C. Rossiter ed. 1961).

When the framers convened to draft a new Constitution, this problem was among those they sought to resolve. To that end, they gave the federal government "broad general powers" over Indian affairs. *United States* v. *Lara*, 541 U. S. 193, 200 (2004). The Constitution afforded Congress authority to make war and negotiate treaties with the Tribes. See Art. I, § 8; Art. VI, cl. 2. It barred States from doing either of these things. See Art. I, § 10. And the Constitution granted Congress the power to "regulate Commerce . . . with the Indian Tribes." Art. I, § 8, cl. 3. Nor did the Constitution replicate the Articles' carveout for state power over Tribes within their borders. Madison praised this change, contending that the new federal government would be "very properly unfettered" from this prior "limitatio[n]." The Federalist No. 42, at 268. Antifederalist Abraham Yates agreed (but bemoaned) that the Constitution "totally surrender[ed] into the hands of Congress the

management and regulation of the Indian affairs." Letter to the Citizens of the State of New York (June 13–14, 1788), in 20 Documentary History of the Ratification of the Constitution 1153, 1158 (J. Kaminski et al. eds. 2004).

Consistent with that view, "the Washington Administration insisted that the federal government enjoyed exclusive constitutional authority" over tribal relations. Ablavsky 1019. The new Administration understood, too, that Tribes remained otherwise free to govern their internal affairs without state interference. See *id.*, at 1041–1042, 1065–1067. In a letter to the Governor of Pennsylvania, President Washington stated curtly that "the United States . . . posses[es] the only authority of regulating an intercourse with [the Indians], and redressing their grievances." Letter to T. Mifflin (Sept. 4, 1790), in 6 Papers of George Washington: Presidential Series 396 (D. Twohig ed. 1996). Even Thomas Jefferson, the great defender of the States' powers, agreed that "under the present Constitution" no "State [has] a right to Treat with the Indians without the consent of the General Government." Letter to H. Knox (Aug. 10, 1791), in 22 Papers of Thomas Jefferson 27 (C. Cullen, E. Sheridan, & R Lester eds. 1986).

Nor was this view confined to the Executive Branch. Congress quickly exercised its new constitutional authority. In 1790, it enacted the first Indian Trade and Intercourse Act, which pervasively regulated commercial and social exchanges among Indians and non-Indians. Ch. 33, 1 Stat. 137. Congress also provided for federal jurisdiction over crimes by non-Indians against Indians on tribal lands. §§ 5–6, *id.*, at 138. States, too, recognized their lack of authority. See Ablavsky 1019, 1043. In 1789, South Carolina Governor Charles Pinckney acknowledged to Washington that "the sole management of India[n] affairs is now committed" to "the general Government." Letter to G. Washington (Dec. 14), in 4 Papers of George Washington: Presidential Series 401, 404 (D. Twohig ed. 1993). Initially, even

Georgia took the same view. See Letter from Georgia House of Representatives to Governor Edward Telfair (June 10, 1790), in 3 Documentary History of the Ratification of the Constitution: Delaware, New Jersey, Georgia, and Connecticut 178 (M. Jensen ed. 1978) (Microform Supp. Doc. No. 50).

It was against this background that Chief Justice Marshall faced *Worcester*. After gold was discovered in Cherokee territory in the 1820s, Georgia's Legislature enacted laws designed to "seize [the] whole Cherokee country, parcel it out among the neighboring counties of the state . . . abolish [the Tribe's] institutions and its laws, and annihilate its political existence." *Worcester*, 6 Pet., at 542. Like Oklahoma today, Georgia also purported to extend its criminal laws to Cherokee lands. See *ibid.*; see also S. Breyer, The Cherokee Indians and the Supreme Court, 87 The Georgia Historical Q. 408, 416–418 (2003) (Breyer). In refusing to sanction Georgia's power grab, this Court explained that the State's "assertion of jurisdiction over the Cherokee nation" was "void," because under our Constitution only the federal government possessed the power to manage relations with the Tribe. *Worcester*, 6 Pet., at 542, 561–562.

B

Two years later, and exercising its authority to regulate tribal affairs in the shadow of *Worcester*, Congress adopted the General Crimes Act of 1834 (GCA). That law extended federal criminal jurisdiction to tribal lands for certain crimes and, in doing so, served two apparent purposes. First, as a "courtesy" to the Tribes, the law represented a promise by the federal government "to punish crimes . . . committed . . . by and against our own [non-Indian] citizens." H. Rep. No. 474, 23d Cong., 1st Sess., 13 (1834) (H. Rep. No. 474). That jurisdictional arrangement was also

consistent with, and even seemingly compelled by, the federal government's treaties with various Tribes. See F. Cohen, Handbook of Federal Indian Law 731 (N. Newton et al. eds. 2005) (Cohen); R. Clinton, Development of Criminal Jurisdiction Over Indian Lands: The Historical Perspective, 17 Ariz. L. Rev. 951, 958–962 (1975) (Clinton). Second, because *Worcester* held that States lacked criminal jurisdiction on tribal lands, Congress sought to ensure a federal forum for crimes committed by and against non-Indians. See H. Rep. No. 474, at 13. Otherwise, Congress understood, non-Indian settlers would be subject to tribal jurisdiction alone. See *id.*, at 13, 18; R. Barsh & J. Henderson, The Betrayal, *Oliphant* v. *Suquamish Indian Tribe* and the Hunting of the Snark, 63 Minn. L. Rev. 609, 625–626 (1979). Congress reenacted the GCA in 1948 with minor amendments, but it remains in force today more or less in its original form. See 18 U. S. C. § 1152 (1946 ed., Supp. II).

Shortly after it adopted the GCA, the Senate ratified the Treaty of New Echota with the Cherokee in 1836. After the Tribe's removal from Georgia, the United States promised the Cherokee that they would enjoy a new home in the West where they could "establish . . . a government of their choice." Treaty with the Cherokee, Preamble, Dec. 29, 1835, 7 Stat. 478. Acknowledging the Tribe's past "difficulties . . . under the jurisdiction and laws of the State Governments," the treaty also pledged that the Tribe would remain forever free from "State sovereignties." *Ibid.*; see Art. 5, *id.*, at 481. These promises constituted an "indemnity," guaranteed by "*the faith of the nation*," that "[t]he United States and the Indian tribes [would be] the sole parties" with power on new western reservations like the Cherokee's. H. Rep. No. 474, at 18 (emphasis in original).

Over time, Congress revised some of these arrangements. In 1885, dissatisfied with how the Sioux Tribe responded to the murder of a tribal member, Congress adopted the Major

Crimes Act (MCA). See R. Anderson, S. Krakoff, & B. Berger, American Indian Law: Cases and Commentary 90–96 (4th ed. 2008) (Anderson). There, Congress directed that, moving forward, only the federal government, not the Tribes, could prosecute certain serious offenses by tribal members on tribal lands. See 18 U. S. C. § 1153(a). On its own initiative, this Court then went a step further. Relying on language in certain laws admitting specific States to the Union, the Court held that States were now entitled to prosecute crimes by non-Indians against non-Indians on tribal lands. See *United States* v. *McBratney*, 104 U. S. 621, 623 (1882); *Draper* v. *United States*, 164 U. S. 240, 243, 247 (1896). Through all these developments, however, at least one promise remained: States could play no role in the prosecution of crimes by or against Native Americans on tribal lands. See *Williams* v. *Lee*, 358 U. S. 217, 220 (1959).

In 1906, Congress reaffirmed this promise to the Cherokee in Oklahoma. As a condition of its admission to the Union, Congress required Oklahoma to "declare that [it] forever disclaim[s] all right and title in or to . . . all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation." 34 Stat. 270. Instead, Congress provided that tribal lands would "remain subject to the jurisdiction, disposal, and control of the United States." *Ibid.* As if the point wasn't clear enough, Congress further provided that "nothing contained in the [new Oklahoma state] constitution shall be construed to . . . limit or affect the authority of the Government of the United States . . . respecting [the State's] Indians . . . which it would have been competent to make if this Act had never been passed." *Id.*, at 267–268. The following year, Oklahoma adopted a State Constitution consistent with Congress's instructions. Art. I, § 3; see also Clinton 961.

In the years that followed, certain States sought arrangements different from Oklahoma's. And once more, Congress intervened. In 1940, Kansas asked for and received

permission from Congress to exercise jurisdiction over crimes "by or against Indians" on tribal lands. 18 U. S. C. § 3243. Through the rest of the decade, Congress experimented with similar laws for New York, Iowa, and North Dakota.[1] Then, in 1953, Congress adopted Public Law 280. That statute granted five additional States criminal "jurisdiction over offenses . . . by or against Indians" and established procedures by which further States could secure the same authority. See ch. 505, § 2, 67 Stat. 588. Ultimately, however, some of these arrangements proved unpopular. Not only with affected Tribes. See C. Goldberg-Ambrose, Public Law 280 and the Problem of Lawlessness in California Indian Country, 44 UCLA L. Rev. 1405, 1406–1407 (1997) (Goldberg-Ambrose). These arrangements also proved unpopular with certain States that viewed their new law enforcement responsibilities on tribal lands as unfunded federal mandates. See Anderson 436. A few States even renounced their Public Law 280 jurisdiction. See Cohen 579.

