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The Role of United States v. Cooley and McGirt v. Oklahoma in Determining Criminal Jurisdiction in Indian Country

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The Role of *United States v. Cooley* and *McGirt v. Oklahoma* in Determining Criminal Jurisdiction in Indian Country

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ABSTRACT

Understanding jurisdiction is paramount to deciding whether federal, state, or tribal courts can exercise jurisdiction for crimes committed in Indian country. The evolution of federal Indian law has created a legal landscape that is far from consistent. For the Indian law practitioner, it is important to stay abreast of the latest case law available to understand where proper jurisdiction lies. The latest cases of *McGirt v. Oklahoma* and *United States v. Cooley* are the newest case law available that demonstrate the Supreme Court's reasoning and analysis in determining proper jurisdiction.

I. INTRODUCTION

Recently, the Supreme Court made decisions in two cases that play a significant role in determining which sovereign authority could properly exercise jurisdiction over crimes committed in Indian country. In *McGirt v. Oklahoma*[2] (*McGirt*), the Supreme Court clarified the process for determining whether Indian country remains Indian country after congressional action affected land status. In a different take than most discussions on criminal jurisdiction, *United States v. Cooley*[3] (*Cooley*) analyzed the scope of sovereign authority tribal law enforcement could exercise over non-Indians traveling on public rights-of-way in Indian country. Regarding the determination of proper jurisdiction, both *McGirt* and *Cooley* identify how the Supreme Court is giving less credence to judicially created federal Indian common law rules, and more weight to explicit congressional action for guidance.

Identifying proper jurisdictional authority will limit what court(s) can hear any given case. Identifying the proper court early on will better ensure the correct application of laws. There are three different sovereigns that come into play when discussing jurisdiction in Indian country criminal matters: federal, state, and tribal. For many in the practice of Indian law, it is understood that to adequately determine which of these sovereigns can exercise authority over participants in a crime, three

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[2] McGirt v. Oklahoma, 140 S. Ct. 2452 (2020).

[3] United States v. Cooley, 141 S. Ct. 1638 (2021).

factors must be examined: whether the crime took place in Indian country; determination of the Indian status of perpetrators and victims involved in the crime; and, an examination into what type of crime was actually committed.

This Article will offer a review of criminal jurisdiction in Indian country and show how *McGirt* and *Cooley* fit into the Indian law landscape. The Article is divided into six parts: part one discusses how to determine if the location of any criminal action is in Indian country; part two discusses the role of "Indian status" of the perpetrator or victim; part three discusses the types of crimes that can affect where jurisdiction lies; part four examines the Supreme Court's focus on the diminishment of tribal sovereignty by way of statute, rather than judicially created rules; part five provides an analysis of *Cooley* and the exercise of sovereign tribal law enforcement authority over non-Indians on public rights-of-way in Indian country in light of the reasoning found in *McGirt*; and, part six holds the concluding remarks and summary of the Article.

II. IDENTIFYING WHAT IS INDIAN COUNTRY AND WHAT IS *STILL* INDIAN COUNTRY WILL DETERMINE WHICH GOVERNMENT CAN ASSERT JURISDICTION

The first step in analyzing where proper jurisdiction lies is determining where the incident actually took place. The United States Code defines "Indian country" as follows:

> Except as otherwise provided in sections 1154 and 1156 of this title, the term "Indian country", as used in this chapter, means (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.[4]

18 U.S.C. § 1151 is used to help in the determination of both civil and criminal jurisdictional questions.[5]

[4] 18 U.S.C. § 1151.

[5] *See* DeCoteau v. Dist. Cnty. Ct., 420 U.S. 425, 427 n.2 (1975) (noting that while 18 U.S.C. § 1151 appears focused on criminal jurisdiction, it has been recognized by the Supreme Court to also apply to questions of civil jurisdiction).

There are cases where the central issue is whether the status of land historically recognized as "Indian country" is *still* "Indian country" at all. A recent case decision from the Supreme Court had to answer the question of whether Jimcy McGirt, an enrolled tribal member, committed a crime on land that is still Indian country, or if that land was diminished or disestablished by Congress.[6] To understand how the Court eventually came to its decision on the matter, we can examine the rule that was developed in Supreme Court precedent and how the Court applied that rule in *McGirt*.

The United States Constitution gives the legislative branch the enumerated power to regulate federal lands.[7] The Supreme Court has recognized and held that Congress has significant authority when it comes to tribal relations, even possessing the authority to breach its own promises and treaties.[8] One such breach may occur when Congress exercises its authority to disestablish, or diminish, Indian lands so that they are no longer considered Indian country.[9] This is a process that sometimes occurs when large portions of reservation lands are opened up to settlement by non-Indians through Congressional action.

In *Solem v. Bartlett* (*Solem*), the Supreme Court stated that it will not infer such a breach once Congress has established a reservation, and that Congress must "clearly evince an 'intent to change boundaries.'"[10] The Court in *Solem* identified three areas of evidence to determine whether congressional action amounts to a diminishment or disestablishment of Indian land or reservation: the Court examines the language of the congressional action; the circumstances surrounding the passage of the act; and, the events that take place immediately after the act opened up Indian lands.[11]

The strongest evidence in deciding whether or not Congress, in fact, diminished or disestablished Indian land is the statutory language used to open up Indian lands to non-Indian settlement.[12] The Court looks for "[e]xplicit reference to cession" or other language that suggests a "total surrender" of tribal interests in the land.[13] In addition to language of cession, if there is an "unconditional commitment from Congress to compensate the Indian tribe for its opened land," a stronger, "almost insurmountable presumption" that the land would no longer be Indian land should be concluded.[14]

Considering the circumstances surrounding the Cheyenne River Act, the *Solem* Court suggested that there must be a clear congressional purpose to diminish

[6] McGirt v. Oklahoma, 140 S. Ct. 2452, 2459 (2020).
[7] U.S. CONST. art. I, § 8.
[8] Lone Wolf v. Hitchcock, 187 U.S. 553, 566-68 (1903).
[9] *See* Solem v. Bartlett, 465 U.S. 463, 470 (1984) ("[O]nly Congress can divest a reservation of its land and diminish its boundaries.").
[10] *Id.* at 470 (quoting Rosebud Sioux Tribe v. Kneip, 430 U.S. 584, 615 (1977)).
[11] *Id.* at 470-71.
[12] *Id.* at 470.
[13] *Id.*
[14] *Id.* at 470-71.

