

# American Government & Politics

Spring 2022

Department of Political Science

University of Texas at El Paso

POLS - 2311

Instructor – Dr. Todd A. Curry

Lecture – M/W 1:30-2:50pm – UGLC 106

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## **Land Acknowledgement**

We, the UTEP Department of Political Science, acknowledge that we are in the unceded territories of the Indigenous Peoples who, along with countless generations of ancestors, are the guardians and keepers of this land, both throughout history and more contemporary times: the Tigua, Mansos, Sumas, Ndé, the Piros, Mescalero Apache, Chiricahua Apache, Tarahumara, Yaqui, Jumano, Comanche, Kiowa, Rarámuri, Tohono O’odham, Yaqui, Kickapoo, Diné, Hopi, Zapotec, Mixtec, Aztec-Nahua-Mexica, Huichol, Tepehuan, Coahuilteco, Chichimeca, and the other Native communities who comprise our multinational region. As scholars and people who reside and work in these lands, we respect and honor the millennia-long history of Native peoples on this land and their ongoing presence today.

## **COVID-19 Precaution Statement**

Please stay home if you have been diagnosed with COVID-19 or are experiencing COVID-19 symptoms. If you are feeling unwell, please let me know as soon as possible, so that we can work on appropriate accommodations. If you have tested positive for COVID-19, you are encouraged to report your results to [covidaction@utep.edu](mailto:covidaction@utep.edu), so that the Dean of Students Office can provide you with support and help with communication with your professors. The Student Health Center is equipped to provide COVID-19 testing.

## **Overview**

This course is intended to be an introductory survey in the American National Government. To this end, we will cover basic theories and principles of government, the institutions of government in the American context, and some of the issues that are current to the day. Students are expected to complete this course with an understanding of the general concepts of American democracy and the way in which the branches of government interact and generate policy.

## **Catalog Description**

A survey of contemporary American, national, state, and local political processes and institutions, with emphasis upon the Constitutions of the United States and Texas. This course meets teacher certification requirements for out-of-state graduate students.

## **Course Objectives**

Students can expect to learn the following by the end of this course:

- 1) to understand the underlying constitutional principles upon which the American system of government is established
- 2) to define and understand concepts central to the study of American national government
- 3) to grasp the interplay of the country's formal institutions and structures
- 4) to place current trends and events into the greater governmental and historical context

### **UTEP Edge**

The UTEP Edge is our philosophy that acknowledges the many assets our students bring to the University. We provide a variety of high-impact experiences both in and out of the classroom through work of our faculty, staff, alumni, and community partners that build on these assets and talents. Many of the assignments and discussions in this class will further develop the talents you bring to this class such as developing your communication skills, teamwork, critical thinking, and problem solving. Students will:

- An understanding of the key elements of American politics, including the Constitution, federalism, civil rights, civil liberties, political participation (voting, interest groups, parties), institutions (Congress, the courts, the president), and public opinion.
- An understanding of basic social science theories and be able to apply them to political behavior and processes.
- The skills necessary to understand and evaluate contemporary political events and problems.
- The ability to think analytically about political issues and articulate arguments with (empirical) justification.
- Their own active citizenship skills and be able to influence local and national policies/politics.
- Addressed and debunked prominent stereotypes across minoritized communities.
- Explored structural racism and how political processes, institutions, and policies create and maintain inequalities.
- Developed practices for engaging in antiracism.
- Developed writing skills to communicate their arguments, evaluations, and policies.
- Developed effective teamwork skills for collaborative work while demonstrating respect and value for a diversity of opinions, viewpoints, and perspectives.

### **Text**

Krutz, Glen. 2021. *American Government 3e*. Openstax.  
<https://openstax.org/details/books/american-government-3e>

### **Grading**

10% - Attendance and Participation

15% - Quizzes  
15% - Weekly Reflection Assignments  
10% - Political Compass and Reflection  
20% - Texas Policy Assignment  
    -10% approved topic, assignment type, and group members (if applicable)  
    -10% final assignment  
10% - First Exam  
10% - Second Exam  
10% - Third Exam

### **Grading Scale:**

The following numerical averages translate into final course grades:

90+: A (4.0)  
80-89: B (3.0)  
70-79: C (2.0)  
60-69: D (1.0)  
-60: F (0.0)

### **Policies**

#### *Participation:*

Attendance and participation in class will count for the substantial portion of your grade; therefore, I expect considerable effort to go into it. This class will exclusively be taught in a lecture format. Students are encouraged to ask questions regarding the materials or current political events. On top of this, you are allowed three absences before I start dropping your attendance grade by 1 percentage point per absence. If attendance becomes a problem I reserve the right to use surprise quizzes to supplement my grading scheme.