By 1968, the federal government came to conclude that, "as a matter of justice and as a matter of enlightened social policy," the "time ha[d] come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions." Richard M. Nixon, Special Message on Indian Affairs (July 8, 1970). Consistent with that vision, Congress amended Public Law 280 to require tribal consent before any State could assume jurisdiction over crimes by or against Indians on tribal lands. Act of Apr. 11, 1968, § 401, 82 Stat. 78, § 406, *id.*, at 80 (25 U. S. C. §§ 1321(a), 1326). Recognizing that certain States' enabling acts barred state

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[1] See Act of July 2, 1948, ch. 809, 62 Stat. 1224 (25 U. S. C. § 232) (New York); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (Iowa), repealed, Act of Dec. 11, 2018, Pub. L. 115–301, 132 Stat. 4395; Act of May 31, 1946, ch. 279, 60 Stat. 229 (North Dakota).

authority on tribal lands and required States to adopt constitutional provisions guaranteeing as much, Congress also authorized States to "amend, where necessary, their State constitution or . . . statutes." § 404, 82 Stat. 79 (25 U. S. C. § 1324). In doing so, however, Congress emphasized that affected States could not assume jurisdiction to prosecute offenses by or against tribal members on tribal lands until they "appropriately amended their State constitution or statutes." *Ibid.* To date, Oklahoma has not amended its state constitutional provisions disclaiming jurisdiction over tribal lands. Nor has Oklahoma sought or obtained tribal consent to the exercise of its jurisdiction. See *The Honorable E. Kelly Haney*, 22 Okla. Op. Atty. Gen. No. 90–32, 72, 1991 WL 567868, *1 (Mar. 1, 1991) (*Haney*). Thus, Oklahoma has remained, in Congress's words, a State "not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within" its borders. 25 U. S. C. § 1321(a).

C

Rather than seek tribal consent pursuant to Public Law 280 or persuade Congress to adopt a state-specific statute authorizing it to prosecute crimes by or against tribal members on tribal lands, Oklahoma has chosen a different path. In the decades following statehood, many settlers engaged in schemes to seize Indian lands and mineral rights by subterfuge. See A. Debo, And Still the Waters Run 92–125 (1940) (Debo). These schemes resulted in "the bulk of the landed wealth of the Indians" ending up in the hands of the new settlers. See *ibid.*; see also *id.*, at 181–202. State officials and courts were sometimes complicit in the process. See *id.*, at 182–183, 185, 195–196. For years, too, Oklahoma courts asserted the power to hear criminal cases involving Native Americans on lands allotted to and owned by tribal members despite the contrary commands of the Oklahoma Enabling Act and the State's own constitution.

The State only disavowed that practice in 1991, after defeats in state and federal court. See *Haney*, 1991 WL 567868, *1–*3; see also *State* v. *Klindt*, 782 P. 2d 401, 404 (Okla. Crim. App. 1989); *Ross* v. *Neff*, 905 F. 2d 1349, 1353 (CA10 1990).

Still, it seems old habits die slowly. Even after renouncing the power to try criminal cases involving Native Americans on *allotted* tribal lands, Oklahoma continued to claim the power to prosecute crimes by or against Native Americans within tribal *reservations*. The State did so on the theory that at some (unspecified) point in the past, Congress had disestablished those reservations. In *McGirt* v. *Oklahoma*, this Court rejected that argument in a case involving the Muscogee (Creek) Tribe. 591 U. S. ___, ___ (2020) (slip op., at 1). We explained that Congress had never disestablished the Creek Reservation. Nor were we willing to usurp Congress's authority and disestablish that reservation by a lawless act of judicial fiat. See *id.*, at ___ (slip op., at 42). Accordingly, only federal and tribal authorities were lawfully entitled to try crimes by or against Native Americans within the Tribe's reservation. *Ibid.* Following *McGirt*, Oklahoma's courts recognized that what held true for the Creek also held true for the Cherokee: Congress had never disestablished its reservation and, accordingly, the State lacked authority to try offenses by or against tribal members within the Cherokee Reservation. See *Spears* v. *State*, 2021 OK CR 7, ¶¶ 10–14, 485 P. 3d 873, 876–877.

Once more, Oklahoma could have responded to this development by asking Congress for state-specific legislation authorizing it to exercise criminal jurisdiction on tribal lands, as Kansas and various other States have done. The State could have employed the procedures of Public Law 280 to amend its own laws and obtain tribal consent. Instead, Oklahoma responded with a media and litigation campaign seeking to portray reservations within its State—where federal and tribal authorities may prosecute crimes

by and against tribal members and Oklahoma can pursue cases involving only non-Indians—as lawless dystopias. See Brief for Cherokee Nation et al. as *Amici Curiae* 18 (Cherokee Brief) ("The State's tale of a criminal dystopia in eastern Oklahoma is just that: A tale").

That effort culminated in this case. In it, Oklahoma has pursued alternative lines of argument. First, the State has asked this Court to revisit *McGirt* and unilaterally eliminate all reservations in Oklahoma. Second, the State has argued that it enjoys a previously unrecognized "inherent" authority to try crimes within reservation boundaries by non-Indians against tribal members—a claim Oklahoma's own courts have rejected. See *Bosse* v. *State*, 2021 OK CR 3, 484 P. 3d 286, 294–295.

Ultimately, this Court declined to entertain the State's first argument but agreed to review the second. Nominally, the question comes to us in a case involving Victor Castro-Huerta, a non-Indian who abused his Cherokee stepdaughter within the Tribe's reservation. Initially, a state court convicted him for a state crime. After *McGirt*, the Oklahoma Court of Criminal Appeals determined that his conviction was invalid because only federal and tribal officials possess authority to prosecute crimes by or against Native Americans on the Cherokee Reservation. See App. to Pet. for Cert. 4a. The federal government swiftly reindicted Mr. Castro-Huerta, and a federal court again found him guilty. Now before us, Oklahoma seeks to undo Mr. Castro-Huerta's federal conviction and have him transferred from federal prison to a state facility to resume his state sentence.

Really, though, this case has less to do with where Mr. Castro-Huerta serves his time and much more to do with Oklahoma's effort to gain a legal foothold for its wish to exercise jurisdiction over crimes involving tribal members on tribal lands. To succeed, Oklahoma must disavow adverse rulings from its own courts; disregard its 1991 recognition

that it lacks legal authority to try cases of this sort; and ignore fundamental principles of tribal sovereignty, a treaty, the Oklahoma Enabling Act, its own state constitution, and Public Law 280. Oklahoma must pursue a proposition so novel and so unlikely that in over two centuries not a single State has successfully attempted it in this Court. Incredibly, too, the defense of tribal interests against the State's gambit falls to a non-Indian criminal defendant. The real party in interest here isn't Mr. Castro-Huerta but the Cherokee, a Tribe of 400,000 members with its own government. Yet the Cherokee have no voice as parties in these proceedings; they and other Tribes are relegated to the filing of *amicus* briefs.

II

A

Today the Court rules for Oklahoma. In doing so, the Court announces that, when it comes to crimes by non-Indians against tribal members within tribal reservations, Oklahoma may "exercise jurisdiction." *Ante*, at 4. But this declaration comes as if by oracle, without any sense of the history recounted above and unattached to any colorable legal authority. Truly, a more ahistorical and mistaken statement of Indian law would be hard to fathom.

The source of the Court's error is foundational. Through most of its opinion, the Court proceeds on the premise that Oklahoma possesses "inherent" sovereign power to prosecute crimes on tribal reservations until and unless Congress "preempt[s]" that authority. *Ante*, at 5–18. The Court emphasizes that States normally wield broad police powers within their borders absent some preemptive federal law. See *ante*, at 4–6; see also *Virginia Uranium, Inc.* v. *Warren*, 587 U. S. ___, ___ (2019) (lead opinion) (slip op., at 12).

But the effort to wedge Tribes into that paradigm is a category error. Tribes are not private organizations within

state boundaries. Their reservations are not glorified private campgrounds. Tribes are sovereigns. And the preemption rule applicable to them is exactly the opposite of the normal rule. Tribal sovereignty means that the criminal laws of the States "can have no force" on tribal members within tribal bounds unless and until Congress clearly ordains otherwise. *Worcester*, 6 Pet., at 561. After all, the power to punish crimes by or against one's own citizens within one's own territory to the exclusion of other authorities is and has always been among the most essential attributes of sovereignty. See, *e.g.*, *Wilson* v. *Girard*, 354 U. S. 524, 529 (1957) (*per curiam*) ("A sovereign nation has exclusive jurisdiction to punish offenses against its laws committed within its borders"); see also *Schooner Exchange* v. *McFaddon*, 7 Cranch 116, 136 (1812); E. de Vattel, Law of Nations 81–82 (1835 ed.).

