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Chief Justice Angela R. Riley and Professor Suzette Malveaux in Conversation at the Eleventh Annual John Paul Stevens Lecture: The Third Sovereign: Tribal Courts and Indian Country Justice

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Chief Justice Angela R. Riley and Professor
Suzette Malveaux *in Conversation* at the
Eleventh Annual John Paul Stevens Lecture:
*The Third Sovereign: Tribal Courts and Indian
Country Justice*

INTRODUCTION

The Byron R. White Center for the Study of American Constitutional Law at the University of Colorado-Boulder's Law School is a premier research and programming institution aiming to facilitate informed and engaged scholarship and dialogue on constitutional law.¹ As part of this effort, it hosts the annual John Paul Stevens Lecture, named after the U.S. Supreme Court Justice Stevens, who delivered the inaugural lecture in September 2011. This fireside chat brings distinguished jurists from around the country (and even world) to Colorado Law to discuss the state of the judiciary, democracy and current constitutional issues.² The esteemed lecture attracts students, lawyers, scholars and community members to Colorado Law to hear about the jurist's approach to some of the most important legal issues of the day.

The eleventh annual lecture, on October 18, 2022, was hosted in partnership with Colorado Law's American-Indian Law Program. This program provides students with robust opportunities to study and gain practical experience in American Indian law. Together with the White Center, it chose Professor and Chief Justice Angela R. Riley to deliver the Stevens Lecture. Chief Justice Riley joins the ranks of other esteemed jurists who have given the Stevens Lecture, including; six former United States Supreme Court justices, U.S. federal circuit court judges, state supreme court justices and appellate court judges, and a former justice on South Africa's Constitutional Court. Chief Justice Riley is the first Tribal Court Justice, first member of a federally-recognized tribe, and first American Indian woman to deliver the lecture. This bestowed honor formally recognizes the substantial role, and necessity, of federal Indian law in American constitutional and civil rights legal jurisprudence.

¹ *Byron R. White Center for the Study of American Constitutional Law*, UNIV. OF COLO. L. SCH., <https://www.colorado.edu/law/research/byron-white-center> [<https://perma.cc/5AFL-UVS3>].

² *See John Paul Stevens Lecture*, UNIV. OF COLO. L. SCH., <https://www.colorado.edu/law/research/byron-white-center/john-paul-stevens-lecture> [<https://perma.cc/J8NL-R64A>].

BIOGRAPHIES

Angela R. Riley (Citizen Potawatomi Nation) is an internationally-renowned indigenous rights scholar. She is Professor of Law and American Indian Studies at UCLA, as well as a Special Advisor to the Chancellor on Native American and Indigenous Affairs. In 2003, she became the first woman Justice of the Supreme Court of the Citizen Potawatomi Nation of Oklahoma. In 2010, she was elected as Chief Justice. She also works as an Evidentiary Hearing Officer for the Morongo Band of Mission Indians and sits as an Appellate Judge for both the Rincon Tribe Court of Appeals and the Pokagon Potawatomi Court of Appeals. She previously served as Co-Chair for the United Nations - Indigenous Peoples' Partnership Policy Board, with a goal of implementing the UN Declaration on the Rights of Indigenous Peoples.

Chief Justice Riley's academic research focuses on Indigenous peoples' rights, with a particular emphasis on cultural property and Native governance. Her work has been published in the nation's leading legal journals, including the *Yale Law Journal*, *Stanford Law Review*, *Columbia Law Review*, *California Law Review*, *Georgetown Law Journal* and numerous others. She received her undergraduate degree at the University of Oklahoma and her law degree from Harvard Law School. The Chief Justice clerked for Chief Judge T. Kern of the Northern District of Oklahoma before working as an associate of Quinn Emanuel in Los Angeles, specializing in intellectual property litigation. She is a member of the American Law Institute. She taught as the Oneida Indian Nation Visiting Professor of Law at Harvard Law School in Fall 2015 and co-teaches the Nation Building course at the Harvard Kennedy School of Government.

The Chief Justice was raised on a farm at Saddle Mountain in southwestern Oklahoma where she learned to butcher chickens, chop cotton, castrate hogs, and live free. She now resides with her family in Los Angeles, California.³

Suzette Malveaux is the Moses Lasky Professor of Law at Colorado Law and the Director of the Byron R. White Center for the Study of American Constitutional Law. She is a member of the American Law Institute and former Chair of the American Association of Law Schools Civil Procedure Section. She recently received the American Bar Foundation 2024 Outstanding Service Award and the National Civil Justice Institute 2024 Scholarship Award. She has taught in the areas of Civil Procedure, Complex Litigation, Employment Discrimination, Civil Rights, and Constitutional Law for over two decades. Her scholarship explores the intersection of civil rights and civil procedure, and access to justice issues. She is co-editor of

³ See *Angela R. Riley*, UCLA L., <https://law.ucla.edu/faculty/faculty-profiles/angela-r-riley/> [<https://perma.cc/EZS3-76TY>]; see also *Angela R. Riley, Home*, <https://www.angelariley.com/> [<https://perma.cc/BD4K-49Z3>] (last visited Mar. 1, 2024).

A Guide to Civil Procedure; Integrating Critical Legal Perspectives (NYU Press, 2022) and co-author of *Class Actions and Other Multi-Party Litigation; Cases and Materials* (West, 2006, 2012). Her research has been published in the *Harvard Law Review Forum*, *George Washington Law Review*, *Boston University Law Review*, *Washington University Law Review*, *Kansas Law Review*, *Boston College Law Review*, and the *Berkeley Journal of Employment & Labor Law*.

Malveaux was a civil rights attorney and class action specialist prior to joining the academy. For six years, she served as pro bono counsel for the plaintiffs in *Alexander v. State of Oklahoma*, the constitutional lawsuit filed against Tulsa by victims of the 1921 Tulsa Race Massacre. As co-counsel, she represented the victims before the U.S. federal courts, the Inter-American Commission on Human Rights and the U.S. House of Representatives. Malveaux also represented over 1.5 million women alleging gender discrimination against Wal-Mart, the largest employment discrimination case to date.

Professor Malveaux graduated magna cum laude from Harvard University. She earned her J.D. from NYU School of Law, where she was a Root-Tilden Scholar, Associate Editor of the Law Review and Center for International Law Fellow.⁴

OVERVIEW OF LECTURE

The fireside conversation between Chief Justice Riley and Professor Malveaux opened with remarks given by Colorado Law's Dean Lolita Buckner Inniss. Afterwards, Chief Justice Riley and Professor Suzette Malveaux spent over an hour in discussion about tribal courts and their position as the "Third Sovereign" in the United States.⁵

Chief Justice Riley formally began the Stevens Lecture by providing the audience with a survey of the landscape of Federal Indian Law and the role of tribal courts.⁶ The Justice then spoke about the complexities of criminal jurisdiction within Indian Country, the consequent impact this system has had specifically on Indigenous women and girls—markedly, 85% of Indigenous women have been subjected to violence at some point—and

⁴ See *Suzette Malveaux*, UNIV. OF COLO. L. SCH., <https://lawweb.colorado.edu/profiles/profile.jsp?id=884> [<https://perma.cc/227B-MPQW>].

⁵ See Tatiana Nelson, *11th Annual John Paul Stevens Lecture hosted Chief Justice Angela Riley who discussed Tribal Courts and Justice in Indian Country*, UNIV. COLO. L. SCH., (Nov. 3, 2022), <https://www.colorado.edu/law/2022/11/03/11th-annual-john-paul-stevens-lecture-hosted-chief-justice-angela-riley-who-discussed> [<https://perma.cc/H4EW-FFMD>].

⁶ See *id.* In particular, Chief Justice Riley explained that in the United States, there are over 400 Tribal justice institutions. These institutions retain varied practices, ranging from peace-keeping and the use of panels of elders to the adversarial system that resembles that of state and federal courts. Across this landscape, tribal courts remain essential to the sovereignty and self-determination of indigenous people, as these institutions allow tribes to enforce their own laws and values.

further, how an acute lack of tribal court jurisdiction to prosecute non-Native Americans on Tribal land allows for the assault of Indigenous women in Indian Country at rates significantly higher than other groups nationally.⁷

After these remarks, Professor Malveaux directed the conversation to the state of Federal Indian Law in the United States Supreme Court. The pair first discussed the landmark case *McGirt v. Oklahoma*,⁸ wherein the Supreme Court held that for the purposes of the Major Crimes Act, land reserved for the Creek Nation in eastern Oklahoma has long been—and remains today—“Indian Country.”⁹ In *McGirt*, Justice Riley highlighted how consequential the decision was from its very first line—“On the far end of the Trail of Tears was a promise.”¹⁰ Addressing the impact of *McGirt*, Justice Riley noted the essential importance, and associated power, involved in the Court’s acknowledgement.

Professor Malveaux and Justice Riley then noted that the promise of *McGirt* proved short lived, as just two years after *McGirt*, in *Oklahoma v. Castro-Huerta*,¹¹ the Court held that the federal government and the state have concurrent jurisdiction to prosecute crimes committed by non-Indians in Indian Country.¹² *Castro-Huerta* significantly curtailed inherent Tribal powers, and distinctly departed from close to two hundred years of precedent. Justice Riley continued the discussion with an analysis of *Brackeen v. Haaland*,¹³ and recognized the unique political status of Tribal nations. In particular, Justice Riley remarked on the Court’s apparent willingness to overturn well-settled precedent in this area. For the Justice, the Court’s tendency to overturn provoked a clear worry: if ICWA were held unconstitutional, the existing minimum standards it codifies for the removal of Native American children (and the preference that those removed be placed with extended family members or in Native foster homes) would be lost.

