Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See v. 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

McGIRT . OKLAHOMA

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF OKLAHOMA

No. 18–9526. Argued May 11, 2020—Decided July 9, 2020

The Major Crimes Act (MCA) provides that, within "the Indian country," "[a]ny Indian who commits" certain enumerated offenses "shall be subject to the same law and penalties as all other persons committing any of [those] offenses, within the exclusive jurisdiction of the United States." 18 U. S. C. §1153(a). "Indian country" includes "all land within the limits of any Indian reservation under the jurisdiction of the United States Government." §1151. Petitioner Jimcy McGirt was convicted by an Oklahoma state court of three serious sexual offenses. He unsuccessfully argued in state postconviction proceedings that the State lacked jurisdiction to prosecute him because he is an enrolled member of the Seminole Nation and his crimes took place on the Creek Reservation. He seeks a new trial, which, he contends, must take place in federal court.

: For MCA purposes, land reserved for the Creek Nation since the 19th century remains "Indian country." Pp. 3–42.

the [assigned] land" to continue "so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them," , at 419. The patent formally issued in 1852.

Though the early treaties did not refer to the Creek lands as a "reservation," similar language in treaties from the same era has been held sufficient to create a reservation, see, , v.

391 U. S. 404, 405, and later Acts of Congress—referring to the "Creek reservation"—leav[5/TT04227l04 (r)- 81381204.23m.on"e

Syllabus

"would ever be embraced or included within, or annexed to, any Terri

SUPREME COURT OF THE UNITED STATES

No. 18–9526

JIMCY M CGIRT, PETITIONER v. OKLAHOMA

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

[July 9, 2020]

JUSTICE GORSUCH delivered the opinion of the Court.

On the far end of the Trail of Tears was a promise. Forced to leave their ancestral lands in Georgia and Alabama, the Creek Nation received assuranc es that their new lands in the West would be secure fore ver. In exchange for ceding "all their land, East of the Mississippi river," the U. S. gov - ernment agreed by treaty that "[t]he Creek country west of the Mississippi shall be solemnly guarantied to the Creek Indians." Treaty With the Creeks, Arts. I, XIV, Mar. 24, 1832, 7 Stat. 366, 368 (1832 Treaty). Both parties settled on boundary lines for a new and "permanent home to the whole Creek nation," located in what is now Oklahoma. Treaty With the Creeks, preamble, Feb. 14, 1833, 7 Stat. 418 (1833 Treaty). The government further promised that "[no] State or Territory [shall] ever have a right to pass laws for the government of such Indians, but they shall be allowed to govern themselves." 1832 Treaty, Art. XIV, 7 Stat. 368.

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

this condition because he co mmitted his crimes on land reserved for the Creek since the 19th century.

The Creek Nation has joined Mr. McGirt as amicus curiae. Not because the Tribe is interested in shielding Mr. McGirt from responsibility for his crimes. Instead, the Creek Nation participates because Mr. McGirt's personal interests wind up implicating the Tribe's. No one disputes that Mr. McGirt's crimes we re committed on lands described as the Creek Reservation in an 1866 treaty and federal statute. But, in seeking to defend the state-court judgment below, Oklahoma has put aside whatever procedural defenses it might have and asked us to confirm that the land once given to the Creeks is no longer a reservation today.

At another level, then, Mr. McGirt's case winds up as a contest between State and Tribe. The scope of their dispute is limited; nothing we might say today could unsettle Oklahoma's authority to try non- Indians for crimes against non-Indians on the lands in question. See United States v. McBratney , 104 U. S. 621, 624 (1882). Still, the stakes are not insignificant. If Mr. McGirt and the Tribe are right, the State has no right to prosecute Indians for crimes committed in a portion of Northeastern Oklahoma that includes most of the city of Tulsa. Responsibility to try these matters would fall instead to the federal government and Tribe. Recently, the question has taken on more salience too. While Oklahoma state courts have rejected any suggestion that the lands in question remain a reservation, the Tenth Circuit has reached the opposite conclusion. Murphy v. Royal, 875 F. 3d 896, 907–909, 966 (2017). We granted certiorari to settle the question. 589 U. S. ___ (2019).

II

Start with what should be obvious: Congress established a reservation for the Creeks. In a series of treaties, Con-

gress not only "solemnly guarantied" the land but also "establish[ed] boundary lines which will secure a country and permanent home to the whole Creek Nation of Indians." 1832 Treaty, Art. XIV, 7 Stat. 368; 1833 Treaty, preamble, 7 Stat. 418. The government's promises weren't made gratuitously. Rather, the 1832 Treaty acknowledged that "[t]he United States are desirous that the Creeks should remove to the country west of the Mississippi" and, in service of that goal, required the Creeks to cede all lands in the East. Arts. I, XII, 7 Stat. 366, 367. Nor were the government's promises meant to be delusory. Congress twice assured the Creeks that "[the] Treaty shall be obligatory on the contracting parties, as soon as the same shall be ratified by the United States." 1832 Treaty, Art. XV, id., at 368; see 1833 Treaty, Art. IX, 7 Stat. 420 ("agreement shall be binding and obligatory" upon ratification). Both treaties were duly ratified and enacted as law.

Because the Tribe's move west was ostensibly voluntary, Congress held out another assurance as well. In the statute that precipitated these negotiations, Congress authorized the President "to assure the tribe . . . that the United States will forever secure and guaranty to them . . . the country so exchanged with them." Indian Removal Act of 1830, §3, 4 Stat. 412. "[A]nd if they prefer it," the bill continued, "the United States will cause a patent or grant to be made and executed to them for the same; Provided always, that such lands shall revert to the United States, if the Indians become extinct, or abandon the same." Ibid. If agreeable to all sides, a tribe would not only enjoy the government's solemn treaty promises; it would hold legal title to its lands.

It was an offer the Creek accepted. The 1833 Treaty fixed borders for what was to be a "permanent home to the whole Creek nation of Indians." 1833 Treaty, preamble, 7 Stat. 418. It also established that the "United States will grant a patent, in fee simple, to the Creek nation of Indians for the land assigned said nation by this treaty." Art. III, id.,

at 419. That grant came with the caveat that "the right thus guaranteed by the United States shall be continued to said tribe of Indians, so long as they shall exist as a nation, and continue to occupy the country hereby assigned to them." Ibid. The promised patent formally issued in 1852. See Woodward v. De Graffenried , 238 U. S. 284, 293–294 (1915).

These early treaties did not refer to the Creek lands as a "reservation"—perhaps because that word had not yet acquired such distinctive significance in federal Indian law. But we have found similar language in treaties from the same era sufficient to create a reservation. See Menominee Tribe v. United States , 391 U. S. 404, 405 (1968) (grant of land " 'for a home, to be held as Indian lands are held,' " established a reservation). And later Acts of Congress left no room for doubt. In 1866, the United States entered yet another treaty with the Creek Na tion. This agreement reduced the size of the land se t aside for the Creek, compensating the Tribe at a price of 30 cents an acre. Treaty Between the United States and the Creek Nation of Indi - ans, Art. III, June 14, 1866, 14 Stat. 786. But Congress explicitly restated its commitme nt that the remaining land would "be forever set apart as a home for said Creek Nation," which it now referred to as "the reduced Creek reser - vation." Arts. III, IX, id., at 786, 788. [1] Throughout the late

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19th century, many other federal laws also expressly referred to the Creek Reservation. See, e.g., Treaty Between United States and Cherokee Nation of Indians, Art. IV, July 19, 1866, 14 Stat. 800 ("Creek reservation"); Act of Mar. 3, 1873, ch. 322, 17 Stat. 626; (multiple references to the "Creek reservation" and "Creek India[n] Reservation"); 11 Cong. Rec. 2351 (1881) (discussing "the dividing line between the Creek reservation and their ceded lands"); Act of Feb. 13, 1891, 26 Stat. 750 (describing a cession by referencing the "West boundary line of the Creek Reservation").

There is a final set of assurances that bear mention, too. In the Treaty of 1856, Congress promised that "no portion" of the Creek Reservation "shall ever be embraced or included within, or annexed to, any Territory or State." Art. IV, 11 Stat. 700. And within their lands, with exceptions, the Creeks were to be "secured in the Injurisd be (d "over enrolled.0601 Tw 613.616 -1.720

diminish its boundaries." Solem, 465 U. S., at 470. So it's no matter how many other promises to a tribe the federal government has already broken. If Congress wishes to break the promise of a reservation, it must say so.

History shows that Congress knows how to withdraw a reservation when it can muster the will. Sometimes, legislation has provided an "[e]xplicit reference to cession" or an "unconditional commitment . . . to compensate the Indian tribe for its opened land." Ibid. Other times, Congress has directed that tribal lands shall be " 'restored to the public domain.' " Hagen v. Utah, 510 U. S. 399, 412 (1994) (emphasis deleted). Likewise, Congress might speak of a reservation as being " 'discontinued,' " " 'abolished,' " or " 'vacated.' " Mattz v. Arnett, 412 U. S. 481, 504, n. 22 (1973). Disestablishment has "never required any particular form of words," Hagen, 510 U. S., at 411. But it does require that Congress clearly express its intent to do so, "[c]ommon[ly with an] '[e]xplicit reference to cession or other language evidencing the present and total surrender of all tribal interests.' " Nebraska v. Parker, 577 U. S. 481, ___–___ (2016) (slip op., at 6).

B

In an effort to show Congress has done just that with the Creek Reservation, Oklahoma points to events during the so-called "allotment era." Starting in the 1880s, Congress sought to pressure many tribes to abandon their communal lifestyles and parcel their lands into smaller lots owned by individual tribe members. See 1 F. Cohen, Handbook of Federal Indian Law §1.04 (2012) (Cohen), discussing General Allotment Act of 1887, ch. 119, 24 Stat. 388. Some allotment advocates hoped that the policy would create a class of assimilated, landowning, agrarian Native Americans. See Cohen §1.04; F. Hoxie, A Final Promise: The Campaign To Assimilate 18–19 (2001). Others may have hoped that, with lands in individual hands and (eventually)

867–868. In 1908, Congress relaxed these alienation restrictions in some ways, and even allowed the Secretary of the Interior to waive them. Act of May 27, 1908, ch. 199, §1, 35 Stat. 312. One way or the other, individual Tribe members were eventually free to sell their land to Indians and non-Indians alike.