Attendance will be taken through the card readers outside of the classroom. It will be available for 15 minutes before and after the start of class. It is your responsibility to use your UTEP ID card to sign in during this time. I am using no other method to document attendance as it delays leaving the classroom, which is unfair to the individuals coming in after us. Do not scan in for other students: I will submit students that do to the Office of Student Conduct which can result in a 0 for your attendance grade.

Information for the students will be communicated in three ways 1. In class; 2. Through email. The only email address I will use to contact you is your official “utep.edu” account. 3. Through the class Blackboard. This means as a requirement of this course you will need to regularly check this account if you do not already. “I did not receive notification,” is not a valid excuse.

#### *Notes:*

Laptops are discouraged from being used, though they are allowed. Laptops can prove distracting not only to you, but to those around you. I will be posting my powerpoint slides (I do not teach from notes) on Blackboard the day before class. I hope students will print

these out, bring them to class, and take notes in the margin to facilitate better studying habits.

### Quizzes:

Regular quizzes evaluate the reading comprehension of the textbook throughout the semester. These quizzes will cover material from each chapter, and these questions are eligible for exams. As such, these quizzes are designed to help students prepare for exams. These will be delivered via Blackboard and will be brief. They will be open each Wednesday, except in weeks where there is an exam. Students will have a full day to complete the quizzes. Under no circumstances are students able to make up quizzes, and no late work is accepted.

### Weekly Reflection Assignments

Every week there will be an activity you will be required to give a response to. Sometimes they will be prompts, other times they will be activities you engage in and respond to. The topics and activities will relate to the content discussed in class, though the goal of the assignments is to create an environment for you to critically think about your relationship with government and the nature of your own biases. Because of the nature of these critical reflections, they will be submitted and graded anonymously, so individuals can be honest in their reactions. These assignments should be no longer than two pages, and while each assignment will be read, you will be graded solely based upon if it meets the minimum requirements and is submitted on time. These reflections will be due on **Blackboard Friday at 7pm**. No late work will be accepted.

### Exams:

The exams will consist of 50 multiple choice questions, each worth two points. Much of the material on the exams is delivered in class; however, some material from the readings not covered in class is tested on the exams as well. The exam schedule follows:

- Exam 1 –
- Exam 2 –
- Exam 3 –

### Political Compass:

The Political Compass survey can be located at this website:

<https://www.politicalcompass.org> At the bottom of this home page, there is a link stating, “Take the Test” that takes students directly to the survey. The completion of the survey will produce a graph and coordinates that students can observe and save. On the assigned due date, students are required to submit their coordinates and a reflection on their placement. Often times we adopt a political identity from an external source, and it conflicts with our actual policy beliefs. The purpose of the assignment is to address that conflict (if it exists) head on. Assignment is due **March 29**.

### Texas Policy Assignment:

In previous years, I have required this to be a group assignment, but that proved to be a hassle under some conditions. Therefore, this assignment *can* be done with groups of up to 4 students.

Students will work through the semester on an assignment that has at its goal to influence public officials regarding policy decisions. This assignment can take multiple forms, and I will provide some suggestions, guidelines, and rubric. **This assignment is due May 3<sup>rd</sup>.**

### **Texas Policy Memo**

Students must turn in a 1-3 page memo (addressing a current local problem plaguing Texas/El Paso/UTEP). This paper should a) address and briefly explain this problem, b) explain why it is important, c) propose a policy solution to this problem, d) address why the proposed solution is superior to alternative solutions (identifying what alternative solutions are), and e) address the costs (and problems) associated with implementing your proposed policy. You must also identify the correct audience for your memo, primarily because you will be sending it to the elected official or body. As such, you need to provide as much information as necessary to enable their decision. This policy proposal will be evaluated on persuasiveness, research, organization, clarity, spelling, grammatical correctness, references, and thoroughness in evaluation using relevant class themes. References are required but do not count towards the page limits. I welcome the submission of drafts to me prior to the deadline for revisions and feedback.