the reservation, which should be buttressed with the Tribe's approval of any act that would diminish their reservation lands.[15] The Court concluded that Congress must understand "itself to be entering into an agreement under which the Tribe committed itself to cede and relinquish all interests in unallotted opened lands. . ."[16] The Supreme Court has stated that "such historical evidence cannot overcome the text of the . . . Act, [when the Act] lacks any indication that Congress intended to diminish the reservation."[17]

The third type of evidence examined is that of events that took place after the passage of any surplus land act.[18] The Court looks at whether the opened Indian land had lost its "Indian character."[19] The Court in *Solem* considered which government entity was exercising authority over the opened area; whether those living on the opened land were Indian or non-Indian; and what tribal activities were taking place on the opened lands.[20] The Court in *Parker* stated that the subsequent demographic history is the "least compelling" evidence in the diminishment analysis.[21]

The Supreme Court in *McGirt* was asked if lands promised to the Creek Nation by treaty remained an Indian reservation for purposes of federal criminal jurisdiction.[22] This land included much of eastern Oklahoma, including a large portion of the city of Tulsa.[23] In this case, Petitioner McGirt was convicted of serious sexual offenses in state court, but McGirt insisted that the state lacked jurisdiction over his case because he is an enrolled member of the Seminole Nation of Oklahoma and his crimes took place on the Creek reservation.[24]

In the majority opinion, the Supreme Court applied the evidentiary test introduced in *Solem*. In *McGirt*, the Court clarifies how the three areas of evidence should be used to come to a determination on whether a reservation has been diminished or disestablished.[25] In doing so, the Supreme Court points out that it is incorrect to categorize the three areas of evidence as "steps", i.e. "examine the laws passed by Congress at the first step, contemporary events at the second, and even later events and demographics at the third."[26]

Rather, the Court in *McGirt* states, "[w]hen interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the

[15] *Id.* at 476-77.
[16] *Id.* at 478.
[17] Nebraska v. Parker, 577 U.S. 481, 482 (2016).
[18] *Solem*, 465 U.S. at 471.
[19] *Id.*
[20] *Id.* at 478-80.
[21] *Parker*, 577 U.S. at 493 (citing South Dakota v. Yankton Sioux Tribe, 522 U.S. 329, 356 (1998)).
[22] McGirt v. Oklahoma, 140 S. Ct. 2452, 2459 (2020).
[23] *Id.* at 2468.
[24] *Id.*
[25] *Id.*
[26] *Id.*

original meaning of the law before us."[27] Emphasizing that statement, the Court continued saying that this is "the only 'step' proper for a court of law."[28] The majority opinion goes on to explain that only when there is ambiguity in a statutory term or phrase, will the Court look to "contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment."[29]

The Court in *McGirt* recognized the original land granted to the Creek Nation was done through the Treaty of 1833, with "fixed borders for what was to be a 'permanent home to the whole Creek nation of Indians.'"[30] So long as the tribe occupied the granted land, and so long as the tribe continued to exist as a nation, the Treaty of 1833 was guaranteed.[31]

The *McGirt* Court considered several congressional actions that could contain the required language indicating a diminishment in the Creek Nation's reservation borders. The 1901 Creek Allotment Agreement was an act of Congress that established procedures to allot large parcels of the Creek reservation to individual Creek tribal members, "who could not sell, transfer, or otherwise encumber their allotments for a number of years."[32] In 1908, Congress relaxed these restrictions, making it possible for individual Creek tribal members to sell their land to Indians and non-Indians.[33] The Court noted that both the 1901 and the 1908 congressional actions lacked the language "evincing anything like the 'present and total surrender of all tribal interests' in the affected lands."[34]

States have argued that the act of allotment of tribal lands indicates a diminishment of the Creek reservation, but the courts have always rejected that argument.[35] Supreme Court precedent shows that when Indian land is transferred to non-Indians via allotment, it shows only that it is possible for non-Indians to own land within a reservation. Citing *Parker*, the Court provides that the Congressional action in that case that opened lands to non-Indians "merely opened reservation land to settlement . . . . Such schemes allow non-Indian settlers to own land on the

[27] *Id.* (citing New Prime Inc. v. Oliveira, 139 S. Ct. 532, 538-39 (2019)).
[28] *McGirt*, 140 S. Ct. at 2468.
[29] *Id.* (citing *Oliveira*, 139 S. Ct. at 538-39).
[30] *McGirt*, 140 S. Ct. at 2461 (quoting Treaty with the Creeks, pmbl., Feb. 14, 1833, 7 Stat. 418 (1833 Treaty)).
[31] *McGirt*, 140 S. Ct. at 2461.
[32] *Id.* at 2463 (citing Creek Allotment Agreement, §§ 3, 7, ch. 676, 31 Stat. 861, at 862-864 (1901)).
[33] *McGirt*, 140 S. Ct. at 2463 (citing Act of May 27, 1908, 35 Stat. 312).
[34] *McGirt*, 140 S. Ct. at 2464.
[35] The Supreme Court identified congressional intent to have reservation lands diminished or reduced in size in both. *Hagen v. Utah*, 510 U.S. 399 (1994)(finding that the operative language of the Act of May 27, 1902, ch. 888, 32 Stat. 263 "provided for allocations of reservation land to Indians, and that 'all the unallotted lands within said reservation shall be restored to the public domain.'"); and, *South Dakota v. Yankton Sioux Tribe*, 522 U.S. 329 (1998)(Where the Court declared that the 1894 Act demonstrated congressional intent to diminish the reservation).

reservation."[36] The Supreme Court explained that "Congress does not disestablish a reservation simply by allowing the transfer of individual [allotted] plots, whether to Native Americans or others."[37]

To the surprise of most who follow Indian law and policy, the Court noted that the State of Oklahoma did not point out any ambiguous language from the 1901 or 1908 congressional actions.[38] Instead, Oklahoma placed an emphasis on the examination of the circumstances surrounding the act and the events that took place immediately after the act opened up Indian lands.[39] To that, the Court stated that the examination of historical practices or current demographics cannot diminish or disestablish reservations, but instead can only be used as "*interpretative*—evidence that, at best, might be used to the extent it sheds light on what the terms found in a statute meant at the time of the law's adoption, not as an alternative means of proving disestablishment or diminishment."[40] The Court further clarified the role of extratextual sources as tools to "'clear up . . . not create' ambiguity about a statute's original meaning."[41] The Court provided the reminder that when a "block of land is set aside for an Indian reservation and no matter what happens to the title of individual plots within the area, the entire block retains its reservation status until Congress explicitly indicates otherwise."[42]