Missing in all this, however, is a statute evincing anything like the "present and total surrender of all tribal interests" in the affected lands. Without doubt, in 1832 the Creek "cede[d]" their original homelands east of the Mississippi for a reservation promised in what is now Oklahoma. 1832 Treaty, Art. I, 7 Stat. 366. And in 1866, they "cede[d] and convey[ed]" a portion of that reservation to the United States. Treaty With the Creek, Art. III, 14 Stat. 786. But because there exists no equivalent law terminating what remained, the Creek Reservation survived allotment.

In saying this we say nothing new. For years, States have sought to suggest that allotments automatically ended reservations, and for years courts have rejected the argument. Remember, Congress has defined "Indian country" to include "all land within the limits of any Indian reservation . . . notwithstanding the issuance of any patent, and, including any rights-of-way running through the reservation." 18 U. S. C. §1151(a). So the relevant statute expressly contemplates private land ownership within reservation boundaries. Nor under the statute's terms does it matter whether these individual parcels have passed hands to non-Indians. To the contrary, this Court has explained repeatedly that Congress does not disestablish a reservation simply by allowing the transfer of individual plots, whether to Native Americans or others. See Mattz , 412 U. S., at 497 ("[A]llotment under the . . . Act is completely consistent with continued reservation status"); Seymour v. Superintendent of Wash. State Penitentiary , 368 U. S. 351, 356–358 (1962) (holding that allotment act "did no more than open the way for non-Indian settlers to own land on the reservation");

Parker , 577 U. S., at ___ (slip op., at 7) ("[T]he 1882 Act falls into another category of surplus land Acts: those that merely opened reservation land to settlement. . . . Such schemes allow non-Indian settlers to own land on the res - ervation" (internal quotation marks omitted)).

It isn't so hard to see why. The federal government issued its own land patents to many homesteaders throughout the West. These patents transferre d legal title and are the basis for much of the private land ownership in a number of States today. But no one thinks any of this diminished the United States's claim to sovereignty over any land. To accomplish that would require an act of cession, the transfer of a sovereign claim from one nation to another. 3 E. Washburn, American Law of Real Property *521–*524. And there is no reason why Congress cannot reserve land for tribes in much the same way, allowing them to continue to exercise governmental functions over land even if they no longer own it communally. Indeed, such an arrangement seems to be contemplated by §1151(a)'s plain terms. Cf. Seymour, 368 U. S., at 357–358. [3]

tracts, while saving the ultimate fate of the land's reservation status for another day. [5]

C

If allotment by itself won't work, Oklahoma seeks to prove disestablishment by pointing to other ways Congress intruded on the Creek's promised right to self-governance during the allotment era. It turns out there were many. For example, just a few years before the 1901 Creek Allotment Agreement, and perhaps in an effort to pressure the Tribe to the negotiating table, Congress abolished the Creeks' tribal courts and transferred all pending civil and criminal cases to the U. S. Courts of the Indian Territory. Curtis Act of 1898, §28, 30 Stat. 504–505. Separately, the Creek Allotment Agreement provided that tribal ordinances "affecting the lands of the Tribe, or of individuals after allotment, or the moneys or other property of the Tribe, or of the citizens thereof " would not be valid until approved by the President of the United States. §42, 31 Stat. 872.

Plainly, these laws represented serious blows to the

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[5] The dissent doesn't purport to find any of the hallmarks of diminishment in the Creek Allotment Agreement. Instead, the dissent tries to excuse their absence by saying that it would have made "little sense" to find such language in an Act transferring the Tribe's lands to private owners. Post, at 14. But the dissent's account is impossible to reconcile with history and precedent. As we have noted, plenty of allotment agreements during this era included precisely the language of cession and compensation that the dissent says it would make "little sense" to find there. And this Court has confirmed time and again that allotment agreements without such language do not necessarily disestablish or diminish the reservation at issue. See Mattz v. Arnett, 412 U. S. 481, 497 (1973); Seymour v. Superintendent of Wash. State Penitentiary, 368 U. S. 351, 358 (1962). The dissent's only answer is to suggest that allotment combined with other statutes limiting the Creek Nation's governing authority amounted to disestablishment—in other words that it's the arguments in the next section that really do the work.

Creek. But, just as plainly, they left the Tribe with significant sovereign functions over the lands in question. For example, the Creek Nation retained the power to collect taxes, operate schools, legislate through tribal ordinances, and, soon, oversee the federally mandated allotment process. §§39, 40, 42, id., at 871–872; Buster v. Wright, 135 F. 947, 949–950, 953–954 (CA8 1905). And, in its own way, the congressional incursion on tribal legislative processes only served to prove the power: Congress would have had no need to subject tribal legislation to Presidential review if the Tribe lacked any authority to legislate. Grave though they were, these congressional intrusions on pre-existing treaty rights fell short of eliminating all tribal interests in the land.

Much more ominously, the 1901 allotment agreement ended by announcing that the Creek tribal government "shall not continue" past 1906, although the agreement quickly qualified that statement, adding the proviso "subject to such further legislation as Congress may deem proper." §46, 31 Stat. 872. Thus, while suggesting that the tribal government might end in 1906, Congress also necessarily understood it had not ended in 1901. All of which was consistent with the Legislature's general practice of taking allotment as a first, not final, step toward disestablishment and dissolution.

When 1906 finally arrived, Congress adopted the Five Civilized Tribes Act. But instead of dissolving the tribal government as some may have expected, Congress "deem[ed] proper" a different course, simply cutting away further at the Tribe's autonomy. Congress empowered the President to remove and replace the principal chief of the Creek, prohibited the tribal council from meeting more than 30 days a year, and directed the Secretary of the Interior to assume control of tribal schools. §§6, 10, 28, 34 Stat. 139–140, 148. The Act also provided for the handling of the

Tribe's funds, land, and legal liabilities in the event of dissolution. §§11, 27, id., at 141, 148. Despite these additional incursions on tribal authority, however, Congress expressly recognized the Creek's "tribal existence and present tribal governmen[t]" and "continued [the m] in full force and effect for all purposes authorized by law." §28, id., at 148.

In the years that followed, Congress continued to adjust its arrangements with the Tribe. For example, in 1908, the Legislature required Creek officials to turn over all "tribal properties" to the Secretary of the Interior. Act of May 27, 1908, §13, 35 Stat. 316. The next year, Congress sought the Creek National Council's release of certain money claims against the U. S. government. Act of Mar. 3, 1909, ch. 263, 35 Stat. 781, 805. And, further still, Congress offered the Creek Nation a one-time opportunity to file suit in the federal Court of Claims for "any and all legal and equitable claims arising under or growing out of any treaty or agreement between the United States and the Creek Indian Nation." Act of May 24, 1924, ch. 181, 43 Stat. 139; see, e.g., United States v. Creek Nation, 295 U. S. 103 (1935). But Congress never withdrew its recognition of the tribal government, and none of its adjustments would have made any sense if Congress thought it had already completed that job.

Indeed, with time, Congress changed course completely. Beginning in the 1920s, the federal outlook toward Native Americans shifted "away from assimilation policies and toward more tolerance and respect for traditional aspects of Indian culture." 1 Cohen §1.05. Few in 1900 might have foreseen such a profound "reve rsal of attitude" was in the making or expected that "new protections for Indian rights," including renewed "s upport for federally defined tribalism," lurked around the corner. Ibid.; see also M.

in 1936, Congress authorized the Creek to adopt a constitution and bylaws, see Act of June 26, 1936, §3, 49 Stat. 1967, enabling the Creek government to resume many of its previously suspended functions. Muscogee (Creek) Nation v. Hodel, 851 F. 2d 1439, 1442–1447 (CADC 1988).[6]

The Creek Nation has done exactly that. In the intervening years, it has ratified a new constitution and established three separate branches of government. Ibid.; see Muscogee Creek Nation (MCN) Const., Arts. V, VI, and VII. Today the Nation is led by a democratically elected Principal Chief, Second Chief, and National Council; operates a police force and three hospitals; commands an annual budget of more than $350 million; and employs over 2,000 people. Brief for Muscogee (Creek) Nation as Amicus Curiae 36–39. In 1982, the Nation passed an ordinance reestablishing the criminal and civil jurisdiction of its courts. See Hodel, 851 F. 2d, at 1442, 1446–1447 (confirming Tribe's authority to do so). The territorial jurisdiction of these courts extends to any Indian country within the Tribe's territory as defined by the Treaty of 1866. MCN Stat. 27, §1–102(A). And the State of Oklahoma has afforded full faith and credit to its judgments since at least 1994. See Barrett v. Barrett, 878

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[6] The dissent calls it "fantasy" to suggest that Congress evinced "any unease about extinguishing the Creek domain" because Congress "did what it set out to do: transform a reservation into a State." Post, at 22–23. The dissent stresses, too, that the Creek were afforded U. S. citizenship and the right to vote. Post, at 20. But the only thing implausible here is the suggestion that "creat[ing] a new State" or enfranchising Native Americans implies an "intent to terminate" any and all reservations within a State's boundaries. Post, at 15. This Court confronted—and rejected—that sort of argument long ago in United States v. Sandoval, 231 U. S. 28, 47–48 (1913). The dissent treats that case as a one-off: special because "the tribe in Sandoval, the Pueblo Indians of New Mexico, retained a rare communal title to their lands." Post, at 21, n. 4. But Sandoval is not only a case about the Pueblos; it is a foundational precedent recognizing that Congress can welcome Native Americans to participate in a broader political community without sacrificing their tribal sovereignty.