Nor is this "'notion,'" *ante*, at 5, some discarded artifact of a bygone era. To be sure, Washington, Jefferson, Marshall, and so many others at the Nation's founding appreciated the sovereign status of Native American Tribes. See Part I–A, *supra*. But this Court's own cases have consistently reaffirmed the point. Just weeks ago, the Court held that federal prosecutors did not violate the Double Jeopardy Clause based on the essential premise that tribal criminal law is the product of a "separate sovereig[n]" exercising its own "retained sovereignty." *Denezpi* v. *United States*, 596 U. S. ___, ___ (2022) (slip op., at 6) (internal quotation marks omitted). Recently, too, this Court confirmed that Tribes enjoy sovereign immunity from suit. See *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 788–789 (2014). Throughout our history, "the basic policy of *Worcester*" that Tribes are separate sovereigns "has remained." *Williams* v. *Lee*, 358 U. S., at 219.[2]

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[2] See also *Ysleta del Sur Pueblo* v. *Texas*, 596 U. S. ___, ___ (2022) (slip

Because Tribes are sovereigns, this Court has consistently recognized that the usual "standards of pre-emption" are "unhelpful." *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 143 (1980); see also *Cotton Petroleum Corp.* v. *New Mexico*, 490 U. S. 163, 176 (1989); *Moe* v. *Confederated Salish and Kootenai Tribes of Flathead Reservation*, 425 U. S. 463, 475–476 (1976); *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 170–172 (1973). In typical preemption cases, courts "start with the assumption" that Congress has not displaced state authority. *Rice* v. *Santa Fe Elevator Corp.*, 331 U. S. 218, 230 (1947). But when a State tries to regulate tribal affairs, the same "backdrop" does not apply because Tribes have a "claim to sovereignty [that] long predates that of our own Government." *McClanahan*, 411 U. S., at 172; see also *Bracker*, 448 U. S., at 143. So instead of searching for an Act of Congress *displacing* state authority, our cases require a search for federal legislation *conferring* state authority: "[U]nless and until Congress acts, the tribes retain their historic sovereign authority." *Bay Mills Indian Community*, 572 U. S., at 788 (internal quotation marks omitted); see *United States* v. *Cooley*, 593 U. S. ___, ___–___ (2021) (slip op., at 3–4) (instructing courts to ask if a "treaty or statute has explicitly divested Indian tribes of the . . . authority at issue"); Anderson 317. What is more, courts must "tread lightly" before concluding Congress has abrogated tribal sovereignty in favor of state authority. *Santa Clara Pueblo*, 436 U. S., at 60. Any ambiguities in

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op., at 1); *United States* v. *Cooley*, 593 U. S. ___, ___–___ (2021) (slip op., at 3–4); *Oklahoma Tax Comm'n* v. *Citizen Band Potawatomi Tribe of Okla.*, 498 U. S. 505, 509 (1991); *United States* v. *Wheeler*, 435 U. S. 313, 322–323 (1978); *Santa Clara Pueblo* v. *Martinez*, 436 U. S. 49, 56 (1978); *United States* v. *Mazurie*, 419 U. S. 544, 557 (1975); *Talton* v. *Mayes*, 163 U. S. 376, 383–384 (1896); *United States* v. *Kagama*, 118 U. S. 375, 381–382 (1886); *Cherokee Nation* v. *Georgia*, 5 Pet. 1, 17 (1831).

Congress's work must be resolved in favor of tribal sovereignty and against state power. See *ibid.*; see also *Cotton Petroleum*, 490 U. S., at 177. And, if anything, these rules bear special force in the criminal context, which lies at the heart of tribal sovereignty and in which Congress "has provided a nearly comprehensive set of statutes allocating criminal jurisdiction" among federal, tribal, and state authorities. Cohen 527.[3]

B

From 1834 to 1968, Congress adopted a series of laws governing criminal jurisdiction on tribal lands. Those laws are many, detailed, and clear. Each operates against the backdrop understanding that Tribes are sovereign and that in our constitutional order only Congress may displace their authority. Nor does anything in Congress's work begin to confer on Oklahoma the authority it seeks.

1

Start with the GCA, first adopted by Congress in 1834

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[3] In the *civil* context, Congress has not always provided comprehensive rules allocating jurisdiction. See Cohen 527. In light of that fact, this Court has, in "exception[al]" cases, *id.*, at 524, allowed certain state laws to apply on tribal lands without express congressional approval, see, *e.g.*, *Washington* v. *Confederated Tribes of Colville Reservation*, 447 U. S. 134, 154–159 (1980). But even in the civil context this Court has proceeded against the backdrop of tribal sovereignty, followed the presumption against state authority, sought to abide its own repeated admonitions to tread cautiously, and generally refused to consider competing state interests. See, *e.g.*, *White Mountain Apache Tribe* v. *Bracker*, 448 U. S. 136, 143–144 (1980); Cohen 520–525. So, for example, in *Confederated Tribes*, this Court allowed the application of a state civil law only on a showing that the State sought to regulate market activities with primarily off-reservation effects and "in which the Tribes ha[d no] significant interest." 447 U. S., at 152. Meanwhile, in *Bracker* this Court refused to permit a State to apply its civil tax laws on tribal lands even though Congress had not expressly prohibited the State from doing so. 448 U. S., at 143.

and most recently reenacted in 1948. The GCA provides:

> "Except as otherwise expressly provided by law, the general laws of the United States as to the punishment of offenses committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, shall extend to Indian Country.
>
> This section shall not extend to offenses committed by one Indian against the person or property of another Indian, nor to any Indian committing any offense in the Indian country who has been punished by the local law of the tribe, or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." 18 U. S. C. § 1152.

As recounted above, Congress adopted the GCA in the aftermath of *Worcester*'s holding that the federal government alone may regulate tribal affairs and States do not possess inherent authority to apply their criminal laws on tribal lands. Responding to that decision, Congress did not choose to exercise its authority to allow state jurisdiction on tribal lands. Far from it. Congress chose only to extend *federal* law to tribal lands—and even then only for certain crimes involving non-Indian settlers. Otherwise, Congress recognized, those settlers might be subject to *tribal* criminal jurisdiction alone. See Part I–B, *supra*. Several features of the law confirm this understanding. Take just three.

First, the GCA compares "Indian country" to "place[s] within the sole and exclusive jurisdiction of the United States." § 1152. The latter category refers to federal enclaves like national parks and military bases that the Constitution places under exclusive federal control. See Art. I, § 8, cl. 17; *United States* v. *Cowboy*, 694 F. 2d 1228, 1234 (CA10 1982); see also *Ex parte Crow Dog*, 109 U. S. 556, 567

(1883). And state laws generally do not apply in federal enclaves. See, *e.g.*, *Fort Leavenworth R. Co.* v. *Lowe*, 114 U. S. 525, 532–533 (1885). Rather than unambiguously endow States with any sort of prosecutorial authority on tribal lands, the GCA thus makes plain that tribal lands are to be treated like federal enclaves subject to federal, not state, control.

Second, the GCA provides that the "general laws of the United States as to the punishment of offenses" shall apply on tribal lands. § 1152. Again, nothing here purports to extend state criminal laws to tribal lands. Quite the contrary. It would hardly make sense to apply federal general criminal law—to address all crimes ranging from murder to jaywalking—if state general criminal law already did the job. Traditionally, this Court does not assume multiple "sets of [general] criminal laws" apply to those subject to federal protection. *Lewis* v. *United States*, 523 U. S. 155, 163 (1998). Instead, when Congress converts an area into a federal enclave, we usually presume later-enacted state law "does not apply." *Parker Drilling Management Services, Ltd.* v. *Newton*, 587 U. S. ___, ___ (2019) (slip op., at 9).

Third, after applying the federal government's general criminal laws to tribal lands, the GCA carves out some exceptions. It provides that federal law "shall not extend" to crimes involving only Indians, crimes by Indians where the perpetrator "has been punished by the local law of the tribe," or where a treaty grants a Tribe exclusive jurisdiction. § 1152. These exceptions ensure that the federal government does not meddle in cases most likely to implicate tribal sovereignty. And it defies the imagination to think Congress would have taken such care to limit federal authority over these most sensitive cases while (somewhere, somehow) leaving States, so often the Tribes' "deadliest enemies," to enjoy free rein. *United States* v. *Kagama*, 118 U. S. 375, 384 (1886).