In conclusion, the Court did not find any ambiguity in either the 1901 or 1908 congressional acts that would warrant a finding that the Creek reservation had been diminished or disestablished for purposes of federal Indian criminal law. There will no doubt be other civil and criminal issues that will stem from this decision, but this Article will not go too much further into this. In anticipating jurisdictional questions stemming from its decision, the Court stated that even in Indian country, the Oklahoma state courts will still have jurisdiction over non-Indian on non-Indian crimes.[43] The Court suggested that when there are conflicts between the State and the Tribe, there is always the opportunity for the two governments to enter into agreements to solve these problems.[44] The majority opinion is clear that this decision is limited to the Creek Nation's Indian land status, and that other tribes' treaties and Congressional agreements must each be "considered on their own terms."[45] The Court points out that "Congress remains

[36] *McGirt*, 140 S. Ct. at 2464 (quoting Nebraska v. Parker, 577 U.S. at 489 (2016)).
[37] *Id.* at 2464 (citations omitted).
[38] *Id.* at 2468.
[39] *Id.*
[40] *Id.* at 2468-69.
[41] *Id.* at 2469 (quoting Milner v. Dep't of Navy, 562 U.S. 562, 574 (2011)).
[42] *McGirt*, 140 S. Ct. at 2468 (quoting Solem v. Bartlett, 465 U.S. 463, 470 (1984)).
[43] *McGirt*, 140 S. Ct. at 2479. *See also* Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2504 (2022) (holding that the state government has concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against Indians in Indian country).
[44] *McGirt*, 140 S. Ct. at 2481.
[45] *Id*. at 2479.

free to supplement its statutory directions about the lands in question at any time," as they have the tools and enumerated constitutional powers to do so.[46]

III. IDENTIFYING THE VICTIM OR PERPETRATOR AS INDIAN OR NON-INDIAN

After determining whether a crime was committed in Indian country, a court must then identify whether the perpetrator(s) or victim(s) of a crime is an Indian to decide whether the tribal, state, or federal government can exercise jurisdiction in the matter. As this Article develops, it will become clear that for federal courts, or tribal courts, to exercise jurisdiction in Indian country criminal law matters, either the perpetrator or victim must be identified as Indian. But who exactly is an Indian for federal criminal jurisdictional purposes?

The Supreme Court in *Morton v. Mancari*, was asked to decide whether a hiring preference for American Indian applicants in the Bureau of Indian Affairs was a violation of equal protection.[47] The Court determined that there was not an equal protection violation, as the hiring preference was not based upon the race of American Indian applicants, but instead was based upon their enrollment and membership in a federally recognized tribe, stating:

> Contrary to the characterization made by appellees, this preference does not constitute 'racial discrimination.' Indeed, it is not even a 'racial' preference. Rather, it is an employment criterion reasonably designed to further the cause of Indian self-government and to make the BIA more responsive to the needs of its constituent groups.[48]

Thus, rather than being considered a racial status, "Indian" was more correctly a political or legal status, and for criminal jurisdiction purposes, a person must be enrolled in a federally recognized tribe to be Indian. This same approach was taken in *United States v. Antelope*, in which the Court discussed the Indian status of the defendants who were enrolled members of the Coeur d'Alene tribe in Idaho,[49] which is discussed in Part III.A.4 of this Article.

IV. IDENTIFYING THE TYPE OF CRIME COMMITTED HELPS DETERMINE WHICH SOVEREIGN CAN EXERCISE PROPER CRIMINAL JURISDICTION

There are several crimes that are under general federal jurisdiction regardless of whether a perpetrator is Indian or not. Some of these crimes are offenses dealing with firearms, offenses dealing with drugs, theft from a tribal

[46] *Id.* at 2481-82.
[47] Morton v. Mancari, 417 U.S. 535, 539 (1974).
[48] *Id.* at 553-54 (footnote omitted).
[49] *See* United States v. Antelope, 430 U.S. 641, 646 (1977).

organization, theft from a gaming establishment, wire fraud/mail fraud, assault on a federal officer, and tax evasion. The state may also have the jurisdiction to try non-Indians for these crimes.

A. Determining Federal Jurisdiction

Federal criminal jurisdiction applies in the following cases that occur in Indian country: where the perpetrators are Indian and the victim is either Indian (Major Crimes Act) or non-Indian (Major Crimes Act, General Crimes Act, Assimilative Crimes Act); where the perpetrator is non-Indian and the victim is Indian (General Crimes Act, Assimilative Crimes Act); and, in certain victimless crime cases, where the perpetrator is Indian.

This Section will look at the existing federal statutes and case law that help determine if jurisdiction properly lays in a federal, state, or tribal court.

1. General Crimes Act, 18 U.S.C. § 1152

In an effort to clarify the scope of federal criminal jurisdiction in Indian country, Congress enacted the General Crimes Act, also known as the Indian Country Crimes Act.[50] Under the General Crimes Act (GCA), "the general laws of the United States as to the punishment of [crimes] committed in any place within the sole and exclusive jurisdiction of the United States, except the District of Columbia, [] extend to the Indian country."[51] The "laws" extended are those laws applicable within the special maritime and territorial jurisdiction of the United States as defined in 18 U.S.C. § 7, most commonly known as "federal enclave laws."[52] Among these federal enclave statutes are: arson;[53] assault;[54] maiming;[55] theft;[56] receiving stolen property;[57] murder;[58] manslaughter;[59] and sexual offenses.[60]

There are four exceptions to the application of the GCA as it applies to Indians. The three legislative exceptions are found in the second paragraph of 18 U.S.C. § 1152. They are (1) Crimes by one Indian against the person or property of another Indian, (2) Crimes by Indians that have been punished by the local law of

[50] 18 U.S.C. § 1152.
[51] *Id.*
[52] *See* United States v. Markiewicz, 978 F.2d 786, 797 (2d Cir. 1992) (describing federal enclave laws generally).
[53] 18 U.S.C. § 81.
[54] *Id.* § 113.
[55] *Id.* § 114.
[56] *Id.* § 661.
[57] *Id.* § 662.
[58] *Id.* § 1111.
[59] *Id.* § 1112.
[60] *Id.* § 2241 *et seq.*

the tribe, and (3) Crimes over which a treaty stipulation gives exclusive jurisdiction to the tribe.[61] A fourth judicially created exception also applies to the GCA's coverage as it applies to non-Indians. In *United States v. McBratney*, the Supreme Court of the United States narrowed the reach of the GCA by holding that, absent a treaty provision to the contrary, the state has exclusive jurisdiction over a crime committed in Indian country by a non-Indian against another non-Indian.[62] Thus, an effect of *McBratney* is that the GCA applies to non-Indians only when they commit crimes against Indians.