Six students from various student organizations at the Law School were selected to ask questions, ranging from the ABA requirement to teach cross-cultural competency to the milestones achieved by Indigenous people in Oklahoma, to the incorporation of international human rights into Tribal jurisprudence. At the end, Justice Riley left the students with words

⁷ *See id.*

⁸ 140 S. Ct. 2452 (2020).

⁹ In so holding, the Court articulated the fundamental of the Creek’s right to their land powerfully: “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.” *See id.* at 2482.

¹⁰ *See id.* at 2459.

¹¹ 597 U.S. 629 (2022).

¹² *Id.* at 656.

¹³ 994 F.3d 249 (5th Cir. 2021), *aff’d in part, vacated in part, rev’d in part*, 599 U.S. 255 (2023).

of wisdom. Her experiences growing up on a farm in rural Oklahoma and her close ties to her tribe inform her perspective as a judge on her tribe's highest court. She remains hopeful for the future of Indian sovereignty for two reasons: first, tribes' persistence in the face of adversity and concerted efforts of erasure by the federal government, and second, young people who have supported a global movement for Indigenous rights. As Justice Riley put it, "Indian tribes are governing and living on behalf of seven generations after them." This forward-looking, generational thinking will ensure that Indigenous people not only survive but thrive.

LECTURE

Professor Suzette Malveaux (Professor Malveaux): Thank you so much to Justice Riley for being here. We are really thrilled and honored to have you. I think this is an especially important conversation to have given the assaults on our democracy today, so I'm very much looking forward to your insights Justice Riley. I am also really grateful that the White Center¹⁴ has partnered this year with the American Indian Law Program¹⁵ to have this conversation. So, my partner in crime, Professor Kristen Carpenter,¹⁶ and I couldn't be more thrilled to be working with you this year. Tonight's discussion is going to be in a fireside chat format. Justice Riley will be discussing native nations as the Third Sovereign¹⁷ within the legal framework of the United States. We will be exploring the role of the courts in ensuring justice in Indian Country. The fireside chat is going to be followed by a Q&A from law students who have submitted questions in advance. So, let's go ahead and start with our topic today.

We know that Justice Sandra Day O'Connor, about 25 years ago, published an article in the *Tulsa Law Review* talking about the Third Sovereign.¹⁸ I'm wondering what you mean when you say Indian tribes are the "Third Sovereign" within the legal framework of the United States.¹⁹ What are we talking about?

¹⁴ Byron R. White Center, *supra* note 1.

¹⁵ American Indian Law Program, UNIVERSITY OF COLORADO LAW SCHOOL, <https://www.colorado.edu/law/academics/areas-study/american-indian-law-program> [<https://perma.cc/VBR2-TZGL>] (last visited Mar. 1, 2024).

¹⁶ Kristen A. Carpenter, UNIV. OF COLO. L. SCH., <https://lawweb.colorado.edu/profiles/profile.jsp?id=368> [<https://perma.cc/7ZDF-QYGE>] (last visited Mar. 1, 2024).

¹⁷ Sandra D. O'Connor, *Lessons from the Third Sovereign: Indian Tribal Courts*, 33 TULSA L. J. 1, 1 (1997) ("Today, in the United States, we have three types of sovereign entities—the Federal government, the States, and the Indian tribes. Each of the three sovereigns has its own judicial system, and each plays an important role in the administration of justice in this country.").

¹⁸ *Id.*

¹⁹ See, e.g., Angela R. Riley, *(Tribal) Sovereignty and Illiberalism*, 95 CALIF. L. REV. 799, 802 (2007) ("American Indian tribes do not neatly fit into existing legal paradigms because they inhabit a strange sovereign space in the U.S. legal system, one which they alone occupy."); Angela R. Riley, *Native Nations and the Constitution: An Inquiry Into "Extra-Constitutionality"*,

Justice Angela R. Riley (Justice Riley): Well, first of all bozho,²⁰ hello, nice to see you all; thank you for being here. When I say the Third Sovereign, I mean it in exactly the way that it sounds. In the United States, of course, we know that we have the federal courts; we know that we have the state courts. But many people don't know that we also have tribal courts and that Tribal governments are, in fact, sovereign nations, who run their own governments and have their own tribal court systems, which are essential to administering justice and keeping peace, safety and security, resolving disputes, and all the things that courts do tribal courts do in Tribal communities. I know Colorado does a wonderful job; none of you are going to graduate without knowing that tribes are the Third Sovereign. But many, many people actually are unaware of Tribal sovereignty and it's a key feature of Tribal self-determination.

Professor Malveaux: Thank you. In our audience today, as I mentioned before, we have experts, we have American Indian lawyers, we have scholars, we have people who are in the field who have been working for years on these sorts of matters. At the same time, in our audience we also have people who don't have any information and we're learning for the first time about Indian courts and Tribal sovereignty. That's in large part, I think, because of our educational system. Can you give us a little bit about what tribal courts do, what kind of cases they hear, and how much they vary amongst each other?

Justice Riley: Yeah, absolutely. tribal courts are as varied as Tribes themselves. There are 574 federally recognized Indian Tribes in the United States, which may be a surprising number to some of you, maybe not to others.²¹ There are around 400 Tribal justice institutions at work in the United States today, and they fall along a wide spectrum.²² I can give you an example. Some Tribes use Tribal institutions to resolve disputes where procedures and policies and laws may not be written down; they may be passed orally.²³ Some pieces of information may be kept only by particular members of the community.²⁴ Some of those conflicts might be resolved by a panel of elders

130 HARV. L. REV. F. 173, 174 (2017) (“Through treaties, the Constitution, federal statutes, and Supreme Court jurisprudence, the distinct status of tribes as sovereigns has been repeatedly affirmed in both domestic and international law. This history sets a baseline for understanding Indian tribes’ historical and continued resistance to integration and assimilation.... Engaging with colonial powers — and ultimately, the United States — on a sovereign-to-sovereign basis since first contact, tribes have sought largely to be left alone to govern their own affairs.”).

²⁰ In the Potawatomi language, a part of the Algonquian language family, the word “bozho” means “hello.”

²¹ MAINON A. SCHWARTZ, CONG. RSCH. SERV., R47414, THE 574 FEDERALLY RECOGNIZED INDIAN TRIBES IN THE UNITED STATES 1 (2024).

²² *Tribal Public Safety*, U.S. DEP'T OF THE INTERIOR, <https://www.doi.gov/ocl/Tribal-public-safety> [<https://perma.cc/7AKT-ZDDU>] (last visited Mar. 1, 2024).

²³ See, e.g., *Tribal Court*, CENT. COUNCIL OF THE TLINGIT & HAIDA INDIAN TRIBES OF ALASKA, <https://www.cchita.org/government/court/index.html> [<https://perma.cc/2ZHK-HCW5>] (last visited Mar. 1, 2024).

²⁴ See Matthew L.M. Fletcher, *Rethinking Customary Law in Tribal Court Jurisprudence*, 13 MICH. J. RACE & L. 57, 66–67 (2007).

or spiritual or religious leaders.²⁵ Then, on the complete other end of the spectrum, you can see Tribes that have tribal courts that would very much emulate what you see in the state or federal system.²⁶ These tribal courts have an adversarial model with all the bells and whistles of court reporters, transcripts, and defense attorneys, and district courts and appellate courts of various levels.²⁷ My own tribe actually has a district court and then we have a supreme court.²⁸ So, the Supreme Court is the one and only appellate level in my Tribe.

So really there's a wide array; and, I should also say that tribal courts, also depending on the Tribe's specific needs, will tailor its court to what its particular objectives are or what's a good fit for its community. Some Tribes, for example, might only want to deal with family law matters.²⁹ So, they might have a court that only deals with family law. Other tribal courts might be set up specifically to deal with criminal matters, but with diversion programs or culturally appropriate punishments that are intended to avoid the carceral system.³⁰ Across Indian Country, you'll see all kinds of things, such as peacemaking courts³¹ and wellness courts.³² There is really an enormous variety in Indian Country. It's as varied as the tribes themselves really.

²⁵ *Id.*

²⁶ *See, e.g., Judicial Branch*, THE OSAGE NATION, <https://www.osagenation-nsn.gov/who-we-are/judicial-branch> (last visited Mar. 1, 2024).

²⁷ *See, e.g., Tribal Court*, WINNEBAGO TRIBE OF NEBRASKA, <https://winnebago-tribe.com/Tribal-court/> [<https://perma.cc/T8DV-UM29>] (last visited Mar. 1, 2024); *Judiciary*, ONEIDA NATION, <https://oneida-nsn.gov/judiciary/> [<https://perma.cc/M9CW-U3C6>] (last visited Mar. 1, 2024); *Tribal Court*, MOHEGAN TRIBE, <https://www.mohegan.nsn.us/about/government/the-Tribal-court-sytem/Tribal-court> (last visited Mar. 1, 2024); *Judicial Branch – The Wilton Rancheria Courts*, WILTON RANCHERIA, <https://wiltonrancheria-nsn.gov/tc/JudicialBranch/tabid/981/language/en-US/Default.aspx> [<https://perma.cc/FYK9-5YZM>] (last visited Mar. 1, 2024).

²⁸ *Judicial Branch*, CITIZEN POTAWATOMI NATION, <https://www.potawatomi.org/government/judicial-branch/> [<https://perma.cc/C4X4-39TD>] (last visited Mar. 1, 2024).

²⁹ *See, e.g., K'ii-daa-naa-dvn (Tribal Judicial System)*, TOLOWA DEE-NI' NATION, <https://www.tolowa-nsn.gov/208/Tribal-Court> [<https://perma.cc/5G9R-DLBF>] (last visited Mar. 1, 2024).