2

When Congress enacted the MCA in 1885, it proceeded once more against the "backdrop" rule that only tribal criminal law applies on tribal lands, that States enjoy no inherent authority to prosecute cases on tribal lands, and that only Congress may displace tribal power. Nor, once more, did Congress's new legislation purport to allow States to prosecute crimes on tribal lands. In response to concerns with how tribal authorities were handling major crimes committed by tribal members, in the MCA Congress took a step beyond the GCA and instructed that, in the future, the *federal* government would have "exclusive jurisdiction" to prosecute certain crimes by Indian defendants on tribal lands. 18 U. S. C. § 1153(a); see also Part I–B, *supra*. Here again, Congress's work hardly would have been necessary or made sense if States already possessed jurisdiction to try crimes by or against Indians on tribal reservations. Plainly, Congress's "purpose" in adopting the MCA was to answer the "objection" that major crimes by tribal members on tribal lands would otherwise be subject to prosecution by tribal authorities alone. See *Kagama*, 118 U. S., at 383–385.

3

Consider next the Treaty of New Echota and the Oklahoma Enabling Act. In 1835, the United States entered into a treaty with the Cherokee. In that treaty, the Nation promised that, within a new reservation in what was to become Oklahoma, the Tribe would enjoy the right to govern itself and remain forever free from "State sovereignties" and "the jurisdiction of any State." Treaty with the Cherokee, Preamble, 7 Stat. 478. This Court has instructed that tribal treaties must be interpreted as they "would naturally be understood by the Indians" at ratification. *Herrera* v. *Wyoming*, 587 U. S. ___, ___ (2019) (slip op., at 19) (internal

quotation marks omitted). And having just lost their traditional homelands to Georgia, who can doubt that the Cherokee understood this promise as a guarantee that they would retain their sovereign authority over crimes by or against tribal members subject only to federal, not state, law? That was certainly the contemporaneous understanding of the House Committee on Indian Affairs, which observed that "[t]he United States and the Indian tribes [would be] the sole parties" with power over new reservations in the West. H. Rep. No. 474, at 18; see also Part I–B, *supra*. This Court has long shared the same view. "By treaties and statutes," the Court has said, "the right of the Cherokee [N]ation to exist as an autonomous body, subject always to the paramount authority of the United States, has been recognized." *Talton* v. *Mayes*, 163 U. S. 376, 379–380 (1896).[4]

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[4] In a fleeting aside, the Court suggests that the treaty was "supplanted" by the Oklahoma Enabling Act in 1906, which endowed the State with "inherent" authority to try crimes by or against tribal members on tribal lands. *Ante*, at 22–23. But the Court cites no proof for its *ipse dixit*, nor could it. As we shall see, Congress took pains to abide its treaty promises when it adopted the Oklahoma Enabling Act and has never revoked them. Nor may this Court abrogate treaties or statutes by wishing them away in passing remarks. In a Nation governed by the rule of law, not men (or willful judges), only Congress may withdraw this Nation's treaty promises or revise its written laws. See *McGirt* v. *Oklahoma*, 591 U. S. ___, ___ (2020) (slip op., at 7). Even on its own terms, too, the Court's discussion of the treaty turns out to be dicta. In the end, the Court abandons any suggestion that, with its admission to the Union, the Cherokee's treaties somehow evaporated and Oklahoma gained an "inherent" right to prosecute crimes by or against tribal members on tribal lands. Instead, the Court resorts to a case-specific "balancing test" that acknowledges state law may not apply on tribal lands even in the absence of a preemptive statute. See Part III–A, *infra*.

In the course of its dicta on the treaty, the Court highlights still two other irrelevant facts—that the Cherokee engaged in treaties with the Confederacy during the Civil War and that "Congress abolished treatymaking with the Indian nations in 1871." *Ante*, at 21, n. 7, 22, n. 8

In 1906, Congress sought to deliver on its treaty promises when it adopted the Oklahoma Enabling Act. That law paved the way for the new State's admission to the Union. But in doing so, Congress took care to require Oklahoma to "agree and declare" that it would "forever disclaim all right and title in or to . . . all lands lying within [the State's] limits owned or held by any Indian, tribe, or nation." 34 Stat. 270. Instead of granting the State some new power to prosecute crimes by or against tribal members, Congress insisted that tribal lands "shall be and remain subject to the jurisdiction, disposal, and control of the United States." *Ibid.* Oklahoma complied with Congress's instructions by adopting both of these commitments verbatim in its Constitution. Art. I, § 3.

Underscoring the nature of this arrangement, the Enabling Act further provided that "nothing contained in the

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(internal quotation marks omitted). In truth, while some members of the Tribe did side with the Confederacy, others fought for the Union. See 1 Litton 222, 224, 239. Regardless, after the Civil War the federal government punished the entire Tribe by stripping some of its lands in the 1866 Treaty of Washington. See *id.*, at 245. But that pact did not terminate the government's other existing treaty promises. To the contrary, the new treaty expressly confirmed that "[a]ll provisions of treaties, heretofore ratified . . . and not inconsistent with the provisions of this treaty, are hereby reaffirmed." Treaty with the Cherokee, Art. XXXI, 14 Stat. 806. As for the 1871 statute the Court cites, it makes plain that "nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any . . . Indian nation or tribe." 16 Stat. 566. Recognizing as much, this Court in 1896 expressly recognized that the Tribe's "guarantee of self-government" in the Treaty of New Echota remained in force. *Talton*, 163 U. S., at 380. In the years since, this Court and others have recognized the continuing vitality of various aspects of the treaty too. See, *e.g.*, *Choctaw Nation* v. *Oklahoma*, 397 U. S. 620, 628 (1970); *EEOC* v. *Cherokee Nation*, 871 F. 2d 937, 938 (CA10 1989). And in this very case, the federal government has confirmed that the Nation's treaties continue to "protect" the Tribe. See Tr. of Oral Arg. 121.

[Oklahoma] constitution shall be construed . . . to limit or affect the authority of the Government of the United States to make any law or regulation respecting such Indians, their lands, property, or other rights by treaties, agreement, law, or otherwise, which it would have been competent to make *if this Act had never been passed*." 34 Stat. 267–268 (emphasis added). Prior to statehood, too, no one could have questioned Congress's exclusive authority to regulate tribal lands and affairs in the Oklahoma territory. See, *e.g.*, U. S. Const., Art. IV; *Kagama*, 118 U. S., at 380 (citing federal government's "exclusive sovereignty" over federal territories); *Simms* v. *Simms*, 175 U. S. 162, 168 (1899) ("In the Territories of the United States, Congress has the entire dominion and sovereignty, . . . Federal and state"); *Harjo* v. *Kleppe*, 420 F. Supp. 1110, 1121 (DC 1976) (federal courts had pre-statehood jurisdiction); Clinton 960–962. The Oklahoma Enabling Act and the commitments it demanded in the new Oklahoma Constitution sought to maintain this status quo.

Recognizing the point, this Court has explained that, "[i]n passing the enabling act for the admission of the State of Oklahoma . . . Congress was careful to preserve the authority of the Government of the United States over the Indians, their lands and property, *which it had prior to the passage of the act*." *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 309 (1911) (emphasis added). This Court has explained, too, that the "grant of statehood" to Oklahoma did nothing to disturb "the long-settled rule" that the "guardianship of the United States" over Native American Tribes in Oklahoma "has not been abandoned." *United States* v. *Ramsey*, 271 U. S. 467, 469 (1926). Instead, this Court has acknowledged, the federal government's "authority in respect of crimes committed by or against Indians continued after the admission of the state as it was before." *Ibid.* In fact, the Court has long interpreted nearly identical language in the

Arizona Enabling Act—enacted close in time to its Oklahoma counterpart—as reinforcing the traditional rule "that the States lac[k] jurisdiction" on tribal lands over crimes by or against Native Americans. *McClanahan*, 411 U. S., at 175; see also *Warren Trading Post Co.* v. *Arizona Tax Comm'n*, 380 U. S. 685, 687, n. 3 (1965).[5]

4

The few occasions on which Congress has even arguably authorized the application of state criminal law on tribal reservations still do not come anywhere near granting Oklahoma the power it seeks. In the late 1800s, this Court in

[5] In places, the Court seems to suggest that the Oklahoma Enabling Act endowed the State with "inherent" jurisdiction to try any crime committed within its borders. See *ante*, at 22–23. But in the end the Court abandons any suggestion that with statehood Oklahoma gained an inherent right to try cases involving tribal members within tribal bounds. See Part III–A, *infra*. So, once more, the Court's discussion of the Oklahoma Enabling Act turns out to be dicta future litigants are free to correct. Much correction is warranted. Not only does the Court fail to quote, let alone offer any analysis of, the relevant statutory text. Its suggestion that the Oklahoma Enabling Act granted the State criminal jurisdiction over tribal lands would require us to suppose that Congress abrogated two treaties with the Cherokee without ever saying so—an interpretation that would grossly defy our Nation's promises and this Court's obligation to read congressional work as a harmonious whole. Reading the Oklahoma Enabling Act in line with the Court's ill-considered dicta would also defy this Court's longstanding precedents in *Tiger*, *Ramsey*, and *McClanahan*. Of course, the Court tries to invoke *McBratney* and *Draper* as contrary authority. But as we will see in a moment, both cases carefully reiterated the rule that statehood does not imply the right to try crimes on tribal lands by or against tribal members. The Court also cites *Organized Village of Kake* v. *Egan*, 369 U. S. 60 (1962). But that case involved Alaska's Anti-Fish-Trap Conservation Law, not the Oklahoma Enabling Act. Admittedly, *Egan* quotes comments from a 1954 legislative committee hearing about the Alaska Enabling Act in which a few participants also happened to express views on the meaning of the Oklahoma Enabling Act, passed almost 50 years earlier. See *id.*, at 71. But surely this Court cannot think a few stray post-enactment legislative comments, "unmoored from any statutory text," *ante*, at 11, control over the statutory terms or our more specific precedents.