2. Assimilative Crimes Act, 18 U.S.C. § 13

The Assimilative Crimes Act, 18 U.S.C. § 13, is "one of those [statutes] extended to the Indian country by 18 U.S.C. § 1152, [which allows] the borrowing of state law when there is no applicable federal statute."[63] It states:

> Whoever within or upon any of the places now existing or hereafter reserved or acquired . . . or on, above, or below any portion of the territorial sea of the United States not within the jurisdiction of any State, . . . is guilty of any act or omission which, although not made punishable by any enactment of Congress, would be punishable if committed or omitted within the jurisdiction of the State, . . . in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.[64]

3. Major Crimes Act, 18 U.S.C. § 1153

In 1885, Congress passed the Major Crimes Act[65] in direct response to the landmark decision, *Ex Parte Crow Dog*.[66] *Ex Parte Crow Dog* involved the death of one Indian by the hands of another Indian, named Crow Dog, on reservation land.[67] The tribal council dealt with the offense and determined that Crow Dog pay restitution to the victim's family according to their traditional ways. Deciding that the punishment was inadequate, the Territory of Dakota also heard the case, which

[61] *Id.* § 1152.
[62] United States v. McBratney, 104 U.S. 621, 624 (1881).
[63] U.S. DEP'T OF JUST. ARCHIVES, CRIMINAL RESOURCE MANUAL 601-699, THE GENERAL CRIMES ACT – 18 U.S.C. § 1152, https://www.justice.gov/archives/jm/criminal-resource-manual-678-general-crimes-act-18-usc-1152 [https://perma.cc/V3EY-PTDG] (citing Williams v. United States, 327 U.S. 711 (1946); Duro v. Reina, 495 U.S. 676, 680 n.1 (1990)).
[64] 18 U.S.C. § 13(a).
[65] *Id.* § 1153.
[66] Ex Parte Crow Dog, 109 U.S. 556 (1883).
[67] *Id.* at 557.

was the first time an Indian was held on trial for the murder of another Indian. The issue before the Supreme Court was whether the district court had jurisdiction to try and punish Crow Dog.[68] The Court determined that unless Congress had explicitly authorized it, general federal laws did not apply to reservation lands.[69] The Court held that the government lacked the jurisdiction over crimes committed by one Indian against another Indian on reservation land and it set Crow Dog free.[70]

Shocked by the ruling, Congress reacted by passing the Major Crimes Act two years later. The legislation put certain crimes committed in Indian Country that involved one Indian against another Indian under the exclusive jurisdiction of the federal government.[71] It included the following offenses: "murder, manslaughter, kidnapping, maiming, a felony under chapter 109A, incest, [assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury], an assault against an individual who has not attained the age of 16 years, felony child abuse or neglect, arson, burglary, robbery, and a felony under section 661 of this title within the Indian country."[72] Any crime "not defined and punished by Federal law in force within the exclusive jurisdiction of the United States shall be defined and punished" according to State law.[73]

4. *United States v. Antelope*: Enrolled Members of Federally Recognized Tribes are "Indian" for Purposes of Federal Criminal Jurisdiction

In federal criminal jurisdiction cases, this same approach is currently taken.[74] In *United States v. Antelope*, two enrolled members of the Coeur d'Alene tribe robbed and killed a non-Indian woman within the borders of the Coeur d'Alene Indian reservation. Because the crimes were listed in the Major Crimes Act, and because the crimes took place in Indian country, and because the defendants were enrolled members of a federally recognized tribe, the defendants were being tried in federal court.[75] The defendants argued that they should be prosecuted in Idaho state court and not in federal court.[76] The defendants argued that had they not been Indian, they would be subject to Idaho state law which would have required the prosecution to prove premeditation and deliberation.[77] Whereas

[68] *Id.*
[69] *Id.* at 572.
[70] *Id.*
[71] 18 U.S.C. § 1153.
[72] *Id.* § 1153(a).
[73] *Id.* § 1153(b).
[74] *See* United States v. Antelope, 430 U.S. 641, 642-43 (1977) (noting the applicability of federal jurisdiction under the Major Crimes Act for a crime committed by enrolled Indians within the reservation).
[75] *Id.*
[76] *Id.* at 644.
[77] *Id.*

the federal statute they were being charged under, 18 U.S.C. § 1111, the cited felony-murder provision, did not require the prosecution to do so, thus putting them at a severe disadvantage solely because of their race, which the defendants argued was "invidious racial discrimination."[78]

The Supreme Court held that the defendants were properly charged and convicted under the Major Crimes Act, as their convictions were based upon their status as enrolled members of a federally recognized tribe, not because of their race.[79] To add weight to this determination, the Court pointed out that if the tribe the defendants were enrolled in were terminated, so that they were no longer a tribe recognized by the federal government as a sovereign, the defendants would not be prosecuted in federal court, but in state court.[80]

5. *Oliphant v. Suquamish Indian Tribe*: Tribes Do Not Have Inherent Jurisdiction Over Non-Indians Committing Crimes in Indian Country

In 1978, the Supreme Court held that tribal courts do not have jurisdiction to try and punish non-Indians committing crimes in Indian country without specific authorization from Congress.[81] In *Oliphant v. Suquamish Indian Tribe* (*Oliphant*), petitioners Oliphant and Belgarde, both non-Indians, were arrested for alleged crimes within Indian country: Oliphant was arrested for allegedly assaulting a tribal officer and resisting arrest; and Belgarde was arrested by tribal authorities after an alleged high-speed chase along reservation highways which ended up with Belgarde crashing his vehicle into a tribal police vehicle.[82] Both petitioners argued that the Suquamish tribe did not have criminal jurisdiction over non-Indians.[83]