P. 2d 1051, 1054 (Okla. 1994); Full Faith and Credit of Tribal Courts, Okla. State Cts. Network (Apr. 18, 2019), https://www.oscn.net/applicat ions/oscn/DeliverDocument. asp?CiteID=458214.

Maybe some of these changes happened for altruistic rea - sons, maybe some for other reasons. It seems, for example, that at least certain Members of Congress hesitated about disestablishment in 1906 because they feared any reversion of the Creek lands to the public domain would trigger a statutory commitment to hand over portions of these lands to already powerful railroad interests. See, e.g., 40 Cong. Rec. 2976 (1906) (Sen. McCumber); Id., at 3053 (Sen. Aldrich). Many of those who advanced the reorganization efforts of the 1930s may have done so more out of frustration with efforts to assimilate Native Americans than any disaffection with assimilation as the ultimate goal. See 1 Cohen §1.05; Scherer, Imperfect Victories, at 2–4. But whatever the confluence of reasons, in all this history there simply arrived no moment when any Act of Congress dissolved the Creek Tribe or disestablished its reservation. In the end, Congress moved in the opposite direction. [7]

D

Ultimately, Oklahoma is left to pursue a very different sort of argument. Now, the State points to historical prac - tices and demographics, both around the time of and long after the enactment of all the relevant legislation. These facts, the State submits, are enough by themselves to prove disestablishment. Oklahoma even classifies and catego-

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[7] The dissent ultimately concedes wh at Oklahoma will not: that no "individual congressional action or pi ece of evidence, standing alone, disestablished the Creek reservation." Post, at 9–10. Instead we're told we must consider "all of the relevant Ac ts of Congress together, viewed in light of contemporaneous and subs equent contextual evidence." Ibid. So, once again, the dissent seems to suggest that it's the arguments in the next section that will get us across the line to disestablishment.

rizes how we should approach the question of disestablishment into three "steps." It reads Solem as requiring us to examine the laws passed by Congress at the first step, contemporary events at the second, and even later events and demographics at the third. On the State's account, we have so far finished only the first step; two more await.

This is mistaken. When interpreting Congress's work in this arena, no less than any other, our charge is usually to ascertain and follow the original meaning of the law before us. New Prime Inc. v. Oliveira, 586 U. S. ___, ___ (2019) (slip op., at 6). That is the only "step" proper for a court of law. To be sure, if during the course of our work an ambiguous statutory term or phrase emerges, we will sometimes consult contemporaneous usages, customs, and practices to the extent they shed light on the meaning of the language in question at the time of enactment. Ibid. But Oklahoma does not point to any ambiguous language in any of the relevant statutes that could plausibly be read as an Act of disestablishment. Nor may a court favor contemporaneous or later practices instead of the laws Congress passed. As Solem explained, "[o]nce 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." 465 U. S., at 470 (citing United States v. Celestine, 215 U. S. 278, 285 (1909)).

Still, Oklahoma reminds us that other language in Solem isn't so constrained. In particular, the State highlights a passage suggesting that "[w]here non-Indian settlers flooded into the opened portion of a reservation and the area has long since lost its Indian character, we have acknowledged that de facto, if not de jure, diminishment may have occurred." 465 U. S., at 471. While acknowledging that resort to subsequent demographics was "an unorthodox and potentially unreliable method of statutory interpretation," the Court seemed nonetheless taken by its

"obvious practical advantages." Id., at 472, n. 13, 471.

Out of context, statements like these might suggest historical practices or current demographics can suffice to disestablish or diminish reservations in the way Oklahoma envisions. But, in the end, Solem itself found these kinds of arguments provided "no help" in resolving the dispute before it. Id., at 478. Notably, too, Solem suggested that whatever utility historical practice or demographics might have was "demonstrated" by this Court's earlier decision in Rosebud Sioux Tribe v. Kneip, 430 U. S. 584 (1977). See Solem, 465 U. S., at 470, n. 10. And Rosebud Sioux hardly endorsed the use of such sources to find disestablishment. Instead, based on the statute at issue there, the Court came "to the firm conclusion that congressional intent" was to diminish the reservation in question. 430 U. S., at 603. At that point, the Tribe sought to cast doubt on the clear import of the text by citing subsequent historical events—and the Court rejected the Tribe's argument exactly because this kind of evidence could not overcome congressional intent as expressed in a statute. Id., at 604–605.

This Court has already sought to clarify that extratextual considerations hardly supply the blank check Oklahoma supposes. In Parker, for example, we explained that "[e]vidence of the subsequent treatment of the disputed land . . . has 'limited interpretive value.' " 577 U. S., at ___ (slip op., at 11) (quoting South Dakota v. Yankton Sioux Tribe, 522 U. S. 329, 355 (1998)).[8] Yankton Sioux called it the "least

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[8] The dissent suggests Parker meant to say only that evidence of subsequent treatment had limited interpretative value "in that case." Post, at 12. But the dissent includes just a snippet of the relevant passage. Read in full, there is little room to doubt Parker invoked a general rule:

"This subsequent demographic history cannot overcome our conclusion that Congress did not intend to diminish the reservation in 1882. And it is not our rule to 'rewrite' the 1882 Act in light of this subsequent demographic history. DeCoteau, 420 U. S., at 447. After all, evidence of the changing demographics of disputed land is 'the least compelling' evi-

compelling" form of evidence. Id., at 356. Both cases emphasized that what value such evidence has can only be 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.

To avoid further confusion, we restate the point. There is no need to consult extratextual sources when the meaning of a statute's terms is clear. Nor may extratextual sources overcome those terms. The only role such materials can properly play is to help "clear up . . . not create" ambiguity about a statute's original meaning. Milner v. Department of Navy, 562 U. S. 562, 574 (2011). And, as we have said time and again, once a reservation is established, it retains that status "until Congress explicitly indicates otherwise." Solem, 465 U. S., at 470 (citing Celestine, 215 U. S., at 285); see also Yankton Sioux, 522 U. S., at 343 ("[O]nly Congress can alter the terms of an Indian treaty by diminishing a reservation, and its intent to do so must be clear and plain") (citation and internal quotation marks omitted).

The dissent charges that we have failed to take account of the "compelling reasons" for considering extratextual evidence as a matter of course. Post, at 11–12. But Oklahoma and the dissent have cited no case in which this Court has found a reservation disestablished without first concluding that a statute required that result. Perhaps they wish this case to be the first. To follow Oklahoma and the dissent down that path, though, would only serve to allow States and courts to finish work Congress has left undone, usurp

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dence in our diminishment analysis, for '[e]very surplus land Act necessarily resulted in a surge of non-Indian settlement and degraded the "Indian character" of the reservation, yet we have repeatedly stated that not every surplus land Act diminished the affected reservation.' Yankton Sioux, 522 U. S., at 356. . . . Evidence of the subsequent treatment of the disputed land by Government officials likewise has 'limited interpretive value.' Id., at 355." 577 U. S., at ___ (slip op., at 11).

the legislative function in the process, and treat Native American claims of statutory right as less valuable than others. None of that can be reconciled with our normal interpretive rules, let alone our rule that disestablishment may not be lightly inferred and treaty rights are to be construed in favor, not against, tribal rights. Solem, 465 U. S., at 472.[9]

To see the perils of substituting stories for statutes, we need look no further than the stories we are offered in the case before us. Put aside that the Tribe could tell more than a few stories of its own: Take just the evidence on which Oklahoma and the dissent wish to rest their case. First, they point to Oklahoma's long historical prosecutorial practice of asserting jurisdiction over Indians in state court, even for serious crimes on the contested lands. If the Creek lands really were part of a reservation, the argument goes, all of these cases should have been tried in federal court pursuant to the MCA. Yet, until the Tenth Circuit's Murphy decision a few years ago, no court embraced that possibility. See Murphy, 875 F. 3d 896. Second, they offer statements from various sources to show that "everyone" in the late 19th and early 20th century thought the reservation system—and the Creek Nation—would be disbanded soon. Third, they stress that non-Indians swiftly moved on to the reservation in the early part of the last century, that Tribe

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[9] In an effort to support its very different course, the dissent stitches together quotes from Rosebud Sioux Tribe v. Knelp, 430 U. S. 584 (1977), and South Dakota v. Yankton Sioux Tribe, 522 U. S. 329 (1998). Post, at 10–11. But far from supporting the dissent, both cases emphasize that "[t]he focus of our inquiry is congressional intent," Rosebud, 430 U. S., at 588, n. 4; see also Yankton Sioux, 522 U. S., at 343, and merely acknowledge that extratextual sources may help resolve ambiguity about Congress's directions. The dissent's appeal to Solem fares no better. As we have seen, the extr atextual sources in S olem only confirmed what the relevant statute already suggested—tha t the reservation in question was not diminished or disestablished. 465 U. S., at 475–476.

members today constitute a small fraction of those now residing on the land, and that the area now includes a "vibrant city with expanding aerospace, healthcare, technology, manufacturing, and transportation sectors." Brief for Petitioner in Carpenter v. Murphy, O. T. 2018, No. 17–1107, p. 15. All this history, we are told, supplies "compelling" evidence about the lands in question.

Maybe so, but even taken on its own terms none of this evidence tells the story we are promised. Start with the State's argument about its longstanding practice of asserting jurisdiction over Native Americans. Oklahoma proceeds on the implicit premise that its historical practices are unlikely to have defied the mandates of the federal MCA. That premise, though, appears more than a little shaky. In conjunction with the MCA, §1151(a) not only sends to federal court certain major crimes committed by Indians on reservations. Two doors down, in §1151(c), the statute does the same for major crimes committed by Indians on "Indian allotments, the Indian titles of which have not been extinguished." Despite this direction, however, Oklahoma state courts erroneously entertained prosecutions for major crimes by Indians on Indian allotments for decades, until state courts finally disavowed the practice in 1989. See State v. Klindt, 782 P. 2d 401, 404 (Okla. Crim. App. 1989) (overruling Ex parte Nowabbi, 60 Okla. Crim. III, 61 P. 2d 1139 (1936)); see also United States v. Sands, 968 F. 2d 1058, 1062–1063 (CA10 1992). And if the State's prosecution practices disregarded §1151(c) for so long, it's unclear why we should take those same practices as a reliable guide to the meaning and application of §1151(a).