McBratney and *Draper* held that federal statutes admitting certain States to the Union effectively meant those States could now prosecute crimes on tribal lands involving only non-Indians. Yet, as aggressive as these decisions were, they took care to safeguard the rule that a State's admission to the Union does not convey with it the power to punish "crimes committed by or against Indians." *McBratney*, 104 U. S., at 624; *Draper*, 164 U. S., at 247. Indeed, soon after Oklahoma became a State, this Court explained that the "grant of statehood" may have endowed Oklahoma with authority to try crimes "not committed by or against Indians," but with statehood did not come any authority to try "crimes by or against Indians" on tribal lands. *Ramsey*, 271 U. S., at 469; see also n. 5, *supra*; *Donnelly* v. *United States*, 228 U. S. 243, 271 (1913); *Williams* v. *Lee*, 358 U. S., at 220; Cohen 506–509. The decision whether and when this arrangement should "cease" "rest[ed] with Congress alone." *Ramsey*, 271 U. S., at 469.

The truth is, Congress has authorized the application of state criminal law on tribal lands for offenses committed by or against Native Americans only in very limited circumstances. The most notable examples can be found in Public Law 280 and related statutes. In 1940, Kansas successfully lobbied Congress for criminal jurisdiction in Indian country. Nearly identical laws for North Dakota, Iowa, and New York followed close behind. Then in 1953, Congress adopted Public Law 280 in which it authorized five States to exercise criminal jurisdiction on tribal lands and established procedures for additional States to assume similar authority. In 1968, Congress amended Public Law 280. Now, before a State like Oklahoma may try crimes by or against Native Americans arising on tribal lands, it must take action to amend any state law disclaiming that authority; then, the State must seek and obtain tribal consent to any extension of state jurisdiction. See Part I–B, *supra*; Clinton 958–962. Unless a State takes these steps, it does

"not hav[e] jurisdiction." 25 U. S. C. §§ 1321(a), 1323(b).[6]

5

The Court's suggestion that Oklahoma enjoys "inherent" authority to try crimes against Native Americans within the Cherokee Reservation makes a mockery of all of Congress's work from 1834 to 1968. The GCA and MCA? On the Court's account, Congress foolishly extended federal criminal law to tribal lands on a mistaken assumption that only tribal law would otherwise apply. Unknown to anyone until today, state law applied all along. The treaty, the Oklahoma Enabling Act, and the provision in Oklahoma's constitution that Congress insisted upon as a condition of statehood? The Court effectively ignores them. The Kansas Act and its sibling statutes? On the Court's account, they were needless too. Congress's instruction in Public Law 280 that States may not exercise jurisdiction over crimes by or against tribal members on tribal lands until they amend contrary state law and obtain tribal consent? Once more, it seems the Court thinks Congress was hopelessly misguided.

Through it all, the Court makes no effort to grapple with the backdrop rule of tribal sovereignty. The Court proceeds oblivious to the rule that only a clear act of Congress may impose constraints on tribal sovereignty. The Court ignores the fact that Congress has never come close to subjecting the Cherokee to state criminal jurisdiction over crimes against tribal members within the Tribe's reservation. The Court even disregards our precedents recognizing that the

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[6]The Court observes that Public Law 280 and related statutes did more than just grant States jurisdiction over crimes by non-Indians against Indians on tribal lands—"the issue here." *Ante*, at 17. Congress also granted "States . . . jurisdiction over crimes committed *by Indians*." *Ibid.* (emphasis in original). But that observation fails to answer the fact that, under the Court's view, a major portion of all these laws is surplusage—and none of them was necessary if States really enjoyed "inherent" criminal jurisdiction on tribal lands from the start.

"grant of statehood" to Oklahoma did not endow the State with any power to try "crimes committed by or against Indians" on tribal lands but reserved that authority to the federal government and Tribes alone. *Ramsey*, 271 U. S., at 469; see also *Tiger*, 221 U. S., at 309. From start to finish, the Court defies our duty to interpret Congress's laws and our own prior work "harmoniously" as "part of an entire *corpus juris*." A. Scalia & B. Garner, Reading Law 252 (2012); see also *Goodyear Atomic Corp.* v. *Miller*, 486 U. S. 174, 184–185 (1988).

C

Putting aside these astonishing errors, Congress's work and this Court's precedents yield three clear principles that firmly resolve this case. First, tribal sovereign authority excludes the operation of other sovereigns' criminal laws unless and until Congress ordains otherwise. Second, while Congress has extended a good deal of federal criminal law to tribal lands, in Oklahoma it has authorized the State to prosecute crimes by or against Native Americans within tribal boundaries only if it satisfies certain requirements. Under Public Law 280, the State must remove state-law barriers to jurisdiction and obtain tribal consent. Third, because Oklahoma has done neither of these things, it lacks the authority it seeks to try crimes against tribal members within a tribal reservation. Until today, all this settled law was well appreciated by this Court, the Executive Branch, and even Oklahoma.

Consider first our own precedents and those of other courts. In 1946 in *Williams* v. *United States*, this Court recognized that, while States "may have jurisdiction over offenses committed on th[e] reservation between persons who are not Indians, the laws and courts of the United States, rather than those of [the States], have jurisdiction over offenses committed there . . . by one who is not an Indian against one who is an Indian." 327 U. S. 711, 714 (footnote

omitted). In *Williams* v. *Lee*, issued in 1959, this Court was clear again: "[I]f the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive." 358 U. S., at 220. As early as 1926, this Court made the same point while speaking directly to Oklahoma. *Ramsey*, 271 U. S., at 469–470. It is a point our cases have continued to make in recent years.[7] It is a point a host of other courts—including state courts issuing decisions contrary to their own interests—have acknowledged too.[8]

The Executive Branch has likewise understood the States to lack authority to try crimes by or against Indians in Indian country absent congressional authorization. Not only did the Washington Administration recognize as much. See Part I–A, *supra*. The same view has persisted throughout the Nation's history. In 1940, the Acting Secretary of the Interior advised Congress that state criminal jurisdiction extends "only to situations where both the offender and the victim" are non-Indians. S. Rep. No. 1523, 76th Cong., 3d Sess., 2 (Vol. 2). A few decades later, the Solicitor General made a similar representation to this Court. See Brief for United States as *Amicus Curiae* in *Arizona* v. *Flint*, O. T.

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[7] See, *e.g.*, *United States* v. *Bryant*, 579 U. S. 140, 146 (2016); *Nevada* v. *Hicks*, 533 U. S. 353, 365 (2001); *Solem* v. *Bartlett*, 465 U. S. 463, 465, n. 2 (1984); *Washington* v. *Confederated Bands and Tribes of Yakima Nation*, 439 U. S. 463, 470–471 (1979); *McClanahan* v. *Arizona Tax Comm'n*, 411 U. S. 164, 170–171 (1973).

[8] See, *e.g.*, *State* v. *Cungtion*, 969 N. W. 2d 501, 504–505 (Iowa 2022); *State* v. *Sebastian*, 243 Conn. 115, 128, and n. 21, 701 A. 2d 13, 22, and n. 21 (1997); *State* v. *Larson*, 455 N. W. 2d 600, 600–601 (S. D. 1990); *State* v. *Flint*, 157 Ariz. 227, 228, 756 P. 2d 324, 324–325 (App. 1988); *State* v. *Greenwalt*, 204 Mont. 196, 204–205, 663 P. 2d 1178, 1182–1183 (1983); *State* v. *Warner*, 71 N. M. 418, 421–422, 379 P. 2d 66, 68–69 (1963); *State* v. *Kuntz*, 66 N. W. 2d 531, 532 (N. D. 1954); *State* v. *Jackson*, 218 Minn. 429, 430, 16 N. W. 2d 752, 754–755 (1944); see also *United States* v. *Langford*, 641 F. 3d 1195, 1199 (CA10 2011); *United States* v. *Bruce*, 394 F. 3d 1215, 1221 (CA9 2005).