³⁰ *See, e.g., Diversion Court*, LEECH LAKE BAND OF OJIBWE, <https://www.llojibwe.org/court/diversion.html> [<https://perma.cc/HU3Y-UNVC>] (last visited Mar. 1, 2024); *Tribal Court Elders Panel*, TULALIP TRIBES, <https://www.tulalipTribalCourt-nsn.gov/ProgramsAndServices/TribalCourtEldersPanel> [<https://perma.cc/3XV9-2BFT>] (last visited Mar. 1, 2024).

³¹ *See, e.g., Peacemaking Court*, THE CHICKASAW NATION, <https://judicial.chickasaw.net/Courts/Peacemaking-Court.aspx> [<https://perma.cc/UVZ7-F4DK>] (last visited Mar. 1, 2024); *Choctaw Nation Peacemakers*, CHOCTAW NATION JUD. BRANCH, <https://www.choctawnation-court.com/courts/peacemaker/> [<https://perma.cc/Y4S6-S28H>] (last visited Mar. 1, 2024); *Tribal Court Peacemaking Program*, PUEBLO OF ISLETA, <https://www.isletapueblo.com/Tribal-court-peacemaking-program/> [<https://perma.cc/9XES-WZAN>] (last visited Mar. 1, 2024).

³² *See, e.g., Healing to Wellness Court*, PENOBSCOT NATION, <https://www.penobscot-nation.org/departments/Tribal-court/penobscot-indian-nation-healing-to-wellness-court/> [<https://perma.cc/7KDZ-VLL3>] (last visited Mar. 1, 2024); *Wellness Court*, MILLE LACS BAND OF OJIBWE, <https://millelacsband.com/government/judicial/wellness-court> [<https://perma.cc/ZTH5-BHUW>] (last visited Mar. 1, 2024); *Quinault Tribal Healing to Wellness Courts*, QUINAULT TRIBAL COURT, <https://www.quinaultindiannation.com/356/Wellness-Court> [<https://perma.cc/3YVN-U5RF>] (last visited Mar. 1, 2024).

Professor Malveaux: Well, we know that the notion of sovereignty is an incredibly important concept to Indian Tribes. What role would you say tribal courts play in sovereignty and self-determination?

Justice Riley: Well, I think it's at the heart of it really. I actually do a lot of work on Tribal law in addition to Federal Indian law and international law.³³ Tribal courts apply Tribal law, and so the law that's being applied in a tribal court is the law of the tribe itself, and that is by its very nature the essence of sovereignty. The process of lawmaking, of deciding as a community what you value, what you prioritize, what you want to protect, where property rights fall, who holds them, where sacred knowledge is, who holds it, all of those things are embodied in Tribal law. Tribal courts are the ones that enforce Tribal law — so they're really at the core of self-determination. And I think it's no surprise that one of the key efforts of the United States, in terms of trying to undermine Tribal sovereignty historically, was to criminalize tribal courts.³⁴ It's a great line of attack if you want to make Tribes less empowered. So, I think it really goes to the heart of it. And the way I think about it is that we do still have some vestiges of federal control in tribal courts in the U.S. to varying degrees. Not really very much anymore, but at the time when the federal government first destroyed, essentially, or dismantled Tribal legal systems, it put its own legal systems in place.³⁵ So for Tribes now to really be able to push out the federal systems and have their own systems, I think it is really at the heart of sovereignty.

Professor Malveaux: Thank you. You mentioned that there are 574 federally recognized tribes in the United States; most people are not going to be familiar with that. I think most Americans are not taught the true history in our country of how the continent was settled. What do you think are some of the biggest misconceptions about tribes and what are some of the most important things that we should know about Sovereign Nations?

Justice Riley: Well, this is interesting to me because growing up in Oklahoma — and Oklahoma has a very troubled history when it comes to Native people, which you probably are well aware of. But you can't grow up in Oklahoma and not know that there are Indian Tribes. There are 39 federally recognized Indian Tribes in the state of Oklahoma.³⁶ Most of the Tribes

³³ See, e.g., Angela R. Riley, *The Ascension of Indigenous Cultural Property Law*, 121 MICH. L. REV. 75 (2022) (conducting and analyzing a survey of Tribal cultural property law); Angela R. Riley, *Good (Native) Governance*, 107 COLUM. L. REV. 1049 (2007) (discussing the development of Tribal governance based in Tribal culture and tradition) [hereinafter *Good Native Governance*]; see also Kirsten A. Carpenter & Angela R. Riley, *Indigenous Peoples and the Jurisgenerative Moment in Human Rights*, 102 CALIF. L. REV. 173 (2014).

³⁴ Judith Resnick, *Dependent Sovereign Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671, 735–37 (1989).

³⁵ *Id.*

³⁶ *Oklahoma's Native Nations*, UNIV. OF OKLA. DEP'T OF NATIVE AM. STUD., <https://www.ou.edu/cas/nas/resources/Tribal-information> (last visited Mar. 1, 2024).

in Oklahoma aren't from there.³⁷ Most, like mine, were removed there at the end of the barrel of a gun and took reservations in Oklahoma by treaty in the late 1800s.³⁸ So, whatever your view is of Indian Tribes, you know that they exist.

When I went to law school on the East Coast, it was so surprising to me that many people I encountered, many of whom were from the East Coast, thought that all Indians were dead. That all Native people had been wiped out either by genocide or disease and there were no tribes left. Then, I moved to California and everyone that I met only thought that tribes were just these small groups of families that had casinos. Those were the two contrasting views that I saw, and of course, both are deeply, deeply flawed, and do not, in any way, capture the true essence of contemporary Tribal governments.

And what do I think people should know about Tribal governments? I mean I teach a class at the Kennedy School at Harvard every January with one of my own mentors, Joe Kalt,³⁹ called *Native Nation Building*,⁴⁰ and we really focus a lot on contemporary Tribes. It's really amazing to see what Indian tribes across the country are doing. People might be surprised to know, for example, in many places Indian Tribes are the largest employer in the county where they are.⁴¹ This is true of my own tribe.⁴² They employ Indians and non-Indians alike. Tribes engage in all forms of economic development. We are sovereign governments, so we have our own police forces; we have our own court systems. We have all the features that you would see in any other government. But there's a particular thing that is driving Tribal sovereignty and Tribal cohesion, and that's Tribal culture, tradition, religion, and life ways. That's really at the core of what Indian Tribes are, and what has basically, I think, allowed us to continue to survive the onslaught of colonization. That piece of it is always there.

Professor Malveaux: Thank you for that background and getting us all on the same page of understanding. Some of this is almost a primer on

³⁷ Mac Bentley, *39 Tribes Call State Home*, THE OKLAHOMAN (Feb. 16, 2003), <https://www.oklahoman.com/story/news/2003/02/16/39-tribes-call-state-home/62057840007/> [<https://perma.cc/RN2Y-2NZ7>].

³⁸ CLAUDIO SAUNT, UNWORTHY REPUBLIC: THE DISPOSSESSION OF NATIVE AMERICANS AND THE ROAD TO INDIAN TERRITORY 268–71, 275–81 (2020) (describing the United States' military campaign of removal of Tribes); SAMANTHA SEELEY, RACE, REMOVAL, AND THE RIGHT TO REMAIN 312–22 (2021) (same).

³⁹ *Joseph Kalt*, HARV. KENNEDY SCH., <https://www.hks.harvard.edu/faculty/joseph-kalt> [<https://perma.cc/C698-VPZT>] (last visited Mar. 1, 2024).

⁴⁰ *Nation Building*, HARV. UNIV. NATIVE AM. PROGRAM, <https://hunap.harvard.edu/nation-building> [<https://perma.cc/BA3S-KDQL>] (last visited Mar. 1, 2024).

⁴¹ Ailsa Chang, Megan Lim & Kathryn Fox, *Native American Economy Leads Rural Communities*, N.C. PUBLIC RADIO, <https://www.wunc.org/2022-04-13/native-american-economy-leads-rural-communities> [<https://perma.cc/LC9L-8K6F>] (last visited Mar. 1, 2024).

⁴² *Community Impact: Citizen Potawatomi Nation Paves Way For New Jobs In Oklahoma*, NATIONAL INDIAN GAMING COMMISSION, <https://www.nigc.gov/public-affairs/community-impact/citizen-potawatomi-nation-paves-way-for-new-jobs-in-oklahoma> [<https://perma.cc/P7B6-BRL4>] (last visited Mar. 1, 2024) (recognizing Citizen Potawatomi Nation to be “the largest employer in Pottawatomie County” and “the largest creator of new jobs in Shawnee, Oklahoma).

Tribes and the tribal courts. I want to turn our attention now to some substantive issues that are going on in Indian Country today and talk a little bit more deeply about those. One of the things that I know that you have worked really hard on, in terms of your research and your advocacy, is addressing criminal jurisdiction and addressing the tremendous violence against Indigenous women and girls.⁴³ Many people may not be familiar with this, but I the statistics are skyrocketing. About 85 percent of Indigenous women and Alaska Native women⁴⁴ have been subjected to violence at some point during their lives, and over half of them have experienced sexual assault.⁴⁵ As you know, there is a disproportionate impact on Native women when it comes to assaults, when it comes to abductions, rape, murder, you name it.⁴⁶ The difficulty that many Indigenous women have is complicated by the fact of complex criminal jurisdictional issues on Indian land.⁴⁷ Can you share with us a little bit about the work that you've done and what that's meant to you?