The Tribe argued that their ability to prosecute non-Indians "flows automatically from '[its] retained inherent powers of government . . .'" and not from any delegated powers from Congress, or any treaty provision.[84] The Supreme Court did not agree with the Tribe's argument. Instead, it embraced the "commonly shared presumption of Congress, the Executive Branch, and lower federal courts that tribal courts do not have the power to try non-Indians . . . ."[85]

[78] *Id.* at 643-44.
[79] *Id.* at 646-47.
[80] *See id.* at 647 n.7 ("members of tribes whose official status has been terminated by congressional enactment are no longer subject, by virtue of their status, to federal criminal jurisdiction under the Major Crimes Act").
[81] Oliphant v. Suquamish Indian Tribe, 435 U.S. 191, 208, 212 (1978).
[82] *Id.* at 194.
[83] *Id.*
[84] *Id.* at 195-96.
[85] *Id.* at 206.

And although the Treaty of Point Elliott was silent on the issue of tribal criminal jurisdiction over non-Indians, the Court indicated that if read in conjunction with 18 U.S.C. § 1152, it could also be presumed that the Tribe did not have the authority to exercise jurisdiction over non-Indians, as the Treaty provides that the Tribe should turn over non-Indian offenders to the United States.[86] Then the Court, citing *Johnson v. M'Intosh*, stated that upon incorporation into the United States, the tribes' right to exercise "complete sovereignty, as independent Nations" was diminished.[87] The Court also pointed out that tribes only "retain elements of 'quasi-sovereign' authority after ceding their lands to the United States and announcing their dependence on the Federal Government."[88]

Finally, the Court referenced *Crow Dog*, stating just as it would be unfair to subject Indians to United States law, equivalent to an "unknown code" imposed by an alien government, "not by their peers," it would be just as unfair to subject non-Indians to laws and punishments they had no role in creating, nor a familiarity of the "customs" and "tradition[s]" from which they come.[89] Part V of this Article will discuss how a tribe does retain some policing authority over non-Indians in Indian country.

B. State Jurisdiction

Throughout the years the federal government has sought to have State courts exercise civil and criminal jurisdiction for actions arising in Indian Country that involve non-Indian perpetrators. As stated previously, per the *McBratney* decision, when it comes to crimes committed in Indian country, State courts can exercise jurisdiction when the perpetrator is non-Indian and the victim is non-Indian; and when the non-Indian perpetrator commits a victimless crime.[90]

1. Public Law 280: States Exercising Criminal and Civil Jurisdiction in Indian Country

In 1953, Congress enacted the federal statute Public Law 280 which enabled certain states to assume civil and criminal jurisdiction in matters involving Indian litigants in Indian country.[91] "[S]parse legislative history" provides that a primary concern for enacting Public Law 280 was the noticeable problem of lawlessness

[86] *Id.* at 206-08 (footnotes omitted) (citing Treaty of Point Elliott, 12 Stat. 927 (1855)).
[87] *Id.* at 209 (citing Johnson v. M'Intosh, 21 U.S. 543, 574 (1823)).
[88] *Id.* at 208 (citing Cherokee Nation v. Georgia, 30 U.S. 1, 15 (1831)).
[89] *Id.* at 210-11 (quoting Ex Parte Crow Dog, 109 U.S. 556, 571 (1883)).
[90] United States v. McBratney, 104 U.S. 621, 624 (1881).
[91] Pub. L. No. 83-280, 67 Stat. 588-90 (1953) (codified as amended at 18 U.S.C. § 1162 and 28 U.S.C. § 1360 (1994)).

and the absence of tribal law enforcement.[92] Six states obligated to exercise jurisdiction under Public Law 280 at the outset were: Alaska, California, Minnesota, Nebraska, Oregon, and Wisconsin.[93] Other states that exercise some type of jurisdiction since the enactment of Public Law 280 include: Arizona, Florida, Idaho, Montana, Nevada, North Dakota, South Dakota, Utah, and Washington.[94]

C. Tribal Jurisdiction

Tribal courts can exercise jurisdiction for crimes committed in Indian country where the perpetrator is Indian and the victim is either Indian or non-Indian; and the Violence Against Women Act Reauthorization Act of 2022 provides tribal criminal jurisdiction when the perpetrator is non-Indian and the victim is Indian in some instances of domestic violence.[95]

1. 1968 Indian Civil Rights Act: Individual Protections Against Unlawful Tribal Government Action

Much like the Bill of Rights of the United States Constitution protects individuals from unlawful action of the federal government, the Indian Civil Rights Act of 1968 (ICRA) secures constitutional rights and protections for *any person* accused of committing a crime in Indian Country from unlawful, arbitrary, or unjust tribal government action.[96]

2. VAWA Exception: Congress Identifies an Opportunity for Tribes to Exercise Jurisdiction Over Non-Indians

The holding in *Oliphant* created a legal need that would allow tribal courts to exercise criminal jurisdiction over non-Indian perpetrators in domestic violence actions on Indian women while in Indian country. Through the Violence Against Women Reauthorization Act of 2013 (VAWA),[97] that legal need can be partially

[92] Bryan v. Itasca County, 426 U.S. 373, 379 (1976) (citing Carole Goldberg, Public Law 280: The Limits of State Jurisdiction over Reservation Indians, 22 UCLA L. REV. 535, 541-542 (1975)).
[93] 28 U.S.C. § 1360(a).
[94] Michael Doran, *The Equal-Protection Challenge to Federal Indian Law*, 6 UNIV. PA. J. L. & PUB. AFFS. 1, 54 (2020).
[95] Pub. L. No. 117-103, 136 Stat. 49, 901 (2022).
[96] 25 U.S.C. §§ 1301-1304 (*emphasis added*); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 61 (1978) ("a central purpose of the ICRA . . . was to 'secur[e] for the American Indian the broad constitutional rights afforded to other Americans,' and thereby to 'protect individual Indians from arbitrary and unjust actions of tribal governments'") (quoting S. REP. NO. 841, 90th Cong., 1st Sess., 5-6 (1967)).
[97] Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 904, 127 Stat. 54, 120-23 (2013) (codified as amended at 25 U.S.C. §1304).