1988, No. 88–603, p. 3 (*Flint Amicus* Brief). In *McGirt*, the federal government once more acknowledged that States cannot prosecute crimes by or against tribal members within still-extant tribal reservations. See Brief for United States as *Amicus Curiae* in *McGirt* v. *Oklahoma*, O. T. 2019, No. 18–9526, p. 38. In this case, the government has espoused the same view yet again. See Brief for United States as *Amicus Curiae* 4; see also Dept. of Justice, Criminal Resource Manual 685 (updated Jan. 22, 2020).[9]

In the past, even Oklahoma has more or less conceded the point. The last time Oklahoma was before us, it asked this Court to usurp congressional authority and disestablish the Creek Reservation because, otherwise, the State "would not have jurisdiction over" "crimes committed against Indians" within its boundaries. See Tr. of Oral Arg. in *McGirt* v. *Oklahoma*, No. 18–9526, O. T. 2019, p. 54; see also *McGirt*, 591 U. S., at ___–___ (slip op., at 37–38). In 1991, Oklahoma's attorney general formally resolved that major "[c]rimes committed by or against Indians . . . are under the exclusive province of the United States," while Tribes retain exclusive jurisdiction over "minor crimes committed by Indians." *Haney*, 22 Okla. Opp. Atty. Gen. 71, 1991 WL 567868, *3. And Oklahoma's own courts have recently taken the same position even in the face of vehement opposition from the State's executive branch. See, *e.g.*, *Spears*, 485 P. 3d, at 875, 877.

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[9] As sometimes happens when the government considers a legal question over centuries, differing views have occasionally popped up. In 1979, the Office of Legal Counsel opined—with little analysis—that States might be able to exercise concurrent criminal jurisdiction on tribal lands, though it conceded the question was "exceedingly difficult." 3 Op. OLC 111, 117, 120. This kind of surface-level, hedged analysis is hardly robust evidence. In any event, the Executive Branch reverted to its traditional position in short order. That makes the Court's repeated reliance on this isolated opinion—and its failure to acknowledge the mountain of contradictory evidence—especially bewildering. See *ante*, at 12–16.

D

Against all this evidence, what is the Court's reply? It acknowledges that, at the Nation's founding, tribal sovereignty precluded States from prosecuting crimes on tribal lands by or against tribal members without congressional authorization. See *ante*, at 5. But the Court suggests this traditional "'notion'" flipped 180 degrees sometime in "the latter half of the 1800s." *Ante*, at 5, 21. Since then, the Court says, Oklahoma has enjoyed the "inherent" power to try at least crimes by non-Indians against tribal members on tribal reservations until and unless Congress preempts state authority.

But exactly when and how did this change happen? The Court never explains. Instead, the Court seeks to cast blame for its ruling on a grab bag of decisions issued by our predecessors. But the failure of that effort is transparent. Start with *McBratney*, which the Court describes as our "leading case in the criminal context." *Ante*, at 6. There, as we have seen, the Court said that States admitted to the Union may gain the right to prosecute cases involving only non-Indians on tribal lands, but they do *not* gain any inherent right to punish "crimes committed by or against Indians" on tribal lands. *McBratney*, 104 U. S., at 624. The Court's reliance on *Draper* fares no better, for that case issued a similar disclaimer. See 164 U. S., at 247. Tellingly, not even Oklahoma thinks *McBratney* and *Draper* compel a ruling in its favor. See Brief for Petitioner 12. And if anything, the Court's invocation of *Donnelly*, 228 U. S. 243, is more baffling still. *Ante*, at 14, n. 3. There, the Court once more reaffirmed the rule that "offenses committed by or against Indians" on tribal lands remain subject to federal, not state, jurisdiction. *Donnelly*, 228 U. S., at 271; see also *Ramsey*, 271 U. S., at 469.

That leaves the Court to assemble a string of carefully curated snippets—a clause here, a sentence there—from six

decisions out of the galaxy of this Court's Indian law jurisprudence. *Ante*, at 5–6. But this collection of cases is no more at fault for the Court's decision than the last. *Organized Village of Kake* v. *Egan*—which the Court seems to think is some magic bullet, see *ante*, at 5, 14, n. 2, 21, 22–24—addressed the prosaic question whether Alaska could apply its fishing laws on lands owned by a native Alaska tribal corporation. 369 U. S. 60, 61–63 (1962); see also n. 5, *supra*. Subsequently, the Court cabined that case to circumstances "dealing with Indians who have left or never inhabited reservations set aside for their exclusive use or who do not possess the usual accoutrements of tribal self-government." *McClanahan*, 411 U. S., at 167–168. Meanwhile, *New York ex rel. Cutler* v. *Dibble* allowed New York to use civil proceedings to eject non-Indian trespassers on Indian lands. 21 How. 366, 369–371 (1859). In *Surplus Trading Co.* v. *Cook*, the crime at issue did not take place on tribal lands but on a "supply station of the United States" sold by Arkansas to the federal government. 281 U. S. 647, 649 (1930). In *New York ex rel. Ray* v. *Martin*, this Court merely reaffirmed *McBratney* and held that States could exercise jurisdiction over crimes involving only non-Indians. 326 U. S. 496, 499–500 (1946). Both *County of Yakima* v. *Confederated Tribes and Bands of Yakima Nation* and *Nevada* v. *Hicks* issued holdings about state civil jurisdiction, not criminal jurisdiction striking at the heart of tribal sovereignty. See 502 U. S. 251, 256–258, 270 (1992); 533 U. S. 353, 361, 363, 374 (2001).

In the end, the Court cannot fault our predecessors for today's decision. The blame belongs only with this Court here and now. Standing before us is a mountain of statutes and precedents making plain that Oklahoma possesses no authority to prosecute crimes against tribal members on tribal reservations until it amends its laws and wins tribal consent. This Court may choose to ignore Congress's statutes and the Nation's treaties, but it has no power to negate

them. The Court may choose to disregard our precedents, but it does not purport to overrule a single one. As a result, today's decision surely marks an embarrassing new entry into the anticanon of Indian law. But its mistakes need not—and should not—be repeated.

III

Doubtless for some of these reasons, even the Court ultimately abandons its suggestion that Oklahoma is "*inherent[ly]*" free to prosecute crimes by non-Indians against tribal members on a tribal reservation absent a federal statute "preempt[ing]" its authority. *Ante*, at 15. In the end, the Court admits that tribal sovereignty *can* require the exclusion of state authority even absent a preemptive federal statute. *Ante*, at 18. But then, after correcting course, the Court veers off once more. To determine whether tribal sovereignty displaces state authority in a case involving a non-Indian defendant and an Indian victim on a reservation in Oklahoma, the Court resorts to a "*Bracker* balancing" test. *Ibid.* Applying that test, the Court concludes that Oklahoma's interests in this case outweigh those of the Cherokee. All this, too, is mistaken root and branch.

A

Begin with the most fundamental problem. The Court invokes what it calls the "*Bracker* balancing" test with no more appreciation of that decision's history and context than it displays in its initial suggestion that the usual rules of preemption apply to Tribes. The Court tells us nothing about *Bracker* itself, its reasoning, or its limits. Perhaps understandably so, for *Bracker* never purported to claim for this Court the raw power to "balance" away tribal sovereignty in favor of state criminal jurisdiction over crimes by or against tribal members—let alone ordain a wholly different set of jurisdictional rules than Congress

already has.

Bracker involved a relatively minor civil dispute. Arizona sought to tax vehicles used by the White Mountain Apache Tribe in logging operations on tribal lands. See *Bracker*, 448 U. S., at 138–140. The Tribe opposed the effort, pointing to a federal law that regulated tribal logging but did not say anything about preempting the State's vehicle tax. See *id.*, at 141, 145. The Court began by recognizing that the usual rules of preemption are not "properly applied" to Tribes. *Id.*, at 143. Instead, the Court started with the traditional "'backdrop'" presumption that States lack jurisdiction in Indian country. *Ibid.* And the Court explained that any ambiguities about the scope of federal law must be "construed generously" in favor of the Tribes as sovereigns. *Id.*, at 143–144. With these rules in mind, the Court proceeded to turn back the State's tax based on a "particularized inquiry into the nature of the state, federal, and tribal interests at stake." *Id.*, at 145. The Court judged that "traditional notions of [tribal] sovereignty," the federal government's "policy of promoting tribal self-sufficiency," and the rule requiring it to resolve "[a]mbiguities" in favor of the Tribe trumped any competing state interest. *Id.*, at 143–144, 151.

Nothing in any of this gets the Court close to where it wishes to go. If Arizona had to proceed against the traditional "backdrop" rule excluding state jurisdiction, Oklahoma must. And if Arizona could not overcome that backdrop rule because it could not point to clear federal statutory language authorizing its comparatively minor civil tax, it is unfathomable how Oklahoma might overcome that rule here. The State has pointed—and can point—to nothing in Congress's work granting it the power to try crimes against tribal members on a tribal reservation. In *Bracker*, the Court found it instructive that Congress had "comprehensive[ly]" regulated "the harvesting of Indian timber," even if it had not spoken directly to the question of

vehicle taxes. *Id.*, at 145–146, 148. Here, Congress has not only pervasively regulated criminal jurisdiction in Indian country, it has spoken to the very situation we face: States like Oklahoma may exercise jurisdiction over crimes within tribal boundaries by or against tribal members only with tribal consent.