Justice Riley: For those who have studied criminal jurisdiction in Indian Country, I think it used to be called a jurisdictional maze,⁴⁸ and then a morass,⁴⁹ and I don't know what we're headed into next. But, one of the defining features is that the Supreme Court ruled in 1978, in an infamous case called *Oliphant*,⁵⁰ that the Tribes lacked criminal jurisdiction over non-Indians who committed crimes in Indian Country.⁵¹ That ruling is directly traced to what we see today, in part, with both domestic abuse, sexual assault, and crimes in general against Native women and girls, as well as missing

⁴³ See, e.g. generally, Angela R. Riley, *Crime and Governance in Indian Country*, 63 UCLA L. REV. 1564 (2016) (discussing the impact of complex jurisdiction over crimes in Indian Country and its impact on the staggering rates of missing and murdered Native women) [hereinafter *Crime and Governance*].

⁴⁴ See André B. Rosay, *Violence Against American Indian and Alaska Native Women and Men*, 277 NAT'L INST. JUST. J. 38, 39 (2016).

⁴⁵ See *id.*

⁴⁶ See generally *id.*; see also NATIONAL CRIME INFORMATION CENTER, FEDERAL BUREAU OF INVESTIGATION, 2021 NCIC MISSING PERSON AND UNIDENTIFIED PERSON STATISTICS 5 (rev. 2024) (finding that indigenous women and girls are going missing at more than two-and-a-half times as often as their share of the U.S. population); KATHLEEN C. BASILE, SHARON G. SMITH, MARCIE-JO KRESNOW, SRIJANA KHATIWADA & RUTH W. LEEMIS, CENTERS FOR DISEASE CONTROL AND PREVENTION, THE NATIONAL INTIMATE PARTNER AND SEXUAL VIOLENCE SURVEY: 2016/2017 REPORT ON SEXUAL VIOLENCE 5-7 (2022) (finding that Native women experienced the second-highest rate of homicide in 2020 and that more than 2 in 5 were raped in their lifetime).

⁴⁷ See *Crime and Governance*, *supra* note 43, at 1574-76.

⁴⁸ *Id.* at 1567 (citing Robert N. Clinton, *Criminal Jurisdiction Over Indian Lands: A Journey Through a Jurisdictional Maze*, 18 ARIZ. L. REV. 503, 504 (1976)).

⁴⁹ INDIAN LAW AND ORDER COMMISSION, A ROADMAP FOR MAKING NATIVE AMERICA SAFER: REPORT TO THE PRESIDENT & CONGRESS OF THE UNITED STATES ix (2013).

⁵⁰ *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191 (1978) *superseded by statute in part*, Department of Defense Appropriations Act of 1991, Pub. L. No. 101-511, § 8077(b)-(c), 104 Stat. 1856, 1892-93 (1990) (codified at 25 U.S.C. § 1301(2), (4)).

⁵¹ *Id.* at 195, 212.

and murdered Indigenous people.⁵² So, most of my work actually has been very much from the perspective in this area of a law professor. I've done a lot of research and I've tried to provide a scholarly foundation to allow for people to continue to use my research to advance advocacy in the field.

In 2013,⁵³ and again in 2022, Congress reauthorized the Violence Against Women Act,⁵⁴ which carves out a certain set of crimes, and acknowledges Tribes' inherent sovereignty to exercise criminal jurisdiction over non-Indians who commit certain kinds of crimes, mostly related to domestic violence and sexual assault against Native women and girls in Indian Country.⁵⁵ So, when the law was first reauthorized in 2013, there was a pilot project period of a year where three tribes in particular undertook to begin this process of prosecuting non-Indians for these crimes.⁵⁶ And so I did a deep dive on those cases.⁵⁷ I got the files of every single case that was filed during that period and went through all of them. I looked at everything that was charged, everything that happened, what happened to the defendants, and the situation of the victims. I wrote it up in one of those very short hundred-page law review articles that I'm sure you all love to read.⁵⁸ And in doing so, really highlighted what I think are best practices of Indian tribes. To many people's surprise, one of the points of opposition of Tribes having this jurisdiction was that Tribes would always rule and always convict non-Indians and, in fact, no, that wasn't the case.⁵⁹ In fact, the very first case and the only case that went to jury trial in that first year ended in an acquittal.⁶⁰ And so, there are so many examples — of what in my work I've called “good native governance” — of the incredible sophistication of Tribes and tribal courts that I think would surprise many, many people.⁶¹ And that's how I've tried to contribute and advance the ball in protecting Native women and girls and other vulnerable people on reservations.

Professor Malveaux: Right, and what has that meant to you as an Indigenous woman doing that work?

Justice Riley: Well, part of it comes from my own experience growing up in Indian Country. Growing up in a very, very rural part of the United

⁵² See *Crime and Governance*, *supra* note 43, at 1568–69, 1581–82.

⁵³ Violence Against Women Reauthorization Act of 2013, Pub. L. No. 113-4, § 904, 127 Stat. 120–122.

⁵⁴ Violence Against Women Reauthorization Act of 2022, Pub. L. 117-103, 136 Stat. 49 (codified at 25 U.S.C. § 1304).

⁵⁵ See *Crime and Governance*, *supra* note 43, at 1591.

⁵⁶ *Id.*

⁵⁷ See generally *id.*

⁵⁸ *Id.*

⁵⁹ See *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 210–11 (1978) *superseded by statute in part*, Department of Defense Appropriations Act of 1991, Pub. L. No. 101-511, § 8077(b)–(c), 104 Stat. 1856, 1892–93 (1990) (codified at 25 U.S.C. § 1301(2), (4)) (citing *Ex parte Crow Dog*, 109 U.S. 556, 571 (1883)).

⁶⁰ See *Crime and Governance*, *supra* note 43, at 1614.

⁶¹ See *Good Native Governance*, *supra* note 33.

States. For most of my growing up life, there was no 9-1-1 service, because no one had physical addresses. I understand the remote isolation of it. I understand a lot of the cultural impediments. So, for me, it's really—when I think about doing this work, I think about doing it for my family and I think about doing it for—I have two daughters who are enrolled Tribal members—doing it for my daughters, doing it for my students, so it's very personal to me.

Professor Malveaux: Thank you. It's amazing work and it's really important. I'd like to turn our attention to the Supreme Court, the United States Supreme Court. Let's start off with a good case. The Supreme Court has decided a number of cases recently. Two pivotal cases actually come out of the state of Oklahoma, your home state. I'm wondering what you think these cases tell us about the direction that the court is going in when it comes to Indian law. So, let's start with the *McGirt*⁶² case, which was decided in 2020, and then we can move to *Castro-Huerta*,⁶³ which was decided just two years after that and came to some very different conclusions. So, the *McGirt* case, I think many people feel is a very powerful, if not beautiful, beautifully written case by Justice Gorsuch. A 5-4 decision, it was in some ways groundbreaking because the Court held the United States government to its word. It said that we were actually going to take treaties seriously,⁶⁴ we're going to enforce the treaty, and we're going to understand the boundaries of Indian Country.⁶⁵ So can you tell us a little bit about that case and the impact that it had on you and so many people who've worked so hard to just have that recognition come out of the United States Supreme Court?

Justice Riley: Yeah, absolutely. Well, the case, if you're not familiar with the *McGirt* case, the Supreme Court held in a 5-4 decision, written by Justice Gorsuch, that the reservation of the Muscogee Creek Nation in Oklahoma had not been disestablished.⁶⁶ The Muscogee Creek Nation reservation had basically been retained from the point of its treaty, despite the fact that the state of Oklahoma had tried to encroach on those reservation lands for over a hundred years.⁶⁷ The first line of the opinion of Justice Gorsuch writes, "on the far end of the Trail of Tears there was a promise."⁶⁸ And it makes me emotional to say it now. I cried when I read that line. Because growing up in Oklahoma I never thought that I would see

⁶² *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020).

⁶³ *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022).

⁶⁴ See *McGirt*, 140 S. Ct. at 2459 ("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.")

⁶⁵ See *id.* at 2472–75, 2481–82.

⁶⁶ *Id.* at 2482 ("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.")

⁶⁷ See, e.g., *id.* at 2478 ("for many years the State continued to try Indians for crimes committed anywhere within its borders.")

⁶⁸ *Id.* at 2459.

something like that come out of the Court and actually acknowledge the Tribes in Oklahoma. And of course, not all the Tribes are similarly situated, but the five, so-called Five tribes, in Oklahoma did have similar treaties.⁶⁹ So as a consequence of *McGirt*, at least for criminal jurisdiction purposes — and remains to be seen for what other purposes — most of the eastern part of Oklahoma is now very decidedly within the bounds of an Indian reservation.⁷⁰ It was a remarkable decision and actually created a lot of change on the ground in Indian Country that the Tribes had to immediately respond to.⁷¹ Although, of course, they were gearing up for that possibility during the whole pending litigation.

Professor Malveaux: It's so powerful what you're saying. And I'd imagine for many people in the state of Oklahoma, it was also — the immediate impact — maybe was shocking: one million people in the state of Oklahoma,⁷² 400,000 in Tulsa,⁷³ realized that they are sitting on a reservation, that this is Indian Country, and that that treaty was actually taken seriously. So just a really powerful case. I hate to do this because now we're going to fast forward two years later to just a huge change, and I'm wondering what you think is behind that.