Things only get worse from there. Why did Oklahoma historically think it could try Native Americans for any crime committed on restricted allotments or anywhere else? Part of the explanation, Oklahoma tells us, is that it thought the eastern half of the State was always categorically exempt from the terms of the federal MCA. So

Cohen §6.04(4)(a) ("Before 1942 the state of New York regularly exercised or claimed the right to exercise jurisdiction over the New York reservations, but a federal court decision in that year raised questions about the validity of state jurisdiction"); Brief for United States as Amicus Curiae in Carpenter v. Murphy, O. T. 2018, No. 17–1107, pp. 7a–8a (Letter from Secretary of the Interior, Mar. 27, 1963) (noting that many States have asserted criminal jurisdiction over Indians without an apparent basis in a federal law). [11]

Oklahoma next points to various statements during the allotment era which, it says, show that even the Creek understood their reservation was under threat. And there's no doubt about that. By 1893, the leadership of the Creek Nation saw what the federal government had in mind: "They [the federal government] do not deny any of our rights under treaty, but say they will go to the people themselves and confer with them and urge upon them the necessity of a change in their present condition, and upon their refusal will force a change upon them." P. Porter & A. McKellop, Printed Statement of Creek Delegates, reMC /P <</MCIfsity of a chaentes, reMC /P

National Council (May 7, 1901), reprinted in The Indian Journal (May 10, 1901)). Surely, too, the future looked even bleaker: "'The remnant of a governme nt now accorded to us can be expected to be maintained only until all settlements of our landed and other interests growing out of treaty stipulations with the government of the United States shall have been settled.' " Ibid .

But note the nature of these statements. The Creek Nation recognized that the federal government will seek to get popular support or otherwise would force change. Likewise, the Tribe's government would continue for only so long. These were prophesies, and hardly groundbreaking ones at that. After all, the 1901 Creek Allotment Agree - ment explicitly said that th e tribal government "shall not continue" past 1906. §46, 31 Stat. 872. So what might statements like these tell us that isn't already evident from tD [(ent un/Hethehe nginueight)]T14761205 Tw 0 -1.208 TD d tha21ThPtgreP

laws.' " Ibid. (quoting App. to Supp. Reply Brief for Petitioner in Carpenter v. Murphy, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). But that statement is incorrect. As we have just seen, Oklahoma's courts acknowledge that the State lacks jurisdiction over Indian crimes on Indian allotments. See Klindt, 782 P. 2d, at 403–404. And the dissent does not dis-

others never paused to think about the question. Certain historians have argued, for example, that the loss of Creek land ownership was accelerated by the discovery of oil in the region during the period at issue here. A number of the federal officials charged with implementing the laws of Congress were apparently openly conflicted, holding shares or board positions in the very oil companies who sought to deprive Indians of their lands. A. Debo, And Still the Waters Run 86–87, 117–118 (1940). And for a time Oklahoma's courts appear to have entertained sham competency and guardianship proceedings that divested Tribe members of oil rich allotments. Id., at 104–106, 233–234; Brief for Historians et al. as Amici Curiae 26–30. Whatever else might be said about the history and demographics placed before us, they hardly tell a story of unalloyed respect for tribal interests. [14]

In the end, only one message rings true. Even the carefully selected history Oklahoma and the dissent recite is not nearly as tidy as they suggest. It supplies us with little help

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[14] The dissent asks us to examine a hodge-podge of other, but no more compelling, material. For example, the dissent points to later statutes that do no more than confirm there are former reservations in the State of Oklahoma. Post, at 30–31. It cites legislative history to show that Congress had the Creek Nation—or, at least, its neighbors—in mind when it added these in 1988. Post,

in discerning the law's meaning and much potential for mischief. If anything, the persistent if unspoken message here seems to be that we should be taken by the "practical advantages" of ignoring the written law. How much easier it would be, after all, to let the State proceed as it has always

country under subsection (b). So Oklahoma lacks jurisdic -

notion that fee title is somehow inherently incompatible with reservation status. Maxey v. Wright , 54 S. W. 807, 810 (Indian Terr. 1900).

By now, Oklahoma's next move will seem familiar. Seeking to sow doubt around express treaty promises, it cites some stray language from a statute that does not control here, a piece of congressional testimony there, and the scattered opinions of agency officials everywhere in between. See, e.g., Act of July 31, 1882, ch. 360, 22 Stat. 179 (referring to Creek land as "Indian country" as opposed to an "Indian reservation"); S. Doc. No. 143, 59th Cong., 1st. Sess., 33 (1906) (Chief of Choctaw Nation—which had an arrangement similar to the Creek's—testified that both Tribes "object to being classified with the reservation Indians"); Dept. of Interior, Census Office, Report on Indians Taxed and Indians Not Taxed in the U. S. 284 (1894) (Creeks and neighboring Tribes were "not on the ordinary Indian reservation, but on lands patented to them by the United States"). Oklahoma stresses that this Court even once called the Creek lands a "dependent Indian community," though it used that phrase in passing and only to show that the Tribe's "property and affairs were subje ct to the control and management of that government"—a po int that would also be true if the lands were a reservation. Creek Nation , 295 U. S., at 109. Unsurprisingly given the Creek Nation's nearly 200-year occupancy of these lands, both sides have turned up a few clues suggesting the label "re si2 Tw t.1</MC0TJ the cte82Tc -0.06n

when the federal government agreed to offer more protection for tribal lands, it really provided less. All this time, fee title was nothing more than another trap for the wary.

V

That leaves Oklahoma to attempt yet another argument in the alternative. We alluded to it earlier in Part III. Now, the State accepts for argument's sake that the Creek land is a reservation and thus "Indian country" for purposes of the Major Crimes Act. It accepts, too, that this would normally mean serious crimes by Indians on the Creek Reservation would have to be tried in federal court. But, the State tells us, none of that matters; everything the parties have briefed and argued so far is beside the point. It's all irrelevant because it turns out the MCA just doesn't apply to the eastern half of Oklahoma, and it never has. That federal law may apply to other States, even to the western half of Oklahoma itself. But eastern Oklahoma is and has always been exempt. So whether or not the Creek have a reservation, the State's historic practices have always been correct and it remains free to try individuals like Mr. McGirt in its own courts.

Notably, the dissent again declines to join Oklahoma in its latest twist. And, it turns out, for good reason. In support of its argument, Oklahoma points to statutory artifacts from its territorial history. The State of Oklahoma was formed from two territories: the Oklahoma Territory in the west and Indian Territory in the east. Originally, it seems criminal prosecutions in the Indian Territory were split between tribal and federal courts. See Act of May 2, 1890, §30, 26 Stat. 94. But, in 1897, Congress abolished that scheme, granting the U. S. Courts of the Indian Territory "exclusive jurisdiction" to try "all criminal causes for the punishment of any offense." Act of June 7, 1897, 30 Stat. 83. These federal territorial courts applied federal law and

State." Act of Mar. 3, 1885, ch. 341, §9, 23 Stat. 385 (emphasis added); see also 18 U. S. C. §1151 (defining "Indian country" even more broadly). By contrast, every one of the statutes the State directs us to merely discusses the assignment of cases among courts in the Indian Territory. They say nothing about the division of responsibilities between federal and state authorities after Oklahoma entered the Union. And however enlightened the State may think it was for territorial law to apply to all persons irrespective of race, some Tribe members may see things differently, given that the same policy entailed the forcible closure of tribal courts in defiance of treaty terms.

Left to hunt for some statute that might have rendered the MCA inapplicable in Oklahoma after statehood, the best the State can find is the Oklahoma Enabling Act. Congress adopted that law in preparation for Oklahoma's admission in 1907. Among its many provisions sorting out the details associated with Oklahoma's transition to statehood, the Enabling Act transferred all nonfederal cases pending in territorial courts to Oklahoma's new state courts. Act of June 16, 1906, §20, 34 Stat. 277; see also Act of Mar. 4, 1907, §3, 34 Stat. 1287 (clarifying treatment of cases to which United States was a party). The State says this transfer made its courts the inheritors of the federal territorial courts' sweeping authority to try Indians for crimes committed on reservations.

But, at best, this tells only half the story. The Enabling Act not only sent all nonfederal cases pending in territorial courts to state court. It also transferred pending cases that arose "under the Constitution, laws, or treaties of the United States" to federal district courts. §16, 34 Stat. 277. Pending criminal cases were thus transferred to federal court if the prosecution would have belonged there had the Territory been a State at the time of the crime. §1, 34 Stat. 1287 (amending the Enabling Act). Nor did the statute make any distinction between cases arising in the former

704–706 (1990) (Brennan, J., dissenting). Many tribal courts across the country were absent or ineffective during the early part of the last century, yielding just the sort of gaps Oklahoma would have us believe impossible. Indeed, this might be why so many States joined Oklahoma in prosecuting Indians without proper jurisdiction. The judicial mind abhors a vacuum, and the temptation for state prosecutors to step into the void was surely strong. See supra, at 23–24.