### **Persuasive Video**

Students will submit a 3-5 minute video addressing a local problem plaguing Texas/El Paso/UTEP. This video should a) address and briefly explain the problem, b) explain why it is important, c) propose a policy solution to this problem, and d) urge your viewers to take a specific action to help accomplish the goal. Your audience is the public first, and elected officials second. To accomplish this, the video will be to be professional, thorough, and concise. You will be evaluated on persuasiveness, presentation, organization, clarity, and theme. I welcome reviewing scripts prior to the deadline for revisions and feedback.

### **Editorial/Letters to the Editor/Op-Ed**

Students will produce a Letter to the Editor/Editorial of approximately 225-750 words addressing a local issue plaguing Texas/El Paso/UTEP. While this format is written, like the policy memo, the goal is like that of the persuasive video, to influence the public first, and elected officials second. Because of the shorter format, this assignment needs to be more concentrated and to the point. The goal is to identify a) identify the issue and why it is an issue, b) propose a solution to the problem, and c) urge the audience to take action persuasively. Letters to the editor/editorials generally don't have traditional citations, so I expect you use hyperlinks within the text. You will be evaluated based on persuasiveness, research, organization, spelling, grammatical correctness and conciseness. I am happy to review drafts prior to the deadline for revisions and feedback.

(Some guidelines on how to write an Op-Ed: [https://projects.iq.harvard.edu/files/hks-communications-program/files/new\\_seglin\\_how\\_to\\_write\\_an\\_oped\\_1\\_25\\_17\\_7.pdf](https://projects.iq.harvard.edu/files/hks-communications-program/files/new_seglin_how_to_write_an_oped_1_25_17_7.pdf))

### **Make-Up Exams**

It is completely the student's responsibility to take the exams when they are scheduled. As a general rule, make-up exams **will not be** allowed; thus, a missed exam counts as a zero (0) toward the final course grade. Notwithstanding, at the instructor's sole discretion make-ups

will be permitted, but only the gravest of reasons will be accepted, *if* documented in writing by the proper authority. Even if there is an acceptable reason for missing the regularly scheduled exam, permission to take a make-up will be granted *only* if the student provides the professor with prompt and proper notification; that is, the student *must* inform the professor of the reason for missing the exam with proper documentation *before* the exam takes place, *and* the reason must be acceptable to the instructor. If a make-up is permitted, both the format and questions can, and likely will, be different from the regularly scheduled exam.

### **Academic Honesty and Integrity**

Per UTEP policy: The University of Texas at El Paso prides itself on its standards of academic excellence. In all matters of intellectual pursuit, UTEP faculty and students must strive to achieve excellence based on the quality of work produced by the individual. In the classroom and in all other academic activities, students are expected to uphold the highest standards of academic integrity. Any form of scholastic dishonesty is an affront to the pursuit of knowledge and jeopardizes the quality of the degree awarded to all graduates of UTEP. It is imperative, therefore, that the members of this academic community understand the regulations pertaining to academic integrity and that all faculty insist on adherence to these standards.

Any student who commits an act of scholastic dishonesty is subject to discipline. Scholastic dishonesty includes, but is not limited to, cheating, plagiarism, collusion, the submission for credit of any work or materials that are attributable in whole or in part to another person, taking an examination for another person, and any act designed to give unfair advantage to a student or the attempt to commit such acts. Proven violations of the detailed regulations, as printed in the *Handbook of Operating Procedures (HOP)* and available in the Office of the Dean of Students and the homepage of The Dean of Students at [www.utep.edu/dos](http://www.utep.edu/dos), may result in sanctions ranging from disciplinary probation, to failing a grade on the work in question, to a failing grade in the course, to suspension or dismissal, among others.

### **Special Needs**

If you have a disability and need classroom accommodations, please contact The Center for Accommodations and Support Services (CASS) at 747-5148, or by email to [cass@utep.edu](mailto:cass@utep.edu), or visit their office located in UTEP Union East, Room 106. For additional information, please visit the CASS website at [www.sa.utep.edu/cass](http://www.sa.utep.edu/cass). *CASS' Staff are the only individuals who can validate and if need be, authorize accommodations for students with disabilities.*

### **Course Outline**

#### **Theme One – Constitutional Foundations of the U.S. Government**

January 18 – Discuss syllabus and course schedule, Chp 1

January 23 - Continue Chp 1

January 25 – Chp 2 – The Constitution (Professor out of town, information to follow)

January 30 - Chp 2 - Continued

February 1 – Chp 3 – Federalism (Professor out of town, information to follow)

February 6 – Chp 3 – Continued

February 8 – Chp 4 – Civil Liberties

February 13 – Chp 5 – Civil Rights

February 15 – Exam 1

Theme Two - Institutions of Government

February 20 – Chp 11 – Congress

Texas Policy Assignment Topic, Format and Group Members (if desired) Submitted for Approval

February 22 – Chp 11 – Continued

February 27 – Chp 12 - The Presidency

March 1 – Chp 13 – Judiciary

March 6 – Chp 13 – Judiciary, cont

March 8 – Chp 4 – State and Local, Texas.