So, the *Castro Huerta* case, which was a Justice Kavanaugh decision, 5-4, seems to have really pushed back on a couple hundred years of precedent, of well-established law⁷⁴ — in its holding that the state of Oklahoma had inherent jurisdiction within its borders.⁷⁵ And I'm wondering how you respond to that. The dissent, again, Justice Gorsuch, came out with a strong dissent.⁷⁶ He quoted “truly a more ahistorical and mistaken statement of Indian law would be hard to fathom.”⁷⁷ So, why did the Supreme Court get it so wrong? I mean here it is, literally two years later. Is it just a change in

⁶⁹ See DAVID H. GETCHES, CHARLES F. WILKINSON, ROBERT A. WILLIAMS, JR., MATTHEW L.M. FLETCHER & KRISTEN A. CARPENTER, *CASES AND MATERIALS ON FEDERAL INDIAN LAW: TEACHER'S MANUAL* 107 (7th ed. 2017) (“As was apparent to those on the ground, the Chickasaw, Choctaw, Cherokee, and Seminole nations have very similar histories to that of the Creek Nation. As expected, the reasoning of the *McGirt* opinion applied to all of the Five Tribes.” (internal citations omitted)).

⁷⁰ See *McGirt*, 140 S. Ct. at 2479 (“[T]he Creek Reservation alone is hardly insignificant, taking in most of Tulsa and certain neighboring communities in Northeastern Oklahoma.”).

⁷¹ See, e.g., Jacob Fischler, *Three years after landmark ruling, Congress silent on Tribal jurisdiction in Oklahoma*, COLO. NEWSLINE (Aug. 30, 2023, 3:45AM), <https://coloradonewsline.com/2023/08/30/three-years-after-landmark-ruling-congress-silent-on-Tribal-jurisdiction-in-oklahoma/> [<https://perma.cc/C8W6-UCYM>] (quoting Cherokee Nation Attorney General who shared that Cherokee tribal courts saw an increase from between 50-100 to 4,000 criminal cases a year post-*McGirt*).

⁷² See *McGirt*, 140 S. Ct. at 2501 (Roberts, C.J., dissenting).

⁷³ *Id.*

⁷⁴ See *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 657 (2022) (Gorsuch, J., dissenting).

⁷⁵ See *id.* at 646 (referencing “inherent state prosecutorial authority in Indian country”). See also *id.* at 651 (“[T]he state has a strong sovereign interest in ensuring public safety and criminal justice within its territory.”).

⁷⁶ See *id.* at 646 (Gorsuch, J., dissenting).

⁷⁷ *Id.* at 667 (Gorsuch, J., dissenting).

the composition of the court from Justice Ginsburg to Justice Amy Coney Barrett or is there something else that's going on there?

Justice Riley: Well, I mean, if I could really answer that question, I'd be on the other Supreme Court. As many of you know, in the fallout from *McGirt*, the Tribes immediately had to pivot and the layers of criminal jurisdiction changed very rapidly. Part of that meant a transfer of power from the state of Oklahoma to the Tribes and the federal government.⁷⁸ The state of Oklahoma didn't like that; it very much felt threatened by the decision. The state of Oklahoma was very angry about the decision and immediately began filing petition after petition after petition to get the Supreme Court to reverse *McGirt*.⁷⁹ In the wake of the lack of legitimacy that the Court would have—although a big question mark on that⁸⁰—the lack of legitimacy that the Court would have if they actually reversed the *McGirt* decision two years after deciding the case. But the Court thankfully declined to do that.

But it did accept cert on a smaller issue in *Oklahoma v. Castro-Huerta*,⁸¹ which was to ask whether states had actually retained criminal jurisdiction in Indian Country despite the passage of the General Crimes Act.⁸² So, for 200 years, it's been understood that the state has no criminal jurisdiction in Indian Country over crimes by or against Indians in Indian Country absent an explicit act of Congress,⁸³ like Public Law 280.⁸⁴ So the baseline framework of criminal jurisdiction of Indian Country, if it involves an Indian, either as a defendant or a victim, has historically been Tribal and federal.⁸⁵

⁷⁸ See, e.g., Mitchell Jagodinski, *Fallout from McGirt and testimony about future crimes*, SCOTUSBLOG (Aug. 20, 2021, 8:48PM), <https://www.scotusblog.com/2021/08/fallout-from-mcgirt-and-testimony-about-future-crimes/> [<https://perma.cc/87QT-NCS7>] (noting that, according to the State, over 3,000 post-conviction relief applications were filed after *McGirt*, causing the release of 150 prisoners, almost half of whom were “set free.”).

⁷⁹ See Amy Howe, *Justices will review scope of McGirt decision, but won't consider whether to overturn it*, SCOTUSBLOG (Jan. 21, 2022, 3:22PM), <https://www.scotusblog.com/2022/01/justices-will-review-scope-of-mcgirt-decision-but-wont-consider-whether-to-overturn-it/#:~:text=Oklahoma%20filed%20more%20than%2030,the%20justices%20to%20overrule%20McGirt> [<https://perma.cc/AM3F-W53L>] (noting that leading up to the grant of cert in *Castro-Huerta*, “Oklahoma filed more than 30 separate petitions asking the justices to overturn *McGirt*.”).

⁸⁰ There have been recent decisions of the Supreme Court of the United States that have undermined its institutional legitimacy. See, e.g., *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215 (2022).

⁸¹ 597 U.S. 629 (2022).

⁸² See *id.* at 635–36 (“[T]he justices agreed to take up only the first question presented by the state’s petition, relating to the application of *McGirt* to bar state prosecutions of non-Native defendants who commit crimes against Native Americans in “Indian Country.”).

⁸³ See, e.g., *Worcester v. Georgia*, 31 U.S. 515, 520 (1832) (stating that as applied to the Cherokee Nation, “the laws of Georgia can have no force...but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of congress.”).

⁸⁴ See Carole E. Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 UCLA L. REV. 535, 537 (1975) (“The statute originally transferred to five willing states and offered all others, civil and criminal jurisdiction over reservation Indians regardless of the Indians’ preference for continued autonomy.”).

⁸⁵ See 18 U.S.C. §1152 (known as the Indian Country Crimes Act, granting federal court

And this is the scenario that Tribes want, in part because the states, like the state of Oklahoma, have actually not acted very often on behalf of Indians and Indian Tribes.⁸⁶ In my view, for the most part, they have not been trying to make Indian Country safer for Indian people.⁸⁷ By deciding *Castro-Huerta* the way it did, the Court sort of threw out 200 years of precedent. By the way, this doesn't just apply in Oklahoma. Any tribe in the United States that was arranged this way now has to reconfigure or think about what criminal jurisdiction is going to look like. But it did something bigger than that in that it suggests that states have sovereignty, have an inherent retained sovereignty, even within Indian Country.⁸⁸ And that is a principle that had been rejected by the courts since the country's inception.⁸⁹ So it was a pretty radical case in that respect.

Professor Malveaux: It's almost like whiplash, right? I mean two years after the *McGirt* case, to come back so opposite, in terms of going another direction. I'd like us to turn to the docket today. There are a number of cases that the Supreme Court is considering, and I am thinking about the *Brackeen*⁹⁰ case that's pending, with oral argument right around the corner.⁹¹ So, in that case the constitutionality of the Indian Child Welfare Act (ICWA)⁹² is being challenged.⁹³ The Court's looking at ICWA's constitutionality, looking at whether or not Congress has exceeded its authority, which is a little scary because ICWA, as you know, is the gold standard for how child welfare procedures go for children who are in the system.⁹⁴ And as many of my Civil Procedure students who are out there know, we talk about the

jurisdiction over crimes committed by non-Indians against Indians or vice versa); 18 U.S.C. § 1153 (known as the Major Crimes Act, granting federal court jurisdiction over a set number of serious Indian-on-Indian felonies).

⁸⁶ *United States v. Kagama*, 118 U.S. 375, 384 (1886) (“[Tribes] owe no allegiance to the states, and receive from them no protection. Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies.”).

⁸⁷ See generally DUANE CHAMPAGNE & CAROLE GOLDBERG, CAPTURED JUSTICE: NATIVE NATIONS AND PUBLIC LAW 280 (2020) (concluding, through the results of several interviews and studies, that Public Law 280 states having criminal jurisdiction over Indian Reservations does not improve safety outcomes for Indian people in Indian Country).

⁸⁸ See *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 679 (Gorsuch, J., dissenting) (“The Court’s suggestion that Oklahoma enjoys ‘inherent’ authority to try crimes against Native Americans within the Cherokee Reservation makes a mockery of all of Congress’s work from 1834 to 1968.”).

⁸⁹ See *id.*

⁹⁰ *Haaland v. Brackeen*, 599 U.S. 255 (2023).

⁹¹ Transcript of Oral Argument at Cover Page, *Haaland v. Brackeen*, 599 U.S. 255 (2023) (No. 21-376).

⁹² See 25 U.S.C. §§ 1901–1963.

⁹³ See *Haaland*, 599 U.S. at 263 (cleaned up) (stating that the respondents were “challeng[ing] the [Indian Child Welfare] Act on multiple constitutional grounds.”).

⁹⁴ National Indian Child Welfare Association, Setting the Record Straight: The Indian Child Welfare Act, Fact Sheet, 1 (Oct. 2018), <https://www.nicwa.org/wp-content/uploads/2018/10/Setting-the-Record-Straight-2018.pdf> [<https://perma.cc/DTP6-TXPC>] (stating that 18 national child advocacy organizations have labeled ICWA the “gold standard” in child welfare policy and practice).

“trans-substantivity” of the federal rules of civil procedure.⁹⁵ This, in fact, is an example, an excellent example, of how procedural “trans-substantivity” is actually not ideal, because Indian children and families are getting better procedure.⁹⁶ We have a statute that is designed to protect Indian children from being removed from their homes,⁹⁷ which has been government policy for, as you know, for years and years and years. Every day we hear a little bit more about what’s happened to Indian children who were at boarding schools⁹⁸ or who were adopted⁹⁹ and so forth. It’s pretty tragic. So, I’m wondering what you make of the fact that the court is looking at the constitutionality of ICWA. What does that tell you going forward?