The simple truth is *Bracker* supplies zero authority for this Court's course today. If Congress has not always "been specific about the allocation of civil jurisdiction in Indian country," the same can hardly be said about the allocation of criminal authority. Cohen 527. Congress "has provided a nearly comprehensive set of statutes allocating criminal jurisdiction." *Ibid.* In doing so, Congress has *already* "balanced" competing tribal, state, and federal interests—and its balance demands tribal consent. Exactly nothing in *Bracker* permits us to ignore Congress's directive.

B

Plainly, the Court's balancing-test game is not one we should be playing in this case. But what if we did? Suppose this Court could (somehow) ignore Congress's decision to allow States like Oklahoma to exercise criminal jurisdiction in cases like ours only with tribal consent. Suppose we could (somehow) replace that rule with one of our own creation. Even proceeding on that stunning premise, it is far from obvious how the Court arrives at its preferred result.

In reweighing competing state and tribal interests for itself, the Court stresses two points. First, the Court suggests that its balance is designed to "help" Native Americans. *Ante*, at 20 (suggesting that Indians would be "second-class citizens" without this Court's intervention); Tr. of Oral Arg. 66 (suggesting state jurisdiction is designed to "help" tribal members). Second, the Court says state jurisdiction is needed on the Cherokee Reservation today because "in the wake of *McGirt*" some defendants "have

simply gone free." *Ante*, at 3–4. On both counts, however, the Court conspicuously loads the dice.

1

Start with the assertion that allowing state prosecutions in cases like ours will "help" Indians. The old paternalist overtones are hard to ignore. Yes, under the laws Congress has ordained Oklahoma may acquire jurisdiction over crimes by or against tribal members only with tribal consent. But to date, the Cherokee have misguidedly shown no interest in state jursidiction. Thanks to their misjudgment, they have rendered themselves "second-class citizens." *Ante*, at 20. So, the argument goes, five unelected judges in Washington must now make the "right" choice for the Tribe. To state the Court's staggering argument should be enough to refute it.

Nor does the Court even pause to consider some of the reasons why the Cherokee might not be so eager to invite state prosecutions in cases like ours. Maybe the Cherokee have so far withheld their consent because, throughout the Nation's history, state governments have sometimes proven less than reliable sources of justice for Indian victims. As early as 1795, George Washington observed that "a Jury on the frontiers" considering a crime by a non-Indian against an Indian could "hardly be got to listen to a charge, much less to convict a culprit." Letter to E. Pendleton (Jan. 22), in 17 Papers of George Washington: Presidential Series 424, 426 (D. Hoth & C. Ebel eds. 2013). Undoubtedly, too, Georgia once proved among the Cherokee's "deadliest enemies." *Kagama*, 118 U. S., at 384.

Maybe the Cherokee also have in mind experiences particular to Oklahoma. Following statehood, settlers embarked on elaborate schemes to deprive Indians of their lands, rents, and mineral rights. "Many young allottees were virtually kidnaped just before they reached their majority"; some were "induced to sign deeds at midnight on

the morning they became of age." Debo 197–198. Others were subjected to predatory guardianships; state judges even "reward[ed] their supporters [with] guardianship appointments." *Id.*, at 183. Oklahoma's courts also sometimes sanctioned the "legalized robbery" of these Native American children "through the probate courts." *Id.*, at 182. Even almost a century on, the federal government warned of "the possibility of prejudice [against Native Americans] in state courts." *Flint Amicus* Brief 5.

Whatever may have happened in the past, it seems the Court can imagine only a bright new day ahead. Moving forward, the Court cheerily promises, more prosecuting authorities can only "help." Three sets of prosecutors—federal, tribal, and state—are sure to prove better than two. But again it's not hard to imagine reasons why the Cherokee might see things differently. If more sets of prosecutors are always better, why not allow Texas to enforce its laws in California? Few sovereigns or their citizens would see that as an improvement. Yet it seems the Court cannot grasp why the Tribe may not.

The Court also neglects to consider actual experience with concurrent state jurisdiction on tribal lands. According to a group of former United States Attorneys, in practice concurrent jurisdiction has sometimes "create[d] a pass-the-buck dynamic . . . with the end result being fewer police and more crime." Brief for Former United States Attorneys et al. as *Amici Curiae* 13; see also C. Goldberg, Public Law 280: The Limits of State Jurisdiction Over Reservation Indians, 22 UCLA L. Rev. 535, 552, and n. 92 (1975); Goldberg-Ambrose 1423. Federal authorities may reduce their involvement when state authorities are present. In turn, some States may not wish to devote the resources required and may view the responsibility as an unfunded federal mandate. Thanks to realities like these, "[a]lmost as soon as Congress began granting States [criminal] jurisdiction" through Public Law 280, "affected

Tribal Nations began seeking retrocession and repeal." Brief for National Indigenous Women's Resource Center et al. as *Amici Curiae* 12. Recently, a bipartisan congressional commission agreed that more state criminal jurisdiction in Indian country is often not a good policy choice. See Indian Law and Order Commission, A Roadmap for Making Native America Safer: Report to the President and Congress of the United States xi, xiv, 11–15 (Nov. 2013). Still, none of this finds its way into the Court's cost-benefit analysis.

2

Instead, the Court marches on. The second "factor" it weighs in its "balance"—and the only history it seems interested in consulting—concerns Oklahoma's account of its experiences in the last two years since *McGirt*. Adopting the State's representations wholesale, the Court says that decision has posed Oklahoma with law-and-order "challenge[s]." *Ante*, at 4. To support its thesis, the Court cites the State's unsubstantiated "estimat[e]" that *McGirt* has forced it to "transfer prosecutorial responsibility for more than 18,000 cases per year to" federal and tribal authorities. *Ibid*. Apparently on the belief that the transfer of cases from state to federal prosecutors equates to an eruption of chaos and criminality, the Court remarks casually that traditional limitations on state prosecutorial authority on tribal lands were "insignificant in the real world" before *McGirt*. *Ante*, at 16.

But what does this prove? Put aside for the moment questions about the accuracy of Oklahoma's statistics and what the number of cases transferred from state to federal prosecutors may or may not mean for law and order. See Tr. of Oral Arg. 26 (questioning whether the State's "figures" might be "grossly exaggerated"). Taking the Court's account at face value, it might amount to a reason for Oklahoma to lobby the Cherokee to consent to state jurisdiction. It might be a reason for the State to petition

Congress to revise criminal jurisdictional arrangements in the State even without tribal consent. But it is no act of statutory or constitutional interpretation. It is a policy argument through and through.

Nor is the Court's policy argument exactly complete in its assessment of the costs and benefits. When this Court issued *McGirt*, it expressly acknowledged that cases involving crimes by or against tribal members within reservation boundaries would have to be transferred from state to tribal or federal authorities. 591 U. S., at ___–___ (slip op., at 36–42). This Court anticipated, too, that this process would require a period of readjustment. But, the Court recognized, all this was necessary only because Oklahoma had long overreached its authority on tribal reservations and defied legally binding congressional promises. See *ibid.*

Notably, too, neither the tribal nor the federal authorities on the receiving end of this new workload think the "costs" of this period of readjustment begin to justify the Court's course. For their part, Tribes in Oklahoma have hired more police officers, prosecutors, and judges. See Cherokee Brief 10–11. Based on that investment, Oklahoma's Tribes have begun to prosecute substantially more cases than they once did. See *id.*, at 12–13. And they have also shown a willingness to work with Oklahoma, having signed hundreds of cross-deputization agreements allowing local law enforcement to collaborate with tribal police. *Id.*, at 15–16, and n. 39. Even Oklahoma's *amici* concede these agreements have proved "an important tool" for law enforcement. Brief for Oklahoma District Attorneys Association et al. as *Amici Curiae* 14.

Both of the federal government's elected branches have also responded, if not in the way this Court happens to prefer. Instead of forcing state criminal jurisdiction onto Tribes, Congress has chosen to allocate additional funds for law enforcement in Oklahoma. See, *e.g.*, Consolidated

Appropriations Act, H. R. 2471, 117th Cong., 2d Sess., 78 (2022). Meanwhile, the Solicitor General has offered the Executive Branch's judgment that *McGirt*'s "practical consequences" do not justify this Court's intervention, explaining that the Department of Justice is "working diligently with tribal and State partners" in Oklahoma. See Brief for United States as *Amicus Curiae* 32.