met. Through VAWA, tribal courts that meet certain requirements are able to exercise criminal jurisdiction over all perpetrators, Indian or non-Indian, who commit violence in domestic relationships in Indian country.[98]

3. *United States v. Lara*: Tribal Criminal Jurisdiction Over Nonmember Indians

The Supreme Court in *United States v. Lara* (*Lara*), concluded that Congress has the constitutional authority to "relax restrictions" previously placed on a tribe's inherent legal authority, in particular, a tribe's authority to prosecute nonmember Indians in tribal court for offenses that took place within Indian country.[99] Billy Jo Lara is a member of the Turtle Mountain Band of Chippewa Indians, but lived on the Spirit Lake Reservation with his wife, who is enrolled with the Spirit Lake Tribe.[100] The Spirit Lake Tribe issued an exclusion order on Lara after several incidents of misconduct.[101] Lara was not compliant with the exclusion order and was stopped by tribal officers, resulting in Lara striking one of the arresting officers, who was a federal Bureau of Indian Affairs (BIA) Officer.[102]

Lara pled guilty to the charge of "violence to a policeman" in tribal court, then after serving a 90-day sentence, was charged in Federal District Court with assaulting a federal officer, for the same incident. Lara claimed double jeopardy in regard to the federal charges.[103]

The Court stated that Congress has the authority to "lift the restrictions on the tribes' criminal jurisdiction over nonmember Indians" committing crimes in Indian country.[104] The Court had to make a determination on the source of a tribe's authority to exercise jurisdiction over nonmember Indians by deciding if it was "inherent *tribal* sovereignty" or a delegated federal power.[105] The Court came to the conclusion that Congress has the power to "relax restrictions that the political branches have, over time, placed on the exercise of a tribe's inherent legal authority."[106] Thus, the tribe's ability to prosecute a nonmember Indian for crimes committed in Indian country is an inherent tribal power.[107] Because both the federal and tribal governments were exercising their powers as separate sovereigns, Lara's double jeopardy argument was denied.[108]

D. Jurisdictional Chart for Crimes Committed in Indian Country

[98] *Id.* § 904, 127 Stat. at 121.
[99] United States v. Lara, 541 U.S. 193, 196 (2004).
[100] *Id.* at 196.
[101] *Id.*
[102] *Id.*
[103] *Id.* at 197.
[104] *Id.* at 200.
[105] *Id.* at 199.
[106] *Id.* at 196.
[107] *Id.* at 199.
[108] *Id.* at 210.

The following chart is given as a summary to better understand which sovereign can properly assert criminal jurisdiction in Indian country.

Perpetrator	**Victim**	**Jurisdiction**
Indian	Non-Indian	Federal Jurisdiction for Felonies Tribal Jurisdiction for Misdemeanors
Indian	Indian	Federal Jurisdiction for Felonies Tribal Jurisdiction for Misdemeanors
Non-Indian	Indian	Federal and State[109] Jurisdiction for both felonies and misdemeanors Tribal Jurisdiction for cases included in the VAWA Exception
Non-Indian	Non-Indian	State Jurisdiction
Non-Indian	Victimless	State Jurisdiction, generally no Federal jurisdiction
Indian	Victimless	Federal and Tribal Jurisdiction

V. HOW WILL THE COURTS USE JUDICIALLY CREATED LIMITATIONS ON TRIBAL SOVEREIGNTY CONSIDERING THE REASONING USED IN *MCGIRT*?

Through the years, the Courts have diminished or disestablished tribal sovereignty and/or jurisdiction by using a form of "federal Indian common law."[110] This federal Indian common law approach can be seen in *Montana*, in which the Court formed a rule based upon precedent and extratextual sources to determine when tribes could exercise jurisdiction over nonmembers in Indian country.[111] The Court in *Montana* provides that the "exercise of tribal power beyond what is necessary to protect tribal self-government or to control internal relations . . . cannot survive without express congressional delegation."[112] This statement presumes that tribes lack the inherent sovereign authority to exercise jurisdiction over non-Indians in Indian country.

[109] *See* Oklahoma v. Castro-Huerta, 142 S. Ct. 2486, 2504 (2022) (holding that the state government has concurrent jurisdiction with the federal government to prosecute crimes committed by non-Indians against Indians in Indian country).

[110] Leading Cases: Federal Statutes and Treaties, *United States-Muscogee (Creek) Nation Treaty—Federal Indian Law—Disestablishment of Indian Reservations*—McGirt v. Oklahoma, 134 HARV. L. REV. 600, 605 (2020) (citing Philip P. Frickey, *A Common Law for Our Age of Colonialism: The Judicial Divestiture of Indian Tribal Authority over Nonmembers*, 109 YALE L.J. 1, 28-57, 58-63 (1999)) [hereinafter *Disestablishment of Indian Reservations*—McGirt v. Oklahoma].

[111] *See* Montana v. United States, 450 U.S. 544, 565-66 (1981) (describing under what circumstances tribes retain inherent sovereign power to exercise civil jurisdiction over non-Indians). *See* Part V of this Article for further discussion regarding the rule developed in *Montana*.

[112] *Montana*, 450 U.S. at 564.

The Court in *McGirt* takes an opposing approach when it comes to tribes exercising jurisdiction over non-Indians in Indian Country by presuming the tribes retain inherent sovereign authority in Indian country unless Congress dictates otherwise. The *McGirt* Court states that "the Court will refuse to 'finish work [of breaking promises to tribal nations that] Congress has left undone,' and decline to diminish any aspect of tribal sovereignty without a clear congressional enactment," a statement that appears to undermine the reasoning in *Montana*.[113] Of late, the Supreme Court has focused on what tribal authority Congress has divested statutorily, rather than by any federal Indian common law fashioned by the Court.[114] Just prior to the decision issued by the Supreme Court in *McGirt*, the Court emphasized the absence of explicitly clear congressional language that would have diminished tribal sovereignty in the areas of gaming, land diminishment/disestablishment, and treaty hunting and fishing rights, thus prompting the Court to rule otherwise.[115]

With *McGirt* directly affecting decisions like *Montana*, it begs the question of how courts will make decisions in the future that involve the diminishment of tribal sovereign authority. Will tribes be able to rely on "a jurisprudence of promise keeping" by the courts and the possibility of the poorly reasoned past precedents being overruled?[116] Will the courts return to incorporating extratextual sources and circumstances to base its decisions upon? Part V of this Article provides some guidance as it analyzes how the Supreme Court came to its decision involving tribal law enforcement powers being exercised over non-Indians in Indian country.