Justice Riley: First of all, I should just say as a matter of federal Indian law, ICWA is absolutely constitutional and could withstand an Equal Protection challenge because under the principles of federal Indian law and American constitutional law, from the point of inception of the United States, it’s been acknowledged that Indian Tribes are political entities, not racial entities.¹⁰⁰ Being a Tribal citizen is a political classification.¹⁰¹ You’re

⁹⁵ See Suzette Malveaux, *A Diamond in the Rough: Trans-Substantivity of the Federal Rules of Civil Procedure and its Detrimental Impact on Civil Rights*, 92 WASH. U. L. REV. 455, 456 (2014); Matthew L. M. Fletcher & Neoshia R. Roemer, *Procedure and Indian Country*, at 85, A GUIDE TO CIVIL PROCEDURE; INTEGRATING CRITICAL LEGAL PERSPECTIVES (edited by Brooke Coleman, Suzette Malveaux, Portia Pedro & Elizabeth Porter, NYU Press 2022) (trans-substantivity is when “the federal rules apply equally to substantive legal matters across the board without distinction among the specific causes of action or parties involved.”).

⁹⁶ Brief for Casey Family Programs and Ten Other Child Welfare and Adoption Organizations as Amici Curiae Supporting Respondents at 6–7, *Adoptive Couple v. Baby Girl*, 570 U.S. 637 (2013) (Nos. 21-376, 21-377); Matthew L. M. Fletcher & Neoshia R. Roemer, *Procedure and Indian Country*, at 85, A GUIDE TO CIVIL PROCEDURE; INTEGRATING CRITICAL LEGAL PERSPECTIVES (edited by Brooke Coleman, Suzette Malveaux, Portia Pedro & Elizabeth Porter, NYU Press 2022).

⁹⁷ See, e.g., 25 U.S.C. §1901(4) (stating the Act’s intent to stop “an alarmingly high percentage of Indian families from being broken up by a trend of placing Indian children in non-Indian adoptive homes.”).

⁹⁸ See, e.g., Sarah Krakoff, *A Narrative of Sovereignty: Illuminating the Paradox of the Domestic Dependent Nation*, 83 OR. L. REV. 1109, 1142 (2004) (“English education meant not only that children would learn the English language, but that they would not be able to wear their hair long, speak their language or learn about their traditions and cultures. In part, the distance between home and boarding schools accomplished the assimilation goals.”). See also *Brackeen*, 599 U.S. at 300 (Gorsuch, J., concurring) (“Upon the children’s arrival, the boarding schools would often seek to strip them of nearly every aspect of their identity.”).

⁹⁹ See, e.g., A. Landers, S. Danes, A. Campbell, & S. White Hawk, *Abuse After Abuse: The Recurrent Maltreatment of American Indian Children in Foster Care and Adoption*, 111 CHILD ABUSE & NEGLECT 104805, 9 (2021) (showing that Indian children were “significantly more likely” to experience “physical, sexual, [and] emotional” abuse in foster and adoptive homes than their white counterparts).

¹⁰⁰ See, e.g., *Morton v. Mancari*, 417 U.S. 535, 554 n.24 (1974) (“The preference is not directed towards a ‘racial’ group consisting of ‘Indians’; instead, it applies only to members of ‘federally recognized’ tribes. This operates to exclude many individuals who are racially to be classified as ‘Indians.’ In this sense, the preference is political rather than racial in nature.”). For a thorough analysis of the legal roots of the political classification doctrine, see Addie C. Rolnick, *The Promise of Mancari: Indian Political Rights As Racial Remedy*, 86 N.Y.U. L. REV. 958 (2011).

¹⁰¹ See *Mancari*, 417 U.S. at 554 n.24; see also Angela R. Riley, *Native Nations and the*

an enrolled member of a legal sovereign called an Indian tribe; that status is not racially defined. If you look at how the United States has made treaties with Indian nations and engaged with Indian nations across hundreds of years, this has always been acknowledged.¹⁰² What's troubling about the *Brackeen* case is the extent to which it seems that this court is eager to conflate Indianness with race, and we see that in some of the Court's other opinions, like *Adoptive Couple v. Baby Girl*.¹⁰³ And that conception really mischaracterizes Indian law and 200 years of precedent.

The whole body of federal Indian law is based on the concept that the federal government has a unique relationship to the Indian Tribes,¹⁰⁴ and part of ICWA is fulfilling the trust obligation that the United States has itself acknowledged that it owes to Indian Tribes.¹⁰⁵ I'm not one to predict what's going to happen in the Supreme Court, but I certainly have a bit of pessimism that the Court will adhere to these well-settled principles. And I think as we've seen in the Court's recent decisions, they are willing to jettison well-settled precedent in cases that they do not want to see continued forth.¹⁰⁶ And I think that's a scary proposition for us.

Professor Malveaux: We'll see. November 9th is the oral argument.¹⁰⁷ So, I want to shift gears to something more, maybe more personal. I think about your background, you shared a little bit about your background. How does that shape or impact your perspective on the bench? Or even sort of enhance your qualifications as a Chief Justice of a tribal court?

Justice Riley: As I mentioned, I grew up in a very rural part of Oklahoma. I lived on a farm for 18 years, which was around 20 miles from even the nearest gas station. For almost all of that time, I had around

Constitution: An Inquiry into "Extra-Constitutionality," 130 HARV. L. REV. F. 173, 179 (2017) (noting that there are multiple sources of authority in the Constitution to support tribal affiliation being considered as a political classification)[hereinafter *Native Nations and the Constitution*].

¹⁰² See also *Native Nations and the Constitution*, *supra* note 101, at 179.

¹⁰³ 570 U.S. 637, 641 (2013) ("This case is about a little girl (Baby Girl) who is classified as an Indian because she is 1.2% (3/256) Cherokee.").

¹⁰⁴ See, e.g., *Worcester v. Georgia*, 31 U.S. 515, 518 (1832) ("They [the United States] receive the Cherokee nation into their favour [*sic*] and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power."); Matthew L.M. Fletcher, *The Dark Matter of Federal Indian Law: The Duty of Protection*, 72 Me. L. Rev. 305, 306 (2023) ("The United States and every federally recognized Tribal nation originally entered into a sovereign-for-sovereign relationship highlighted by the duty of protection...").

¹⁰⁵ See 25 U.S.C. §§1901(2)-(3) ("that Congress, through statutes, treaties, and the general course of dealing with Indian tribes, has assumed the responsibility for the protection and preservation of Indian tribes and their resources....and that the United States has a direct interest, as trustee, in protecting Indian children who are members of or are eligible for membership in an Indian tribe,").

¹⁰⁶ See, e.g., *Oklahoma v. Castro-Huerta*, 597 U.S. 629, 657 (2022) (Gorsuch, J. dissenting); *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 231 (2022).

¹⁰⁷ The Court later held that the Indian Child Welfare Act did not exceed Congress's Article I powers and does not violate the anti-commandeering principle of the Tenth Amendment. Furthermore, the plaintiffs did not have standing to pursue its other claims, including Texas' claims under the Equal Protection Clause of the Fourteenth Amendment. See *Haaland v. Brackeen*, 599 U.S. 255, 273, 287, 294–96 (2023).

18 classmates in our small, country school. So, a very small rural community. I grew up butchering chickens and hoeing cotton and all that stuff. For real, for real. And so, there—in Oklahoma—there’s nothing unusual about my background at all. I also grew up quite poor. When I went to law school, I realized there weren’t a lot of people at Harvard Law School who actually grew up butchering chickens and castrating hogs and doing all those other fun things. And as a professor, also, very few of my colleagues have that kind of shared background. So, I think all of that combined with the fact that I lived on a farm, smack-dab in the middle of what was formerly the Kiowa-Comanche-Apache Reservation, makes my background for the kinds of positions I now hold quite unique. Also, because of where I was raised, I grew up with many Kiowa people, and I am a Tribal member myself. My sister and mother live in Tribal housing on our Tribes’ treaty lands and have for well over a decade. So, I think having that life experience brings something to the table. I hope this background offers value beyond someone who just has an intellectual interest in it, or maybe even knows a lot about Indian law. For me, it’s very personal and difficult oftentimes, because sometimes we know the parties, and the decisions touch every part of our lives. It’s very intimately connected, and I like to think that I bring, hopefully, context and empathy to the cases that I hear.

Professor Malveaux: I think that’s really important, yeah that’s great. My last question before we turn to the student questions. And I just ask you to think about the future for a minute. I think about the next generation. I think about the young Indigenous people today. I think about my daughter; she’s a member of the Cherokee Nation. I think about some of our Indigenous students. Are you optimistic about the future of Native Americans and Native Nations? Any advice that you would give Indigenous students and young people in general?

Justice Riley: I have two teenage daughters, who, as I mentioned, are also Tribal members, and I see the things that they are going through. Many of you are close to that age yourselves. It’s a challenging time. They’ve seen their reproductive rights essentially taken away, at least their constitutionally guaranteed right.¹⁰⁸ The issues around racial injustice and climate change and wealth inequality—all of the things that they’re encountering as young people are really overwhelming. At the same time, I am very optimistic, and I’m optimistic about Indian tribes in particular. For two reasons. One, we’re still here. The whole plan was to make sure that we weren’t here by now. Tribes were intended to have disappeared a long time ago. The reservation system was supposed to be sort of a temporary holding pattern until Indians either died off or assimilated.¹⁰⁹ But Tribes are still here. Indians take the

¹⁰⁸ See *Dobbs v. Jackson Women’s Health Organization*, 597 U.S. 215, 231 (2022) (“The Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision.”).