With time, too, Congress has filled many of the gaps Oklahoma worries about. One way Congress has done so is by reauthorizing tribal courts to hear minor crimes in Indian country. Congress chose exactly this course for the Creeks and others in 1936. Act of June 26, 1936, §3, 49 Stat. 1967; see also Hodel, 851 F. 2d, at 1442–1446. Another option Congress has employed is to allow affected Indian tribes to consent to state criminal jurisdiction. 25 U. S. C. §§1321(a), 1326. Finally, Congress has sometimes expressly expanded state criminal jurisdiction in targeted bills addressing specific States. See, e.g., 18 U. S. C. §3243 (creating jurisdiction for Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (same for a reservation in North Dakota); Act of June 30, 1948, ch. 759, 62 Stat. 1161 (same for certain reservations in Iowa); 18 U. S. C. §1162 (creating jurisdiction for six additional States). But Oklahoma doesn't claim to have complied with the requirements to assume jurisdiction voluntarily over Creek lands. Nor has Congress ever passed a law conferring jurisdiction on Oklahoma. As a result, the MCA applies to Oklahoma according to its usual terms: Only the federal government, not the State, may prosecute Indians for major crimes committed in Indian country.

VI

In the end, Oklahoma abandons any pretense of law and speaks openly about the potentially "transform[ative]" effects of a loss today. Brief for Respondent 43. Here, at

least, the State is finally rejoined by the dissent. If we dared to recognize that the Creek Reservation was never disestablished, Oklahoma and dissent warn, our holding might be used by other tribes to vindicate similar treaty promises. Ultimately, Oklahoma fears that perhaps as much as half its land and roughly 1.8 million of its residents could wind up within Indian country.

It's hard to know what to make of this self-defeating argument. Each tribe's treaties must be considered on their own terms, and the only quest ion before us concerns the Creek. Of course, the Creek Reservation alone is hardly insignificant, taking in most of Tulsa and certain neighboring communities in Northeastern Oklahoma. But neither is it unheard of for significant non-Indian populations to live successfully in or near reservations today. See, e.g., Brief for National Congress of American Indians Fund as Amicus Curiae 26–28 (describing success of Tacoma, Washington, and Mount Pleasant, Michigan); see also Parker, 577 U. S., at ___–___ (slip op., at 10–12) (holding Pender, Nebraska, to be within Indian country despite tribe's absence from the disputed territory for more than 120 years). Oklahoma replies that its situation is different because the affected population here is large and many of its residents will be surprised to find out they have been living in Indian country this whole time. But we imagine some members of the 1832 Creek Tribe would be just as surprised to find them there.

What are the consequences the State and dissent worry might follow from an adverse ruling anyway? Primarily, they argue that recognizing the continued existence of the Creek Reservation could unsettle an untold number of con - victions and frustrate the State's ability to prosecute crimes in the future. But the MCA applies only to certain crimes committed in Indian country by Indian defendants. A

to apply their criminal laws in cases of non-Indian victims and defendants, including within Indian country. See McBratney , 104 U. S., at 624. And Oklahoma tells us that somewhere between 10% and 15% of its citizens identify as Native American. Given all this, even Oklahoma admits that the vast majority of its prosecutions will be unaffected whatever we decide today.

Still, Oklahoma and the dissent fear, "[t]housands" of Native Americans like Mr. McGirt "wait in the wings" to challenge the jurisdictional basis of their state-court convictions. Brief for Respondent 3. But this number is admittedly speculative, because many defendants may choose to finish their state sentences rather than risk reprosecution in federal court where sentences can be graver. Other defendants who do try to challenge their state convictions may face significant procedural obstacles, thanks to well-known state and federal limitations on post-conviction review in criminal proceedings. [15]

In any event, the magnitude of a legal wrong is no reason to perpetuate it. When Congress adopted the MCA, it broke many treaty promises that had once allowed tribes like the Creek to try their own members. But, in return, Congress allowed only the federal government, not the States, to try

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[15] For example, Oklahoma appears to apply a general rule that "issues that were not raised previously on direct appeal, but which could have been raised, are waived for further review." Logan v. State, 2013 OK CR 2, ¶ 1, 293 P. 3d 969, 973. Indeed, JUSTICE THOMAS contends that this state-law limitation on collateral review prevents us from considering even the case now before us. Post, at 2 (dissenting opinion). But while that state-law rule may often bar our way, it doesn't in this case. After noting a potential state-law obstacle, the Oklahoma Court of Criminal Appeals (OCCA) proceeded to address the merits of Mr. McGirt's federal MCA claim anyway. Because the OCCA's opinion "fairly appears to rest primarily on federal law or to be interwoven with federal law" and lacks any "plain statement" that it was relying on a state-law ground, we have jurisdiction to consider the federal-law question presented to us. See Michigan v. Long, 463 U. S. 1032, 1040–1041, 1044 (1983).

utes or regulations to rely on definitions found in the criminal law. Of course, many federal civil laws and regulations do currently borrow from §1151 when defining the scope of Indian country. But it is far from obvious why this collateral drafting choice should be allowed to skew our interpretation of the MCA, or deny its promised benefits of a federal criminal forum to tribal members.

It isn't even clear what the real upshot of this borrowing into civil law may be. Oklahoma reports that recognizing the existence of the Creek Reservation for purposes of the MCA might potentially trigger a variety of federal civil statutes and rules, including ones making the region eligible for assistance with homeland security, 6 U. S. C. §§601, 606, historical preservation, 54 U. S. C. §302704, schools, 20 U. S. C. §1443, highways, 23 U. S. C. §120, roads, §202, primary care clinics, 25 U. S. C. §1616e–1, housing assistance, §4131, nutritional programs, 7 U. S. C. §§2012, 2013, disability programs, 20 U. S. C. §1411, and more. But what are we to make of this? Some may find developments like these unwelcome, but from what we are told others may celebrate them.

The dissent isn't so sanguine—it assures us, without further elaboration, that the consequences will be "drastic precisely because they depart from . . . more than a century [of] settled understanding." Post, at 37. The prediction is a familiar one. Thirty years ago the Solicitor General warned that "[l]aw enforcement would be rendered very difficult" and there would be "grave uncertainty regarding the application" of state law if courts departed from decades of "long-held understanding" and recognized that the federal MCA applies to restricted allotments in Oklahoma. Brief for United States as Amicus Curiae in Oklahoma v. Brooks, O.T. 1988, No. 88–1147, pp. 2, 9, 18, 19. Yet, during the intervening decades none of these predictions panned out, and that fact stands as a note of caution against too readily crediting identical warnings today.

cooperative sovereignty" behind these agreements, id., at 20, will be imperiled by an adverse decision for the State today any more than it might be by a favorable one.[16] And, of course, should agreement prove elusive, Congress remains free to supplement its statutory directions about the lands in question at any time. It has no shortage of tools at its disposal.

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The federal government promised the Creek a reservation in perpetuity. Over time, Congress has diminished that reservation. It has sometimes restricted and other times expanded the Tribe's authority. But Congress has never withdrawn the promised reservation. As a result, many of the arguments before us today follow a sadly familiar pattern. Yes, promises were made, but the price of keeping them has become too great, so now we should just cast a blind eye. We reject that thinking. If Congress wishes to withdraw its promises, it must say so. Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right.

The judgment of the Court of Criminal Appeals of Oklahoma is

Reversed.

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[16] This sense of cooperation and a shared future is on display in this very case. The Creek Nation is supported by an array of leaders of other Tribes and the State of Oklahoma, many of whom had a role in negotiating exactly these agreements. See Brief for Tom Cole et al. as Amici Curiae 1 ("Amici are a former Governor, State Attorney General, cabinet members, and legislators of the State of Oklahoma, and two federally recognized Indian tribes, the Chickasaw Nation and Choctaw Nation of Oklahoma") (brief authored by Robert H. Henry, also a former State Attorney General and Chief Judge of the Tenth Circuit).

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environmental law.

None of this is warranted. What has gone unquestioned for a century remains true today: A huge portion of Oklahoma is not a Creek Indian reservation. Congress disestablished any reservation in a series of statutes leading up to Oklahoma statehood at the turn of the 19th century. The Court reaches the opposite conclusion only by disregarding the "well settled" approach required by our precedents. Nebraska v. Parker, 577 U. S. 481, ___ (2016) (slip op., at 5).

Under those precedents, we determine whether Congress intended to disestablish a reservation by examining the relevant Acts of Congress and "all the [surrounding] circumstances," including the "contemporaneous and subsequent understanding of the status of the reservation." Id., at ___ (slip op., at 6) (internal quotation marks omitted). Yet the Court declines to consider such understandings here, preferring to examine only individual statutes in isolation.

Applying the broader inquiry our precedents require, a reservation did not exist when McGirt committed his crimes, so Oklahoma had jurisdiction to prosecute him. I respectfully dissent.

I

The Creek Nation once occupied what is now Alabama and Georgia. In 1832, the Creek were compelled to cede these lands to the United States in exchange for land in present day Oklahoma. The expanse set aside for the Creek and the other Indian nations that composed the "Five Civilized Tribes"—the Cherokees, Chickasaws, Choctaws, and Seminoles—became known as Indian Territory. See F. Cohen, Handbook of Federal Indian Law §4.07(1)(a), pp. 289–290 (N. Newton ed. 2012) (Cohen). Each of the Five Tribes formed a tripartite system of government. See Marlin v. Lewallen, 276 U. S. 58, 60 (1928). They "enact[ed] and execut[ed] their own laws," "punish[ed] their own criminals," and "rais[ed] and expend[ed] their own revenues." Atlantic

& Pacific R. Co. v. Mingus , 165 U. S. 413, 436 (1897).

The Five Tribes also enjoyed unique property rights. While many tribes held only a "right of occupancy" on lands owned by the United States, United States v. Creek Nation , 295 U. S. 103, 109 (1935), each of the Five Tribes possessed title to its lands in communal fee simple, meaning the lands were "considered the property of the whole." E.g., Treaty with the Creeks, Arts. III and IV, Feb. 14, 1833, 7 Stat. 419; see Marlin, 276 U. S., at 60. Congress promised the Tribes that their lands would never be "included within, or annexed to, any Territory or State," see, e.g., Treaty with Creeks and Seminoles, Art. IV, Aug. 7, 1856, 11 Stat. 700 (1856 Treaty), and that their new homes would be "forever secure," Indian Removal Act, §3, 4 Stat. 412; see also Treaty with the Creeks, Arts. I and XIV, Mar. 24, 1832, 7 Stat. 368.