VI. *UNITED STATES V. COOLEY*: TRIBAL LAW ENFORCEMENT JURISDICTION OVER NON-INDIANS ON PUBLIC RIGHTS-OF-WAY WITHIN INDIAN COUNTRY

Up to this point, this Article discussed whether state, federal, or tribal courts could exercise jurisdiction over perpetrators, whether Indian or non-Indian, committing crimes in Indian country. In a different approach on the exercise of sovereign tribal powers, the Supreme Court recently held that tribal law enforcement officers have the authority to detain and search non-Indians traveling

[113] *Disestablishment of Indian Reservations*—McGirt v. Oklahoma, *supra* note 111, at 608.
[114] *Id.* at 605.
[115] *Id.* at 605-08. In *Michigan v. Bay Mills Indian Community*, the Court ruled that a tribe's sovereign immunity barred a Michigan lawsuit "unless and 'until Congress acts.'" 572 U.S. 782, 788 (2014). Then, in *Nebraska v. Parker*, the Court determined that only Congress could diminish/disestablish the Omaha reservation. 577 U.S. 481, 487-88 (2016). Also, in *Herrera v. Wyoming*, the Supreme Court analyzed whether a statute explicitly abrogated Indian treaty hunting and fishing rights, and concluded that it did not. 139 S. Ct. 1686, 1691-92 (2019). For further discussion of these cases, see *Disestablishment of Indian Reservations*—McGirt v. Oklahoma, *supra* note 111, at 605-08.
[116] *Disestablishment of Indian Reservations*—McGirt v. Oklahoma, *supra* note 111, at 609.

on public rights-of-way that run through reservation lands for suspected violations of state or federal law.[117]

Prior to this case, the practice for tribal law enforcement officers that stopped non-Indians for violations committed in Indian country was to hold the motorists until non-Indian law enforcement could arrive and take over the investigation. Up until *United States v. Cooley* (*Cooley*), the Supreme Court had not ruled on whether, or under what standard, a tribal police officer could temporarily search and detain a non-Indian suspected of criminal violation of federal or state law while in Indian country.

In February of 2016, Crow Tribal Police Officer Saylor was patrolling a public right-of-way within the Crow reservation, where he saw a truck parked on the side of the right-of-way.[118] Saylor approached the truck believing the occupants may require assistance.[119] As Saylor approached the truck, he noticed the driver, Cooley, had "watery, bloodshot eyes" and appeared to be non-Indian. Saylor also saw firearms on the front seat, which prompted him to have Cooley exit the truck, where Cooley was patted down. Saylor also called other tribal officers and county officers.[120] While waiting for the other officers to arrive, Saylor saw a glass pipe and a bag of methamphetamine.[121] When the other officers arrived, which included an officer from the federal Bureau of Indian Affairs, they instructed Saylor to "seize all contraband in plain view, leading him to discover more methamphetamine."[122] Saylor transported Cooley to the Crow Police Department where federal and local officers further questioned Cooley.[123]

In District Court, Cooley motioned to suppress the drug evidence seized by Saylor, stating that the police officer did not have authority to "investigate nonapparent violations of state or federal law by a non-Indian on a public right-of-way crossing the reservation."[124] The District Court granted Cooley's motion and suppressed the evidence.[125] After the government appealed, the Ninth Circuit affirmed the District Court's evidence-suppression decision. The Ninth Circuit panel stated that tribes "cannot exclude non-Indians from a state or federal highway" and "lack the ancillary power to investigate non-Indians who are using such public rights-of-way."[126]

The *Cooley* Court began its opinion by reiterating that tribes "lack inherent sovereign power to exercise criminal jurisdiction over non-Indians."[127] Then, like

[117] *Cooley*, 141 S. Ct. at 1646.
[118] *Id.* at 1641-42.
[119] *Id.* at 1642.
[120] *Id.*
[121] *Id.*
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] United States v. Cooley, 919 F.3d 1135, 1141 (2019), *vacated*, 141 S. Ct. 1638 (2021).
[127] *Cooley*, 141 S. Ct. at 1643 (citing Oliphant v. Suquamish Tribe, 435 U.S. 191, 212 (1978)).

in *McGirt*, the Court acknowledged that there was "no treaty or statute [that] has explicitly divested Indian tribes of the policing authority at issue."[128] To answer this issue, the Court turned to precedent, specifically *Montana*, in which they concluded that a tribe could not regulate hunting and fishing by non-Indians on land that non-Indians owned in fee simple within a reservation.[129] The Court made clear that the "general proposition" in *Montana* was "not an absolute rule" and that tribes could exercise jurisdiction over non-Indian activities if it met one of two exceptions: (1) when non-Indians entered into a "consensual relationship[] with the tribe or its members, through commercial dealing, contracts, leases, or other arrangements"; or (2) when the conduct of non-Indians on fee lands within its reservation "threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe."[130]

In *Cooley*, the second exception was said to fit "almost like a glove" as the phrase goes to the protection of the health and welfare of the tribe.[131] The Court went on to state:

> To deny a tribal police officer authority to search and detain for a reasonable time any person he or she believes may commit or has committed a crime would make it difficult for tribes to protect themselves against ongoing threats. Such threats may be posed by, for instance, non-Indian drunk drivers, transporters of contraband, or other criminal offenders operating on roads within the boundaries of a tribal reservation.[132]

The Court then cited a Washington Supreme Court case that noted, "[a]llowing a known drunk driver to get back in his or her car, careen off down the road, and possibly kill or injure Indians or non-Indians would certainly be detrimental to the health or welfare of the tribe."[133]

In the past, there have been cases before the Supreme Court where there was a denial of tribal jurisdiction over the activities of non-Indians in Indian country, and this determination "rested in part upon the fact that full tribal jurisdiction would require the application of tribal laws to non-Indians who do not belong to the tribe and consequently had no say in creating the laws that would be applied to them."[134] In this case, Saylor's search and detention did not subject

[128] *Cooley*, 141 S. Ct. at 1643.
[129] *Id.* (citing *Montana*, 450 U.S. at 565).
[130] *Cooley*, 141 S. Ct. at 1643 (quoting *Montana*, 450 U.S. at 565-66).
[131] *Cooley*, 141 S. Ct. at 1643.
[132] *Id.*
[133] *Id.* (quoting State v. Schmuck, 850 P.2d 1332, 1341, *cert. denied*, 510 U.S. 931 (1993)).
[134] *Cooley*, 141 S. Ct. at 1644 (citing Duro v. Reina, 495 U.S. 676, 693(1990)).