¹⁰⁹ See, e.g., William Medill, Annual Report of the Commissioner of Indian Affairs (Nov. 30, 1848), reprinted in *Documents of United State Indian Policy* 77–80 (Francis P. Prucha ed.,

long view. Indian Tribes are living and acting and governing on behalf of the next seven generations after them. So, the United States can kind of do what it's going to do, and the Court can do what it's going to do, but I think Tribes are going to still be here, and I think that resilience has been demonstrated for thousands of years. So, I am optimistic about that.

In terms of advice, I think it's interesting, and again, I see this in my own kids. The young people today—many of you are out here—you're the most sophisticated generation in the history of the world. You have the power of information in your pocket—some of you have probably been checking it while I've been talking. You can get information at a moment's notice about almost anything. You have unbelievable access, power, sophistication, and knowledge; but what I see a lot is that even with that, there's a temptation to just sort of swipe your way through life. You scroll your way through Instagram or swipe your way through TikTok or Bumble, or whatever it is, and think: "There's always something better. There's always something else that might catch my attention." And I guess what I would say, my advice would be is this: I don't think that's a recipe for a life that will be fulfilling and that will have value. For a life of value, in my opinion, means you must commit. Commit to something. Believe in something. Really invest in something. Whatever that is. But really go deep, and put your heart into it. Because the superficial, like, "the next best thing is just around the corner," I think, will ultimately end in not being a very fulfilling existence. That's the advice I give my own children when they are on TikTok at the dinner table.

Professor Malveaux: I'll pass that on to my daughter. Thank you. Okay, we are actually going to invite at this time some of those young people to join us for this conversation. We have six students who have submitted questions—and those questions have been selected—and will have the opportunity to ask the Justice questions.

Student Question: Thank you, Professor Malveaux and thank you, Justice Riley, for being here. So, my question is centered on the new ABA standard 303c, which now requires that ABA-accredited law schools like CU Law provide education to law students about bias, cross-cultural competency, and racism. So, my question for you is: How can schools incorporate American Indian law and more narrowly, Tribal law, into our legal education?

Justice Riley: Thank you for that question. Well, as I mentioned before, I think that your law school does a very good job of introducing you to these principles. But in general, I think about Indian law the same way I would think about American law, which is that it's horizontal not vertical. In other words, anything you want to do can be done through Indian law: taxation, gaming, civil rights, criminal jurisdiction. So, Indian law really touches on

2d ed. 1990) ("confining each within a small district of country, so that, as the game decreases and becomes scarce, the adults will gradually be compelled to resort to agriculture and other kinds of labor to obtain a subsistence...").

every single area of law that impacts Indian Tribes. I think that there are really intuitive ways for it to be introduced in the law school classroom. It takes a little bit of courage, a little bit of intellectual curiosity. I know not all my colleagues are probably really interested in integrating Indian law into their teaching, but I think it can be done fairly simply.

I will just add—I'm also a property Professor. I teach 1L property—and I've always started my class with *Johnson v. M'Intosh*,¹¹⁰ the doctrine of discovery case.¹¹¹ When I first started teaching — I was also much younger — but when I first started teaching, many of my students said to me: “Why are we learning this niche thing about Indians? Why aren't we learning the *real* law that all the other students are learning in their property class?” I've been teaching a long time, and now when I teach *Johnson v. M'Intosh*, my students not only appreciate me teaching it, but say that they've approached their other professors to try to understand why they *don't* teach it. How can we actually have a property class in an American law school that doesn't talk about *Johnson v. M'Intosh* and the doctrine of discovery? Legal education is changing, students are changing, and with it I think those of us in the Academy are changing. There is an interest in integrating Indian law into that, and I think that there are ways to do it, and I'm optimistic about that as well.

Student Question: In preparing for this lecture, I learned that the Citizen Potawatomi Nation ratified its current constitution in 2007. That was very interesting to me, and I'm curious to know how this new Constitution has affected the daily lives of Native members.

Justice Riley: I have to give credit to my Tribal chairman who I think is a visionary—Chairman Rocky Barrett—who's been our chairman for decades. Like many Tribes, not just in Oklahoma, but many Tribes in the U.S., we had a big movement of people from our reservation base in Oklahoma to other places. For us, a big part of it was the Dust Bowl, and then subsequently, the Relocation program. As a result, we have a lot of Potawatomis who don't live in Oklahoma, although the majority do, and the majority live around our treaty territory in Shawnee. My Tribal chairman wanted to create a legislative system where there would actually be representation in our legislature of the Potawatomis who were outside of the state of Oklahoma. That took probably about 10 years of him, outlining the process and what it would mean and really explaining to the people in Oklahoma that they would always still have the majority of power, so there would never be an imbalance of power for out-of-Oklahoma Potawatomis. It was a remarkable effort to re-engage the citizenry of the Tribe. People feel

¹¹⁰ 21 U.S. 543 (1823).

¹¹¹ The Discovery Doctrine established that the federal government would not recognize private purchases of Native American lands. For more on the history of the *McIntosh* decision, see Eric Kades, *History and Interpretation of the Great Case of Johnson v. M'Intosh*, WM. & MARY L. SCH. SCHOLARSHIP REPOSITORY (2001), <https://scholarship.law.wm.edu/facpubs/50> [<https://perma.cc/5WY5-PH3A>].

like they have a voice. There are certain things that you can access and benefit from if you're a Potawatomi who's out of state, as well as in-state. One of the other really key features of our constitutional reform was to get the provision of our Constitution that required approval of the Secretary of the Interior to change our Constitution, out of our Constitution. And we did. Yes, I know, right? Those are some of the things that happened in our constitutional reform that really made us stronger and also really concretized a separation of powers for us that I think was really key to our leadership.

Student Question: First of all, thank you so much for joining us today, Chief Justice Riley. My question is: How would you measure justice for Indigenous people in Oklahoma? What are some important milestones that have been reached, and in light of the discussion about *McGirt v. Oklahoma*?¹¹² Is this one of those milestones?

Justice Riley: As I mentioned, most of the Tribes in Oklahoma were removed there.¹¹³ It's not our aboriginal homeland.¹¹⁴ In addition to the reservation system, once we got our reservations, then, our reservations were allotted, most of that land went to non-Indians.¹¹⁵ Our reservations were broken up, and many, many children were taken to boarding schools.¹¹⁶ The process of assimilation, the decimation of the buffalo, very intentionally, to sort of starve Indians into submission in many cases, policing reservation borders so we could no longer move about freely, hunt, and gather, etc., really putting us under the thumb of the United States in a very profound way.¹¹⁷ Given that that was the situation we were in, criminalizing our Tribal governments, given that that's the situation that we were in in the early 1900s, and looking where Tribes are today... I would say, today Tribes have achieved an enormous number of milestones in the state of Oklahoma. But not due to anybody but themselves. The Tribes have been absolutely resilient, maintained their culture, maintained who they are as Tribal people, and have just pushed back against the assimilation and the effort to sort of annihilate them culturally, and actually, for many, many, many years. One of the things that was so amazing in the post-*McGirt* world was to see tribal courts go from having a couple of dozen cases in a calendar year prior to *McGirt*,

¹¹² 140 S. Ct. 2452 (2020).

¹¹³ For a collection of data map of the diaspora created by the removal of Tribes to Oklahoma, see *Exiled to Indian Country*, U. OKLA. GAYLORD COLL. JOURNALISM & MASS COMMUNICATIONS, <https://www.ou.edu/gaylord/exiled-to-indian-country> [<https://perma.cc/65FG-NMSA>] (last visited Mar. 1, 2024).

¹¹⁴ See *id.*

¹¹⁵ See Ann E. Tweedy, *Unjustifiable Expectations: Laying to Rest the Ghosts of Allotment-Era Settlers*, 36 SEATTLE U. L. REV. 129, 129–30, 133–37 (2012).

¹¹⁶ See Matthew L. M. Fletcher & Wenona T. Singel, *Indian Children and the Federal-Tribal Trust Relationship*, 95 NEB. L. REV. 885, 891, 930 (2017) (discussing the purpose and genesis of boarding schools and their connection to allotment).

¹¹⁷ See J. Weston Phippen, 'Kill Every Buffalo You Can! Every Buffalo Dead Is an Indian Gone', THE ATLANTIC (May 13, 2016), <https://www.theatlantic.com/national/archive/2016/05/the-buffalo-killers/482349/> [<https://perma.cc/HY28-B9ZL>].

to having close to a thousand cases in the year after,¹¹⁸ and seeing the extent to which they scaled up—they hired prosecutors, got new judges, and just really built... I've gotten to observe some of those proceedings. The amount of flexibility, nimbleness, resilience—I think it's just remarkable. So, Tribes in Oklahoma may not have achieved justice in the fullest sense for sure, but the trajectory is steep and it is continuing, I think, to ascend.

Student Question: Thank you, and thank you very much for your time tonight. I want to ask you about how the structure of many tribal courts is kind of at odds with inherent Tribal values because those courts are built upon the American legal system—a system that has enshrined individualistic and antagonistic legal systems and values—and how you, as a Justice, kind of combat that.