Forever, it turns out, did not last very long, because the Civil War disrupted both relationships and borders. The Five Tribes, whose members collectively held at least 8,000 slaves, signed treaties of alliance with the Confederacy and contributed forces to fight alongside Rebel troops. See Gibson, Native Americans and the Civil War, 9 Am. Indian Q. 4, 385, 388–389, 393 (1985); Doran, Negro Slaves of the Five Civilized Tribes, 68 Annals Assn. Am. Geographers 335, 346–347, and Table 3 (1978); Cohen §4.07(1)(a), at 289. After the war, the United States and the Tribes formed new treaties, which required each Tribe to free its slaves and allow them to become tribal citizens. E.g., Treaty with the Creek Indians, Art. II, June 14, 1866, 14 Stat. 786 (1866 Treaty); see Cohen §4.07(1)(a), at 289, and n. 9. The treaties also stated that the Tribes had "ignored their allegiance to the United States" and "unsettled the [existing] treaty relations," thereby rendering themselves "liable to forfeit" all "benefits and advantages sb Tc Tc 00879 Tw nd njo 0.01ohe [exis5519. The trea3

Tribes failed to hold the communal lands for the "equal benefit" of all members. Woodward v. De Graffenried, 238 U. S. 284, 297 (1915). Instead, a few "enterprising citizens" of the Tribes "appropriate[d] to their exclusive use almost the entire property of the Territory that could be rendered profitable." Id.-

cause "the only 'step' proper for a court of law" is interpreting the laws enacted by Congress. Ante, at 17–18. Any label is fine with us. What matters is that these are categories of evidence that our precedents "direct[ ] us" to examine in determining whether the laws enacted by Congress dis-

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The Court today treats these precedents as aging relics in need of "clarif[ication]." Ante, at 19. But these precedents have been clear enough for some time. Just a few Terms ago, the same inquiry was described as "well settled" by the unanimous Court in Nebraska v. Parker, 577 U. S. 481, ___ (2016) (slip op., at 5). First, the Court explained, "we start with the statutory text." Ibid. "Under our precedents," the Court continued, "we also 'examine all the circumstances surrounding the opening of a reservation.' " Id., at ___ (slip op., at 6) (quoting Hagen, 510 U. S., at 412). Thus, second and third, we "look to any unequivocal evidence of the contemporaneous and subsequent understanding of the status of the reservation by members and nonmembers, as well as the United States and the State." 577 U. S., at ___ (slip op., at 6) (internal quotation marks omitted). These inquiries include, respectively, the "history surrounding the passage of the [relevant] Act" as well as the subsequent "demographic history" and "treatment" of the lands at issue. Id., at ___, ___ (slip op., at 8, 10).

Today the Court does not even discuss the governing approach reiterated throughout these precedents. The Court briefly recites the general rule that disestablishment requires clear congressional "intent," ante, at 8, but the Court then declines to examine the categories of evidence that our precedents demand we consider. Instead, the Court argues at length that allotment alone is not enough to disestablish a reservation. Ante, at 8–12. Then the Court argues that the "many" "serious blows" dealt by Congress to tribal governance, and the creation of the new State of Oklahoma, are each insufficient for disestablishment. Ante, at 13–16. Then the Court emphasizes that "historical practices or current demographics" do not "by themselves" "suffice" to disestablish a reservation. Ante, at 17–18.

This is a school of red herrings. No one here contends that any individual congressional action or piece of evi-

dence, standing alone, disestablished the Creek reservation. Rather, Oklahoma contends that all of the relevant Acts of Congress together, viewed in light of contemporaneous and subsequent contextual evidence, demonstrate Congress's intent to disestablish the reservation. "[O]ur traditional approach . . . requires us" to determine Congress's intent by "examin[ing] all the circumstances surrounding the opening of a reservation." Hagen, 510 U. S., at 412 (emphasis added). Yet the Court refuses to confront the cumulative import of all of Congress's actions here.

The Court instead announces a new approach sharply restricting consideration of contemporaneous and subsequent evidence of congressional intent. The Court states that such "extratextual sources" may be considered in "only" one narrow circumstance: to help " 'clear up' " ambiguity in a particular "statutory term or phrase." Ante, at 17–18, 20 (quoting Milner v. Department of Navy, 562 U. S. 562, 574 (2011), and citing New Prime Inc. v. Oliveira, 586 U. S. ___, ___ (2019) (slip op., at 6)).

But, if that is the right approach, what have we been doing all these years? Every single one of our disestablishment cases has considered extratextual sources, and in doing so, none has required the identification of ambiguity in a particular term. That is because, while it is well established that Congress's "intent" must be "clear," ante, at 20 (quoting Yankton Sioux Tribe, 522 U. S., at 343), in this area we have expressly held that the appropriate inquiry does not focus on the statutory text alone.

Today the Court suggests that only the text can satisfy the longstanding requirement that Congress "explicitly indicate[ ]" its intent. Ante, at 20 (quoting Solem, 465 U. S., at 470). The Court reiterates that a reservation persists unless Congress "said otherwise," ante, at 1; if Congress wishes to disestablish a reservation, "it must say so," with the right "language." Ante, at 8, 18; see ante, at 42 (same).

Our precedents disagree. They explain that disestablishment can occur "[e]ven in the absence of a clear expression of congressional purpose in the text of [the] Act." Yankton Sioux Tribe , 522 U. S., at 351. The "notion" that "express language in an Act is the only method by which congressional action may result in disestablishment" is "quite inconsistent" with our prh

of the analysis; there is no "magic words" requirement for disestablishment, and each individual statute may not be considered in isolation. See supra, at 10–11; Hagen, 510 U. S., at 411, 415–416 (when two statutes "buil[d]" on one another in this area, "[both] statutes—as well as those that came in between—must therefore be read together"); see also Rosebud Sioux Tribe, 430 U. S., at 592 (recognizing that a statute "cannot, and should not, be read as if it were the first time Congress had ad dressed itself to" disestablishment when prior statutes also indicate congressional intent). In this area, "we are not free to say to Congress: 'We see what you are driving at, but you have not said it, and therefore we shall go on as before.' " Id., at 597 (quoting Johnson v. United States, 163 F. 30, 32 (CA1 1908) (Holmes, J.)). Rather, we recognize that the language Congress uses to accomplish its objective is adapted to the circumstances it confronts.

For example, "cession" is generally what a tribe does when it conveys land to a fellow sovereign, such as the United States or another tribe. See Mitchel v. United States, 9 Pet. 711, 734 (1835); e.g., 1856 Treaty, Art. I, 11 Stat. 699. But here, given that Congress sought direct allotment to tribe members in order to enable private ownership by both Indians and the 300,000 settlers in the territory, it would have made little sense to "cede" the lands to the United States or "restore" the lands to the "public domain," as Congress did on other occasions. So too with a "commitment" to "compensate" the Tribe. Rather than buying land from the Creek, Congress provided for allotment to tribe members and also "; other allotment statutes have contained varri-

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disestablish a reservation. Hagen, 510 U. S., at 411. There are good reasons the statutes here do not include the language the Court looks for, and those reasons have nothing to do with a failure to disest ablish the reservation. Respect for Congress's work requires us to look at what it actually did, not search in vain for what it might have done or did on other occasions.

What Congress actually did here was enact a series of statutes beginning in 1890 and culminating with Oklahoma statehood that (1) established a uniform legal system for Indians and non-Indians alike; (2) dismantled the Creek government; (3) extinguished the Creek Nation's title to the lands at issue; and (4) incorporated the Creek members into a new political community—the State of Oklahoma. These statutes evince Congress's inte nt to terminate the reservation and create a new State in its place.

First, Congress supplanted the Creek legal system with a legal code and court system that applied equally to Indians and non-Indians. In 1890, Congress subjected the Indian Territory to specified federa l criminal laws. Act of May 2, 1890, §31, 26 Stat. 96. For o ffenses not covered by federal law, Congress did what it often did when establishing a new territorial government. It pr ovided that the criminal laws from a neighboring State, here Arkansas, would apply. §33, id., at 96–97. Seven years later, Congress provided that the laws of the United States and Arkansas "shall apply to all persons" in Indian Territory, " irrespective of race." Act of June 7, 1897 (1897 Act), 30 Stat. 83 (emphasis added). In the same Act, Congress conferred on the U. S. Courts for the Indian Territory "exclusive jurisdiction" over "all civil causes in law and equity" and "all criminal causes" for the punishment of offenses committed by "any person" in the Indian Territory. Ibid.

The following year, the 1898 Curtis Act "abolished" all tribal courts, prohibited all officers of such courts from ex-

ercising "any authority" to perform "any act" previously authorized by "any law," and transferred "all civil and criminal causes then pending" to the U. S. Courts for the Indian Territory. Act of June 27, 1898 (Curtis Act), §28, id., at 504–505. In the same Act, Congress completed the shift to a uniform legal order by banning the enforcement of tribal law in the newly exclusive jurisdiction of the U. S. Courts. See §26, id., at 504 ("[T]he laws of the various tribes or nations of Indians shall not be enforced at law or in equity by the courts of the United States in the Indian Territory."). Congress reiterated yet again in 1904 that Arkansas law "continued" to "embrace all persons and estates" in the territory—"whether Indian, freedmen, or otherwise." Act of Apr. 28, 1904, ch. 1824, §2, 33 Stat. 573 (emphasis added). In this way, Congress replaced tribal law with local law in matters at the core of tribal governance, such as inheritance and marital disputes. See, e.g., Georgev. Robb, 4 Ind. T. 61, 64 S. W. 615, 615–616 (1901); Colbert v. Fulton, 74 Okla. 293, 157 P. 1151, 1152 (1916).