There is even more evidence cutting against the Court's dystopian tale. According to a recent United States Attorney in Oklahoma, "the sky isn't falling" and "partnerships between tribal law enforcement and state law enforcement" are strong. A. Herrera, Trent Shores Reflects on His Time as U. S. Attorney, Remains Committed to Justice for Indian Country, KOSU-NPR (Feb. 24, 2021), www.kosu.org/politics/2021-02-24/trent-shores-reflects-on-his-time-as-u-s-attorney-remains-committed-to-justice-for-indian-country. A Federal Bureau of Investigation special agent in charge of Oklahoma has stated that violent crimes "'are being pursued as heavily as they were in the past, and in some cases, maybe even stronger.'" A. Brothers, Oklahoma Special Agent Says FBI Faces Challenges in 3 Categories, News on 6 (Feb. 14, 2022), https://www.newson6.com/story/620b261bf8cd4a07e5cb845b/oklahoma-special-agent-says-fbi-faces-challenges-in-3-categories. And the Tribes—those most affected by all this supposed lawlessness within their reservations—tell us that, after a period of adjustment, federal prosecutors are now pursuing lower level offenses vigorously too. See Brief for Muscogee (Creek) Nation as *Amicus Curiae* on Pet. for Cert. 11–12, and nn. 21–22 (collecting indictments). The federal government has made a similar representation to this Court. Tr. of Oral Arg. 118. Nor is it any secret that those convicted of federal crimes generally receive longer sentences than individuals convicted of similar state offenses. See, *e.g.*, Bureau of Justice Statistics, Felony Sentences in State Courts, 2006—Statistical Tables 9

(2009) (Table 1.6).

In recounting all this, I do not profess certainty about the optimal law enforcement arrangements in Oklahoma. I do not pretend to know all the relevant facts, let alone how to balance each of them in this complex picture. Nor do I claim to know what weight to give historical wrongs or future hopes. I offer the preceding observations only to illustrate the one thing I am sure of: This Court has no business usurping congressional decisions about the appropriate balance between federal, tribal, and state interests. If the Court's ruling today sounds like a legislative committee report touting the benefits of some newly proposed bill, that's because it is exactly that. And given that a nine-member court is a poor substitute for the people's elected representatives, it is no surprise that the Court's cost-benefit analysis is radically incomplete. The Court's decision is not a judicial interpretation of the law's meaning; it is the pastiche of a legislative process.

C

As unsound as the Court's decision is, it would be a mistake to overlook its limits. In the end, the Court admits that tribal sovereignty *can* displace state authority even without a preemptive statute. See Part III–A, *supra*. To be sure, the Court proceeds to disparage a federal statute requiring Oklahoma to obtain tribal consent before trying any crime involving an Indian victim within the Cherokee Reservation. But look at what the Court leaves unresolved. The Court does not pass on Public Law 280's provision that States "shall not" be entitled to assume jurisdiction on tribal lands until they "appropriately amen[d]" state laws disclaiming authority over tribal reservations. 25 U. S. C. § 1324. The Court gestures toward the Cherokee's treaties and the Oklahoma Enabling Act, but ultimately abandons any argument that those treaties were lawfully abrogated or that the Oklahoma Enabling Act endowed Oklahoma

with inherent authority to try cases involving Native Americans within tribal bounds. See *ante*, at 18. Nor does the Court address the relevant text of those treaties or the Enabling Act—let alone come to terms with our precedents holding that Oklahoma's "grant of statehood" did not include the power to try "crimes committed by or against Indians" on tribal lands. *Ramsey*, 271 U. S., at 469; see also *Tiger*, 221 U. S., at 309. Nothing in today's decision could or does begin to preclude the Cherokee or other Tribes from pressing arguments along any of these lines in future cases. The unamended Oklahoma Constitution and other state statutes and judicial decisions may stand as independent barriers to the assumption of state jurisdiction as a matter of state law too.

The Court's decision is limited in still other important ways. Most significantly, the Court leaves undisturbed the ancient rule that States cannot prosecute crimes by Native Americans on tribal lands without clear congressional authorization—for that would touch the heart of "tribal self-government." *Ante*, at 17. At least that rule (and maybe others) can never be balanced away. Indeed, the Court's ruling today rests in significant part on the fact that Tribes currently lack criminal jurisdiction over non-Indians who commit crimes on tribal lands—a factor that obviously does not apply to cases involving Native American defendants. *Ante*, at 19.

Additionally, nothing in the "*Bracker* balancing" test the Court employs foreordains today's grim result for different Tribes in different States. *Bracker* instructs courts to focus on the "specific context" at issue, taking cognizance of the particular circumstances of the Tribe in question, including all relevant treaties and statutes. 448 U. S., at 145. Nor are Tribes and their treaties "fungible." S. Prakash, Against Tribal Fungibility, 89 Cornell L. Rev. 1069, 1071–1072 (2004). There are nearly 600 federally recognized Indian Tribes across the country. See Anderson 3. Some of

their treaties appear to promise tribal freedom from state criminal jurisdiction in express terms. See, *e.g.*, Treaty with the Navajo, Art. I, June 1868, 15 Stat. 667 (guaranteeing that those who commit crimes against tribal members will be "arrested and punished according to the laws of the United States"). Any analysis true to *Bracker* must take cognizance of all of this. Any such analysis must recognize, too, that the standards of preemption applicable "in other areas of the law" are "unhelpful" when it comes to Tribes. *Bracker*, 448 U. S., at 143. Instead, courts must proceed against the "'backdrop'" of tribal sovereignty, *ibid.*, with an "assumption that the States have no power to regulate the affairs of Indians on a reservation" or other tribal lands, *Williams*, 358 U. S., at 219–220. To overcome that backdrop assumption, a clear congressional statement is required and any ambiguities must be "construed generously" in favor of the Tribes. *Bracker*, 448 U. S., at 143–144; see also *Cotton Petroleum*, 490 U. S., at 177–178.

The Court today may ignore a clear jurisdictional rule prescribed by statute and choose to apply its own balancing test instead. The Court may misapply that balancing test in an effort to address one State's professed "law and order" concerns. In the process, the Court may even risk unsettling longstanding and clear jurisdictional rules nationwide. But in the end, any faithful application of *Bracker* to other Tribes in other States should only confirm the soundness of the traditional rule that state authorities may not try crimes like this one absent congressional authorization.[10]

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[10] In a final drive-by flourish, the Court asserts that its "jurisdictional holding[s]" today apply "throughout the United States." For emphasis, the Court repeats the point in a footnote. *Ante*, at 24, n. 8, 25. But not only does the Court acknowledge that Congress may preempt state jurisdiction over crimes like this one. See *ante*, at 6. The truth is, in this case involving one Tribe in one State the Court does not purport to evaluate

Nor must Congress stand by as this Court sows needless confusion across the country. Even the Court acknowledges that Congress can undo its decision and preempt state authority at any time. *Ante*, at 6. And Congress could do exactly that with a simple amendment to Public Law 280. It might say: A State lacks criminal jurisdiction over crimes by or against Indians in Indian Country, unless the State complies with the procedures to obtain tribal consent outlined in 25 U. S. C. § 1321, and, where necessary, amends its constitution or statutes pursuant to 25 U. S. C. § 1324. Of course, that reminder of the obvious should hardly be necessary. But thanks to this Court's egregious misappropriation of legislative authority, "the ball is back in Congress' court." *Ledbetter* v. *Goodyear Tire & Rubber Co.*, 550 U. S. 618, 661 (2007) (Ginsburg, J., dissenting).

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In the 1830s, this Court struggled to keep our Nation's promises to the Cherokee. Justice Story celebrated the

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the (many) treaties, federal statutes, precedents, and state laws that may preclude state jurisdiction on specific tribal lands around the country. Nor are we legislators entitled to pass new laws of general applicability, but a court charged with resolving cases and controversies involving particular parties who are entitled to make their own arguments in their own cases. The very precedent the Court invokes as authority to reach its decision today recognizes as much—and demands future courts conduct any analysis sensitive to the "specific context" of each Tribe, its treaties, and relevant laws. *Bracker*, 448 U. S., at 145. For that matter, even when it comes to the Cherokee the Court leaves much unanswered. The Court does not confront the relevant text of the Cherokee's treaties, the Oklahoma Enabling Act, or the relevant portions of our precedents interpreting both. And the Court does not mention the terms of Public Law 280 that require Oklahoma to amend its laws before asserting jurisdiction. Even more than all that, the Court ultimately retreats from its claim that statehood confers an "inherent" right to prosecute crimes by non-Indians against tribal members on tribal lands. It rests instead on a "balancing test" that makes anything it does say about the "inherent" right of States to try cases within Indian country dicta through and through.

decision in *Worcester*: "'[T]hanks be to God, the Court can wash [its] hands clean of the iniquity of oppressing the Indians and disregarding their rights.'" Breyer 420. "'The Court had done its duty,'" even if Georgia refused to do its own. *Ibid.* Today, the tables turn. Oklahoma's courts exercised the fortitude to stand athwart their own State's lawless disregard of the Cherokee's sovereignty. Now, at the bidding of Oklahoma's executive branch, this Court unravels those lower-court decisions, defies Congress's statutes requiring tribal consent, offers its own consent in place of the Tribe's, and allows Oklahoma to intrude on a feature of tribal sovereignty recognized since the founding. One can only hope the political branches and future courts will do their duty to honor this Nation's promises even as we have failed today to do our own.