Justice Riley: Well, I think that it's interesting in tribal courts to sort of see this huge range: some that are emulating state and federal systems, and many that do not. One of the things that I've noticed in my research, especially with criminal jurisdiction, is that a lot of what happens in Indian Tribes—or at least Tribal institutions—relies on federal grant funding.¹¹⁹ Some of that federal grant funding is tied to tribes emulating a carceral system.¹²⁰ So, you see tribes making changes as they achieve greater independence from the federal government and are able to structure their own systems completely independently of any sort of federal oversight.¹²¹ You see tribes moving away from that carceral model and toward forms of restorative justice, peacekeeping, peacemaking courts,¹²² wellness courts,¹²³ and drug treatment for people instead of jail or prison.¹²⁴ So when Tribes actually are in the driver's seat, you do see in many cases a rejection of that

¹¹⁸ See, e.g., Staff Reports, *Cherokee Nation Files 1,000th Case in Tribal Court Following McGirt Ruling*, CHEROKEE PHOENIX (Jun. 10, 2021), https://www.cherokeephoenix.org/news/ Cherokee-nation-files-1-000th-case-in-Tribal-court-following-mcgirt-ruling/article_158796a8-c9b3-11eb-b487-175361bea804.html [<https://perma.cc/NWJ3-FDQ3>] (referencing a Cherokee Nation press release noting that it had filed its 1000th case since *McGirt*).

¹¹⁹ For more on recent federal efforts to provide comprehensive funding, see Press Release, White House Council on Native American Affairs Takes Steps to Increase Access to Capital Across Indian Country, U.S. Department of the Interior (Dec. 2023), <https://www.doi.gov/pressreleases/white-house-council-native-american-affairs-takes-steps-increase-access-capital> [<https://perma.cc/Z7MP-DF3N>].

¹²⁰ See *Crime and Governance*, *supra* note 43, at 1571–72; see also, e.g., Press Release, Justice Department Announces Funding Opportunities to Support Public Safety in Tribal Communities, U.S. Department of Justice Office of Internal Affairs (Dec. 13, 2023) <https://www.justice.gov/opa/pr/justice-department-announces-funding-opportunities-support-public-safety-Tribal-0> [<https://perma.cc/8M5N-RP2N>].

¹²¹ See *Crime and Governance*, *supra* note 43, at 1571–72.

¹²² See Rebecca Clarren, Native American Peacemaking Courts Offer A Model For Reform, INVESTIGATEWEST (Nov. 30, 2017), <https://www.invw.org/2017/11/30/native-american-judge-shows-peacemaking-courts-offer-a-model-for-reform/> [<https://perma.cc/Y3DR-NPSP>]; see also PEACEMAKERS, MASHPEE WAMPANOAG TRIBE, <https://mashpeewampanoagtribe-nsn.gov/peacemakers> [<https://perma.cc/LG29-79EF>].

¹²³ See, e.g., sources cited *supra* note 32.

¹²⁴ *Id.*

federal system. A lot of it has to do with self-determination¹²⁵ and financial independence. I see a lot of amazing change happening in Indian Country in those spaces. I will also say though, that some tribes have a model that is similar to state and federal governments, and that's the model that they want. It is their choice, that that's the model that they want to keep. Sometimes they allow defendants to have a choice between a traditional peacekeeping process and an adversarial court process, and the defendants themselves get to choose, and it's a consent-based model. So, I really see all varieties out there, but tribes being in the driver's seat is the key.

Student Question: Thank you, Professor Malveaux and Chief Justice Riley. Much of your work has revolved around large concepts, like Federal Indian law and international human rights. My question is: How have you been able to incorporate international human rights norms into your jurisprudence, and how has it helped you to make decisions for your tribe?

Justice Riley: Well, a long, long time ago when I was a law student at Harvard and wanted to take a class in Indigenous Peoples' in International Law and Harvard offered no such class, I wrote a letter with Professor Kristen Carpenter. We went and sat in the Dean's office and demanded such a thing be taught. And you know what? It was. Professor Jim Anaya¹²⁶ was invited to come in and teach that class, so I learned from the person who literally wrote the book.¹²⁷ So, I'm going to say thank you, Jim. So really my interest began and then the field has grown over the years and has changed tremendously. Professor Carpenter and I have worked extensively in the UN system in a variety of ways.¹²⁸

Just to give one high point, during the pandemic, the University of Colorado, the Native American Rights Fund, and UCLA Law School all got together and put together what we call the Tribal Implementation Toolkit,¹²⁹ which is essentially both an online document and a physical document that talks about how to implement the principles of the UN Declaration on the Rights of Indigenous Peoples¹³⁰ into Tribal law.¹³¹ Under the leadership

¹²⁵ See Lauren van Schilfgaarde, *Restorative Justice as Regenerative Tribal Jurisdiction*, 112 CAL. L. REV. 103, 110 (2024).

¹²⁶ S. James Anaya, UNIV. OF COLO. L. SCH., <https://lawweb.colorado.edu/profiles/profile.jsp?id=729> [<https://perma.cc/A7JF-JTHD>] (last visited Mar. 1, 2024).

¹²⁷ S. JAMES ANAYA, *INDIGENOUS PEOPLES IN INTERNATIONAL LAW* (2d ed. 2004).

¹²⁸ Chief Justice Riley has served as Co-Chair for the United Nations - Indigenous Peoples' Partnership Policy Board, which functions as a commitment to the UN Declaration on the Rights of Indigenous Peoples, and calls for its full realization through the mobilization of financial and technical assistance. See *United Nations Indigenous Peoples' Partnership*, UNITED NATIONS (2019), <https://mptf.undp.org/fund/ipp00> [<https://perma.cc/XA6B-TH6F>].

¹²⁹ See NATIVE AMERICAN RIGHTS FUND, UNIVERSITY OF COLORADO LAW SCHOOL & UNIVERSITY OF CALIFORNIA LOS ANGELES LAW SCHOOL, *TRIBAL IMPLEMENTATION TOOLKIT* (2021) available at <https://un-declaration.narf.org/wp-content/uploads/Tribal-Implementation-Toolkit-Digital-Edition.pdf> [<https://perma.cc/5WBP-WB2M>].

¹³⁰ G.A. Res. 61/295, UN Declaration on the Rights of Indigenous Peoples (UNDRIP) (Sept. 13, 2007).

¹³¹ See Julia Roth, *New Toolkit Helps Indigenous Peoples Realize Their Rights at Home*,

of people like John Echohawk and Walter Echohawk and others, we were inspired to ask, “Well, why not start with Tribes first?” We’re not going to get the United States—at least not today—to adopt the U.N. Declaration on the Rights of Indigenous Peoples, but Tribes can be the leaders in this. Again, achieving justice on our own, being the model, being good Native governments. So, we put together that Toolkit and we’ve seen Tribes—not just the Tribes we highlight in that document—but Tribes since then who are themselves actually being leaders in really putting into Tribal law international Indigenous rights. I think it’s an incredible moment and it’s just the beginning—or maybe the middle—of a really long movement that’s moving in the right direction.

Student Question: Thank you, Professor. My question is, how do you envision a decolonized justice system and how could it be integrated into the U.S. court system?

Justice Riley: Wow, well I think that the first step—and, this is, again, in my experience working with tribes in the U.S. and Indigenous Peoples around the world—the first step of course is to decolonize ourselves. Right? To look critically at our own institutions, at our own governments, at our own sort of values and lifeways, and to really take control and again be a self-determining people, and think about what we want. Some tribes have not had enough opportunity to do that because for so many years the tribes have been on the brink of survival, and just trying to put one foot in front of the other. We are now, I think, increasingly seeing the ability of Tribes to move beyond that, and that again ties into the restorative justice models, the non-carceral models, peacemaking, all of those things that are Tribal custom and tradition that are being given life in Tribal communities. That’s the essence of decolonizing.

I really think that there’s a bigger story to that. Part of it involves you, as young people, and really understanding and connecting yourself. I saw this especially during Standing Rock.¹³² When Professor Carpenter and I were out at the Standing Rock reservation in the #NoDAPL movement,¹³³ and really seeing people, Indigenous people—not just from across the United States but from across the world—united in a collective understanding that all Indigenous Peoples have so many common stories and instances

Colorado Law (Mar. 31, 2021), <https://www.colorado.edu/law/2021/03/31/new-toolkit-helps-indigenous-peoples-realize-their-rights-home> [https://perma.cc/BT6Q-C26X].

¹³² See *Camp Information*, STAND WITH STANDING ROCK, <https://standwithstandingrock.net/> [https://perma.cc/BP9T-AMU3] (gathering at Oceti Sakowin Camp tribes and allies in solidarity to halt the Dakota Access Pipeline).

¹³³ “DAPL” stands for “Dakota Access Pipeline.” The #NoDAPL movement was exemplified by the grassroots movement mobilized to halt the construction of the Dakota Access Pipeline, especially through an area just north of the Standing Rock Sioux Reservation, the Lake Oahe, which is a reservoir fed by the Missouri River. Running the pipeline through that area would imperil tribal sacred sites and water rights. See *Treaties Still Matter: The Dakota Access Pipeline*, NAT’L MUSEUM OF THE AM. INDIAN <https://americanindian.si.edu/nk360/plains-treaties/dapl> [https://perma.cc/KK4T-QKSR].

of discrimination and maltreatment.¹³⁴ There is a collective, growing global Indigenous rights movement that is very much being led by young people, and partially through the thing that you have in your pocket, because your technology allows you to be in conversation with people from all over the globe. So that, I think, is a feature of decolonizing, and I think that with your help, the young people, we'll continue to see that.

Professor Malveaux: We're in good shape, this next generation. We are so thrilled for your participation, Chief Justice Riley, and for your words and your inspiration and your brilliance.

¹³⁴ See *The #NoDAPL movement was powerful, factual, and Indigenous-led. Lawsuit lies can't change that*, Center for Constitutional Rights, CENT. FOR CONST. RTS. BLOG, (Feb. 21, 2018), <https://ccrjustice.org/home/blog/2018/02/21/nodapl-movement-was-powerful-factual-and-indigenous-led-lawsuit-lies-can-t> [<https://perma.cc/C8PQ-V9HQ>].