In addition, the Curtis Act established municipalities to govern both Indians and non-Indians. It authorized "any city or town" with at least 200 residents to incorporate. §14, 30 Stat. 499. The Act gave incorporated towns "all the powers" and "all the rights" of municipalities under Arkansas law. Ibid. "All male inhabitants," including Indians, were deemed qualified to vote in town elections. Ibid. And "all inhabitants"—"without regard to race"—were made subject to "all" town laws and were declared to possess "equal rights, privileges, and protection." Id., at 499–500 (emphasis added). These changes reorganized the approximately 150 towns in the territory—including Tulsa, Muskogee, and 23 others within the Creek Nation's former territory—that were home to tens of thousands of people and nearly one third of the territory's population at the time, laying the foundation for the state governance that was to come. See H. R. Doc. No. 5, 57th Cong., 2d Sess., pt. 2, pp. 299–300,

Table 1 (1903); Depts. of Commerce and Labor, Bureau of Census, Population of Oklahoma and Indian Territory 1907, pp. 8, 30–33.

Second, Congress systematically dismantled the governmental authority of the Creek Nation, targeting all three branches. As noted, Congress dissolved the Tribe's judicial system. Congress also specified in the Original Creek Agreement that the Creek government would "not continue" past March 1906, essentially preserving it only as long as Congress thought necessary for the Tribe to wind up its affairs. §46, 31 Stat. 872. In the meantime, Congress radically curtailed tribal legislative authority, providing that no statute passed by the council of the Creek Nation affecting the Nation's lands, money, or property would be valid unless approved by the Pres ident of the United States. §42, id., at 872. When 1906 came around, the Five Tribes Act provided for the "final disposition of the affairs of the Five Civilized Tribes." Act of Apr. 26, 1906, ch. 1876, 34 Stat. 137. Along with "abolish[ing]" all tribal taxes, the Act directed the Secretary of the Inte rior to assume control over the collection of the Nation's remaining revenues and to distribute them among tribe members on a per capita basis. §§11, 17, id., at 141, 143–144. Thus, by the time Oklahoma became the 46th State in 1907, there was little left of the Creek Nation's authority: No tri bal courts. No tribal law. No tribal fisc. And any lingering authority was further reduced in 1908, when Congress amended the Five Tribes Act to require tribal officers and members to surrender all remaining tribal property, money, and records. Act of May 27, 1908, §13, 35 Stat. 316.

The Court stresses that the Five Tribes Act separately stated that the Creek governme nt was "continued" in "full force and effect for all purposes authorized by law." Ante, at 15 (quoting §28, 34 Stat. 148). By that point, however, such "authorized" purposes were nearly nonexistent, and the Act's statement is readily explained by the need to

Creeks. §§11, 14, id., at 866. The agreement required that the deeds for the allotments and town site purchases convey "all right, title, and interest of the Creek Nation and of all other [Creek] citizens," and t hat the deeds be executed by the leader of the Creek Nation (the "principal chief "). §23, id., at 867–868. The conveyances were then approved by the Secretary of the Interior, who in turn "relinquish[ed] to the grantee . . . all the right, title, and interest of the United States" in the land. Id. , at 868. In this way, Congress provided for the complete terminat ion of the Creek Nation's interest in the lands, as well as the interests of individual Creek members apart from their personal allotments. Indeed, the language Congress used in the Original Creek Agreement resembles what the Court regards as model disestablishment language. See ante, at 8, 10 (looking for language evincing "the present and total surrender of all tribal interests in the affected lands" (internal quotation marks omitted)). And, making even more clear its intent to place Indian-held land under the same laws as all other property, Congress subsequently eliminated restrictions on the alien - ation of allotments, freeing tribe members "to sell their land to Indians and non-Indians alike." Ante, at 10.

In addition, while the Original Creek Agreement did not

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parcels. Contrary to the Court's portrayal, this is not a scenario in which Congress allowed a tribe to "continue to exercise governmental functions over land" that it "no longer own[ed] communally." Ante, at 11. From top to bottom, these statutes, which divested the Tribes and the United States of their interests while displacing tribal governance, "strongly suggest[ ] that Congress meant to divest" the lands of reservation status. Solem, 465 U. S., at 470.

Finally, having stripped the Creek Nation of its laws, its powers of self-governance, and its land, Congress incorporated the Nation's members into a new political community. Congress made "every Indian" in the Oklahoma territory a citizen of the United States in 1901—decades before conferring citizenship on all native born Indians elsewhere in the country. Act of Mar. 3, 1901, ch. 868, 31 Stat. 1447. In the Oklahoma Enabling Act of 1906—the gateway to statehood—Congress confirmed that members of the Five Tribes would participate in equal measure alongside non-Indians in the choice regarding statehood. The Act gave Indians the right to vote on delegates to a constitutional convention and ultimately on the state constitution that the delegates proposed. §§2, 4, 34 Stat. 268, 271. Fifteen members of the Five Tribes were elected as convention delegates, many of them served on significant committees, and a member of the Chickasaw Nation even served as president of the convention. See Brief for Seventeen Oklahoma District Attorneys et al. as Amici Curiae 9–13.

The Enabling Act also ensured that Indians and non-Indians would be subject to uniform laws and courts. It replaced Arkansas law, which had applied to all persons "irrespective of race," 1897 Act, 30 Stat. 83, with the laws of the adjacent Oklahoma Territory until the new state legislature provided otherwise. Enabling Act §§2, 13, 21, 34 Stat. 268–269, 275, 277–278; see Jefferson v. Fink, 247 U. S. 288, 294 (1918). All of the pending cases in the territorial courts arising under federal law were transferred to

the newly created U. S. District Courts of Oklahoma. See §16, 34 Stat. 276. Pending cases not involving federal law, including those that involved Indians on Indian land and had arisen under Arkansas law, were transferred to the new Oklahoma state courts. §§16, 17, 20, *id.*, at 276–277. To dispel any potential confusion about the distribution of criminal cases, Congress amended the Enabling Act the following year, clarifying that all cases for crimes that would have fallen under federal jurisdiction had they been committed in a State would be transferred to the U. S. District Courts. Act of Mar. 4, 1907, §1, *id.*, at 1286–1287. All other pending criminal cases would be "prosecuted to a final determination in the State courts of Oklahoma." §3, *id.*, at 1287. As [illegible] civil cases, the new state courts were [illegible]

about extinguishing the Creek domain, or any shortage of "will." Quite the opposite. Through an open and concerted effort, Congress did what it set out to do: transform a reservation into a State. "Mustering the broad social consensus required to pass new legislatio n is a deliberately hard business," as the Court reminds us. Ibid. Congress did that hard work here, enacting not one but a steady progression of major statutes. The Court today does not give effect to the cumulative significance of Congress's actions, because Congress did not use explicit words of the sort the Court insists upon. But Congress had no reason to suppose that re03willw Coblk d1J 0.d sritor162 Span <>BDC 0.0>BDC (-)Tj EMC /P10 </MCID 6 >>BDC

where who encourage and receive any part of such contri-butions do it knowing that they can give no return or service for same and that they take such money fraudulently and dishonestly." Id., at 17a.[5]

In addition to their words, the contemporaneous actions of Oklahoma, the Creek, and the United States in criminal matters confirm their shared understanding that Congress did not intend a reservation to persist. Had the land been a reservation, the federal government—not the new State—would have had jurisdiction over serious crimes committed by Indians under the Major Crimes Act of 1885. See §9, 23 Stat. 385. Yet, at statehood, Oklahoma immediately began prosecuting serious crimes committed by Indians in the

These prosecutions were lawful, the Oklahoma Supreme Court recognized at the time, because Congress had not intended to "except out of [Oklahoma] an Indian reservation" upon its admission as a State. Higgins v. Brown, 20 Okla. 355, 419, 94 P. 703, 730 (1908).

Instead of explaining how everyone at the time somehow missed that a reservation still existed, the Court resorts to misdirection. It observes that Oklahoma state courts have held that they erroneously entertained prosecutions for crimes committed by Indians on the small number of remaining restricted allotments and tribal trust lands from the 1930s until 1989. But this Court has not addressed that issue, and regardless, it would not tell us whether the State properly prosecuted major crimes committed by Indians on the lands at issue here—the unrestricted fee lands that make up more than 95% of the Creek Nation's former territory. Perhaps most telling is that the State's jurisdiction over crimes on Indian allotments was hotly contested from an early date, whereas nobody raised objections based on a surviving reservation. See, e.g., Ex parte Nowabbi, 60 Okla. Crim. 111, 61 P. 2d 1139 (1936), overruled by State v. Klindt, 782 P. 2d 401, 404 (Okla. Crim. App. 1989); see also ante, at 21 ("no court" suggested the "possibility" that "the Creek lands really were part of a reservation" until 2017). [6]

Lacking any other arguments, the Court suspects uniform lawlessness: The State must have "overstepped its authority" in prosecuting thousands of cases for over a century. Ante, at 23. Perhaps, the Court suggests, the State

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[6] The Court claims that the Oklahoma courts' reasons for treating restricted allotments as Indian country must apply with "equal force" to the unrestricted fee lands at issue here, but the Court ultimately admits the two types of land are "legally distinct." Ante, at 23, n. 10. And any misstep with regard to the small number of restricted allotments hardly means the Oklahoma courts made the far more extraordinary mistake of failing to notice that the Five Tribes' reservations—encompassing 19 million acres—continued to exist.

lacked "good faith." Ibid. In the Court's telling, the federal government acquiesced in this extraordinary alleged power grab, abdicating its responsibilities over the purported reservation. And, all the while, the state and federal courts turned a blind eye.

But we normally presume that government officials exercise their duties in accordance with the law. Certainly the presumption may be strained from time to time in this area, but not so much as to justify the Court's speculations, which posit that government officials at every level either conspired to violate the law or uniformly misunderstood the fundamental structure of their society and government. Whatever the imperfections of our forebears, neither option seems tenable. And it is downright inconceivable that this could occur without prompting objections—from anyone, including from the Five Tribes themselves. Indians frequently asserted their rights during this period. The cases above, for example, involve criminal appeals brought by Indians, and Indians raised numerous objections to land graft in the former Territory. See Brief for Historians et al. as Amici Curiae 28–31. Yet, according to the extensive record

at 6, 10); see Solem, 465 U. S., at 471. Each of the indicia from our precedents—subsequent treatment by Congress, the State's unquestioned exercise of jurisdiction, and demographic evidence—confirms that the Creek reservation did not survive statehood.