Cooley to tribal laws, "but rather only to state and federal laws that apply whether an individual is outside a reservation or on a state or federal highway within it."[135]

The United States Supreme Court concluded its opinion by stating that the "existing legislation and executive action appear to operate on the assumption that tribes have retained this [policing] authority."[136]

Though *Cooley* supports the Court's reasoning in *McGirt*—that unless jurisdictional authority is congressionally removed, tribes retain such authority—the Court's decision relies primarily on "civil jurisdiction precedent without explaining why this precedent should be extended to the criminal context."[137] An assumption can be made that the application of the *Montana* rule was in part based upon the United States' brief in *Cooley*, which asserted "that one of the exceptions . . . in *Montana* . . . allows for tribal civil jurisdiction where there is a threat or direct effect on tribal health or welfare, '[and] reflects a general principle that supports the more modest ability to protect the public from imminent danger and to aid federal and state law enforcement.'"[138] Without further explanation, the *Cooley* Court applied *Montana* in the criminal context, which may leave lower courts and law practitioners wondering if the civil test is now a criminal test as well.[139]

VII. CONCLUSION

The United States Supreme Court in *McGirt* steps away from its previous practice of divesting tribes of its inherent jurisdictional authority, or diminishment of Indian lands by looking directly at congressional action related to the jurisdictional issue. The *McGirt* Court focused on the explicit language of the congressional action to determine if there was a disestablishment of Indian land, rather than focus on the circumstances surrounding the act, or the events that took place immediately after the act opened Indian land. This approach allowed the Court to begin its analysis with an assumption that tribes retain jurisdictional authority unless Congress explicitly divests it, which is a departure from the United States Supreme Court's prior method.

The decision in *Cooley* supports the reasoning in *McGirt* by acknowledging tribes retain some jurisdictional policing authority over non-Indians in Indian country unless Congress has explicitly divested the tribe of that authority. A rule developed by the United States Supreme Court in *Montana* to determine the tribal civil jurisdictional authority over non-Indians in Indian country was also used in *Cooley* to determine when tribal law enforcement could exercise criminal policing

[135] *Cooley*, 141 S. Ct. at 1644-45.
[136] *Id.* at 1646.
[137] Ann E. Tweedy, *Has Federal Indian Law Finally Arrived at "The Far End of the Trail of Tears"?*, 37 GA. STATE UNIV. L. REV. 739, 773 (2021).
[138] *Id*. at 774 (quoting Brief of Petitioner at 25-26, *Cooley*, 141 S. Ct. 1638 (No. 19-1414), 2021 WL 103640, at *25-26).
[139] Tweedy, *supra* note 138, at 774.

authority over non-Indians within Indian country. By invoking the *Montana* civil rule and placing it in the criminal context, the Court has left ambiguity as to whether the *Montana* civil jurisdiction test applies in the criminal context.

The United States Supreme Court in *McGirt* and *Cooley* appears to be changing its approach in how it decides cases regarding jurisdictional questions in Indian country. The basic elements to determine jurisdiction remain the same: deciding whether the crime occurred in Indian country; verifying the Indian status of the perpetrator(s) and victim(s); and identifying the type of crime that occurred. What has changed in both cases is that the Court's analysis begins with the assumption that tribes retain the jurisdictional authority at issue before the Court moves on to identify whether there was explicit congressional action diminishing that authority. So far, this approach has worked out favorably for tribes asserting their jurisdictional authority, but it is difficult to know[140] how long this trend may last.

[140] Since this journal article's completion, the United States Supreme Court decided the case Oklahoma v. Castro-Huerta. *See* 142 S.Ct. 2486 (2022). The Supreme Court there determined "the Federal Government and the State have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country." *See* Castro-Huerta, 142 S.Ct. at 2491. This decision moves away from the previous interpretations of the General Crimes Act and Public Law 280, which have been used as limitations on state jurisdiction exercised in Indian country. The Court reasoned that because neither the General Crimes Act nor Public Law 280 contained any language that provided state jurisdiction in these situations were preempted, the states could exercise such authority. The Court also used the *Bracker test*, from White Mountain Apache v. Bracker, which provides a balancing test used to determine if state jurisdiction is proper within Indian country. *See* 448 U.S. 136 (1980). The Court in Castro-Huerta reasoned that because (1) "state jurisdiction here would not infringe on tribal self-government"; (2) "[the] state prosecution of a non-Indian [...] would not harm the federal interest in protecting Indian victims"; and (3), "the state has a strong sovereign interest in ensuring public safety and criminal justice within its territory, and in protecting all crime victims", state jurisdiction is permitted. *See* Castro-Huerta, at 2500-2502.

One question that is raised by Castro-Huerta is how state law enforcement will operate within Indian country when there is a non-Indian committing crimes against Indians in Indian country. Though there may be strong opposition by most tribal governments to this idea, some tribes with limited resources may welcome state law enforcement onto their reservations. But to effectively do this, and avoid liability issues, state governments and tribal governments would be wise to enter into mutual aid agreements that are common throughout the United States between states and tribal governments.

Another question that may be considered, as a result of the decision in Castro-Huerta, is how this ruling may benefit or hamper tribal court efforts to prosecute non-Indian offenders in domestic violence situations. For tribes that lack the resources to prosecute non-Indian domestic violence offenders on reservations, having the state take jurisdiction may be welcome on some reservations, while for other tribes it may be seen as further intrusion in Indian sovereignty and tribal jurisdiction.

Castro-Huerta, on its own, is a contemporary contribution to criminal law enforcement jurisdiction in Indian country. Neither Cooley nor McGirt have been altered by the Castro-Huerta decision, as each case addresses unique issues.