Who Has Authority?

Trace how federal actions shape Tribal jurisdiction

USG.C.3.6.E "Describe how Tribal jurisdiction and authority have evolved through federal legislation and Supreme Court decisions affecting criminal jurisdiction, family law, religious freedom, and other areas. Examples: Legislation: Major Crimes Act..."

NAME _____ DATE _____

1 READ AND MARK

Read it twice

YOUR JOB Circle each named law or court case, underline what it changed or protected, and write C, F, or R in the margin for criminal cases, family law, or religious practice.

Authority Is Not All or Nothing

1. Imagine a crime case in eastern Oklahoma. Who can prosecute may depend on the defendant's legal status, where the act occurred, and what law covers the offense. In 1885, Congress passed the Major Crimes Act. It gave federal courts authority over certain serious crimes committed by Indians in Indian country, while tribes kept their own authority to prosecute under tribal law. In 2020, the Supreme Court ruled in McGirt v. Oklahoma that Congress had not ended the Muscogee (Creek) Reservation. For the crime at issue, Oklahoma could not prosecute an Indian defendant on that reservation; federal and tribal authority remained.

2. Now consider a child welfare case, not a prosecution. For decades, state agencies removed many Native children from their families and communities. Congress responded with the 1978 Indian Child Welfare Act (ICWA). In covered cases involving an "Indian child," the law sets standards for state courts and gives tribes a role, including the right to intervene in many state child custody proceedings. Tribes generally have exclusive jurisdiction over covered cases when a child lives or is domiciled on a reservation. In Haaland v. Brackeen (2023), the Supreme Court rejected several constitutional challenges to ICWA, leaving these federal protections in place.

3. Authority also reaches the practice of religion. The American Indian Religious Freedom Act of 1978 declared a federal policy to protect Native Americans' access to sacred sites and their freedom to practice traditional religions. Yet that policy alone did not give tribes a guaranteed right to use every sacred place, especially on federal land. Across these issues, federal actions have not moved power in only one direction. Congress can place cases in federal court, require states to recognize tribal roles, or announce protections with limits. Court decisions can clarify which governments have authority, but they do not erase every overlap or conflict.

2 ANSWER WITH EVIDENCE

Use the passage

1. How did the Major Crimes Act change criminal jurisdiction without ending tribal authority?

2. What did McGirt v. Oklahoma establish about the reservation, and how did that affect who could prosecute the crime at issue?

3. How did ICWA give tribes a role in child welfare cases, and what was the effect of Haaland v. Brackeen on those protections?

4. How did the two 1978 laws differ in the authority or protection they provided?

3 YOUR TURN

Your own words

A student says, "Federal actions always give tribes full control or take all control away." Write a short response that challenges this claim using one example from criminal jurisdiction and one from child welfare or religious practice. Explain the limit or overlap in each example without quoting the passage.

ANSWER KEY

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HIGH SCHOOL · USG.C.3.6.E

PART 1 · READ AND MARK

Circle each named law or court case, underline what it changed or protected, and write C, F, or R in the margin for criminal cases, family law, or religious practice. Accept any marking that follows this job and points at the right text.

PART 2 · ANSWERS

#	QUESTION	ANSWER
1	How did the Major Crimes Act change criminal jurisdiction without ending tribal authority?	**It gave federal courts authority over certain serious crimes committed by Indians in Indian country, while tribes kept authority to prosecute under tribal law.**
2	What did McGirt v. Oklahoma establish about the reservation, and how did that affect who could prosecute the crime at issue?	**The Court held that Congress had not ended the Muscogee (Creek) Reservation. Oklahoma could not prosecute the Indian defendant for the crime at issue there; federal and tribal authority remained.**
3	How did ICWA give tribes a role in child welfare cases, and what was the effect of Haaland v. Brackeen on those protections?	**ICWA gave tribes the right to intervene in many state proceedings and generally exclusive jurisdiction over covered cases involving children who live or are domiciled on a reservation. Brackeen rejected several constitutional challenges, leaving ICWA's protections in place.**
4	How did the two 1978 laws differ in the authority or protection they provided?	**ICWA established specific tribal roles and jurisdiction in covered child welfare cases. The American Indian Religious Freedom Act declared a federal policy protecting religious practice and access to sacred sites, but it did not guarantee use of every sacred place.**

PART 3 · YOUR TURN (SAMPLE ANSWER)

That claim misses how governments can share authority. Under the Major Crimes Act, federal courts gained power over certain serious crimes committed by Indians in Indian country, but tribes kept authority to prosecute under tribal law. ICWA also shows that authority is not all or nothing. It gives tribes a role in many state child custody cases and generally places covered cases involving children who live on a reservation under tribal jurisdiction. State courts still handle some covered cases, but they must follow federal standards.

Accept answers that distinguish a shift in authority from total control. For McGirt, students should connect the reservation ruling to the limit on Oklahoma's power in the crime at issue, not claim that the state lost authority over every crime there.