First, "Congress' own treatment of the affected areas" strongly supports disestablishment. Id., at 471. After statehood, Congress enacted several statutes progressively eliminating restrictions on the alienation and taxation of Creek allotments, and Congress subjected even restricted lands to state jurisdiction. Since Congress had already destroyed nearly all tribal authority, these statutes rendered Creek parcels little different from other plots of land in the State. See Act of May 27, 1908, 35 Stat. 312; Act of June 14, 1918, 40 Stat. 606; Act of Apr. 10, 1926, 44 Stat. 239. This is not a scenario where Congress merely opened land for "purchase . . . by non-Indians" while allowing the Tribe to "continue to exercise governmental functions over [the] land," ante, at 11, and n. 3; rather, Congress eliminated both restrictions on the lands here and the Creek Nation's authority over them. Such developments would be surprising if Congress intended for all of the former Indian Territory to be reservation land insulated from state jurisdiction in significant ways. The simpler and more likely explanation is that they reflect Congress's understanding through the years that "all Indian reservations as such have ceased to exist" in Oklahoma, S. Rep. No. 1232, 74th Cong., 1st Sess., 6 (1935), and that "Indian reservations [in the Indian Territory] were destroyed" when "Oklahoma entered the union," S. Rep. No. 101–216, p. 47 (1989).

That understanding is now woven throughout the U. S. Code, which applies numerous statutes to the land here by extending them to the "former reservation[s]" "in Oklahoma"—underscoring that no reservation exists today. 25 U. S. C. §2719(a)(2)(A)(i) (emphasis added) (Indian Gaming

Regulatory Act); see Brief for United States as Amicus Curiae 23; 23 U. S. C. §202(b)(1)(B)(v) (road grants; "former Indian reservations in the State of Oklahoma"); 25 U. S. C. §1452(d) (Indian Financing Act; "former Indian reservations in Oklahoma"); §2020(d) (education grants; "former Indian reservations in Oklahoma"); §3103(12) (National Indian Forest Resources Management Act; "former Indian reservations in Oklahoma"); 29 U. S. C. §741(d) (American Indian Vocational Rehabilitation Services Act; "former Indian reservations in Oklahoma"); 33 U. S. C. §1377(c)(3)(B) (waste treatment grants; "former Indian reservations in Oklahoma"); 42 U. S. C. §5318(n)(2) (urban development grants; "former Indian reservations in Oklahoma"). [7]

Second, consider the State's "exercis[e] [of] unquestioned jurisdiction over the disputed area since the passage of" the Enabling Act, which deserves "weight" as "an indication of the intended purpose of the Act." Rosebud Sioux Tribe, 430 U. S., at 599, n. 20, 604. As discussed above, for 113 years, Oklahoma has asserted jurisdiction over the former Indian

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[7] The Court suggests that these statutes only show that there are some "former reservations" in Oklahoma, not that the Five Tribes' former domains are necessarily among them. Ante, at 27, n. 14. History says otherwise. For example, the Five Tribes actively lobbied for inclusion of this

Territory on the understanding that it is not a reservation, without any objection by the Five Tribes until recently (or by McGirt for the first 20 years after his convictions). See Brief for Respondent 4, 40. The same goes for major cities in Oklahoma. Tulsa, for example, has exercised jurisdiction over both Indians and non-Indians for more than a century on the understanding that it is not a reservation. See Brief for City of Tulsa as Amicus Curiae 27–28.

All the while, the federal government has operated on the same understanding. Brief for United States as Amicus Curiae 24. No less than Felix Cohen, whose authoritative treatise the Court repeatedly cites, agreed while serving as Acting Solicitor of the Interior in 1941 that "all offenses by or against Indians" in the former Indian Territory "are subject to State laws." App. to Supp. Reply Brief for Petitioner in Carpenter v. Murphy, O. T. 2018, No. 17–1107, p. 1a (Memorandum for Commissioner of Indian Affairs (July 11, 1941)). In the view of the Department of the Interior, such state jurisdiction was appropriate because the reservations in the Territory "lost their character as Indian country" by the time Oklahoma became a State. App. to Brief for United States as Amicus Curiae 4a (Letter from O. Chapman, Assistant Secretary of the Interior, to the Attorney General (Aug. 17, 1942)); see also supra, at 28, n. 6.

Indeed, far from disputing Oklahoma's jurisdiction, the Five Tribes themselves have repeatedly and emphatically agreed that no reservation exists. After statehood, tribal leaders and members frequently informed Congress that "there are no reservations in Oklahoma." App. to Brief for Respondent 19a (Testimony of Hon. Bill Anoatubby, Governor, Chickasaw Nation, Hearings before the Subcommittee on Indian, Insular and Alaska Native Affairs of the House Committee on Natural Resources (Feb. 24, 2016)). [8] They

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[8] See App. to Brief for Respondent 18a–19a (excerpting various statements before Congress, including: "[w]e are not a reservation tribe"

took the same position before federal courts. Before this litigation started, the Creek Nation represented to the Tenth Circuit that there is only " 'checkerboard' Indian country within its former reservation boundaries." Reply Brief in No. 09–5123, p. 5 (emphasis added). And the Nation never once contended in this Court that a sprawling reservation still existed in the more than a century that preceded the present disputes.

Like the Creek, this Court has repeatedly described the area in question as the "former" lands of the Creek Nation.

factor entitled to weight as part of the 'jurisdictional history.' " Id. , at 603–604 (citations omitted).

Third, consider the "subsequent demographic history" of the lands at issue, which provides an " 'additional clue' " as to the meaning of Congress's actions. Parker, 577 U. S., at ___ (slip op., at 10) (quoting Solem, 465 U. S., at 472). Continuing from statehood to the present, the population of the lands has remained approximately 85%–90% non-Indian. See Brief for Respondent 43; Murphy v. Royal, 875 F. 3d 896, 965 (CA10 2017). "[T]hose demographics signify a diminished reservation." Yankton Sioux Tribe , 522 U. S., at 357. The Court questions whether the consideration of demographic history is appropriate, ante, at 18–19, 27, but we have determined that it is a " necessary expedient." Solem, 465 U. S., at 472, and n. 13 (emphasis added); see Parker, 577 U. S., at ___ (slip op., at 10). And for good reason. Our precedents recognize that disestablishment cases call for a wider variety of tools than more workaday questions of statutory interpretation. Supra, at 12. In addition, the use of demographic data addresses the practical concern that "[w]hen an area is predominately populated by non-Indians with only a few surviving pockets of Indian allotments, finding that the land remains Indian country seriously burdens the administration of state and local governments." Solem, 465 U. S., at 471–472, n. 12.

Here those burdens—the prod uct of a century of settled understanding—are extraordinary. Most immediately, the Court's decision draws into question thousands of convictions obtained by the State for crimes involving Indian defendants or Indian victims across several decades. This includes convictions for serious crimes such as murder, rape, kidnapping, and maiming. Such convictions are now subject to jurisdictional challenges, leading to the potential re - lease of numerous individuals found guilty under state law

relationship[ ] with the tribe or its members" or directly affects "the political integrity, the economic security, or the health or welfare of the tribe." Montana v. United States, 450 U. S. 544, 565–566 (1981); see Cohen §6.02(2)(a), at 506–507. Tribes may also impose certain taxes on non-Indians on reservation land, see Kerr-McGee Corp. v. Navajo Tribe, 471 U. S. 195, 198 (1985), and in this litigation, the Creek Nation contends that it retains the power to tax nonmembers doing business within its borders. Brief for Muscogee (Creek) Nation as Amicus Curiae 18, n. 6. No small power, given that those borders now embrace three million acres, the city of Tulsa, and hundreds of thousands of Oklahoma citizens. Recognizing the significant "potential for cost and conflict" caused by its decision, the Court insists any problems can be ameliorated if the citizens of Oklahoma just keep up the "spirit" of cooperation behind existing intergovernmental agreements between Oklahoma and the Five Tribes. Ante, at 41. But those agreements are small potatoes compared to what will be necessary to address the disruption inflicted by today's decision.

The Court responds to these and other concerns with the truism that significant consequences are no "license for us to disregard the law." Ibid. Of course not. But when those consequences are drastic precisely because they depart from how the law has been applied for more than a century—a settled understanding that our precedents demand we consider—they are reason to think the Court may have taken a wrong turn in its analysis.

* * *

As the Creek, the State of Oklahoma, the United States, and our judicial predecessors have long agreed, Congress disestablished any Creek reservation more than 100 years ago. Oklahoma therefore had jurisdiction to prosecute McGirt. I respectfully dissent.

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The Oklahoma Court of Criminal Appeals concluded that petitioner's claim was procedurally barred under state law because it was "not raised previously on direct appeal" and thus was "waived for further review." 2018 OK CR 1057 ¶2, ___ P. 3d ___, ___ (citing Okla. Stat., Tit. 22, §1086 (2011)). The court found no grounds for excusing this default, explaining that "[p]etitioner [had] not established any sufficient reason why his current grounds for relief were not previously raised." ___ P. 3d, at ___. This state procedural bar was applied independent of any federal law, and it is adequate to support the decision below. We therefore lack jurisdiction to disturb the state court's judgment.

There are two possible arguments in favor of jurisdiction, neither of which hold water. First, one might claim that the state procedural bar is not an "adequate" ground for decision in this case. In *Murphy*, the Tenth Circuit suggested that Oklahoma law permits jurisdictional challenges to be raised for the first time on collateral review. 875 F. 3d, at 907, n. 5 (citing *Wallace v. State*, 1997 OK CR 18, 935 P. 2d