**SPRING BREAK March 13-17**

March 20 - Texas Constitution -

[https://web.archive.org/web/20130728074632/http://texaspolitics.laits.utexas.edu/7\\_1\\_0.html](https://web.archive.org/web/20130728074632/http://texaspolitics.laits.utexas.edu/7_1_0.html)

March 22 – Review

March 27 – Exam 2

Theme Three – Political Behavior/Public Policy

March 29 – Chp 7 – Elections and Voting  
Political Compass Due

April 3 – Chp 8 – Media and the current context

April 5 – Chp 6 - Public Opinion

April 10 – Chp 6 – Continued

April 12 – Chp 9 – Political Parties

April 17 – Chp 15 - The Bureaucracy

April 19 – Chp 16 – Domestic Policy

**LAST DAY TO SUBMIT ROUGH DRAFT FOR FEEDBACK**

April 24 - Chp 17 – Foreign Policy

April 26 – Policy in Action: The Indian Child Welfare Act

May 1 - Policy in Action: Immigration Policy, Title 42, MPP and El Paso

May 3 – Voluntary Review Session

Texas Policy Assignment Due

Wednesday May 10<sup>th</sup> – 4:00-6:45pm - Final Exam



## How to write a policy memo

A policy memo is a document that provides analysis and recommendations for a particular audience regarding a particular situation or problem. A well-written policy memo reflects attention to purpose; it is well organized; and it has a clear, concise style.

### Determining and responding to your audience

In most cases, you will know the audience for your work because (1) you have been hired by that individual or organization or (2) your instructor provides that information to you. Think carefully about the needs and expectations of your audience. For example, if your audience is an elected official seeking analysis on a highly technical matter, you should generally assume that the official lacks substantial technical expertise. You will need to define technical terms and provide enough background about the situation you are discussing that such a “lay” audience can grasp your arguments. On the other hand, if you are writing for a technically trained audience, you will waste time and energy providing background information that your readers already know.

### Organizing an effective policy memo

#### Introduction

One distinguishing characteristic of a policy memo is that a summary of the document’s conclusion(s) and recommendation(s) is placed right at the beginning of the memo. Remember that the purpose of the document is generally to provide your audience advice about a particular decision, project, or policy stance. Thus, you open the memo by summarizing the problem or situation about which you are writing, and by providing a very brief summary of the conclusions/recommendations you have reached during your analysis. The rest of the memo is designed to support the conclusions or recommendations you present.

#### Background

Keeping in mind that different audiences need different amounts of background information (see above), follow your introduction with a concise summary of any historical or technical that your audience needs to understand the arguments you are building. (It may be that no background information is needed at all.)

#### Supporting arguments or analysis

Once you have set the stage for your audience, show how this information leads logically to the conclusions/recommendations you have provided.

## Style and format

Your prose should be simple, clear, and easy to read; you will confuse, not impress, your readers with sophisticated vocabulary. Your reader should be able to describe your conclusions and the general arguments you used to reach them after only one reading of your memo.

Some tips on achieving an effective writing style:

1. Choose the simplest words available to express your ideas. When discussing technical information, avoid the use of jargon--or at least define your terms clearly.
2. Make your sentences "active"; avoid phrases such as "there are" or "it is."
3. Use one paragraph to develop one idea or argument. Make that idea or argument explicit within the first one or two sentences of the paragraph.
4. **PROOFREAD CAREFULLY.** Don't distract your readers from the content of your memo with poor spelling or grammar.

The format of the memo should be as follows:

1. Memos must be typed on 8.5 X 11" with margins of one inch on all sides.
2. Paragraphs should be single-spaced and should be separated by a double space.
3. You may use any standard conventions for the layout of your memo, including numbering, bullets, indentation, etc. Do address the memo to your audience at the top of the page. See the attached sample for a suggested layout.

## Length

The length of your policy memo assignment is no more than 3 pages. Do not exceed this length limit! I am enforcing this rule for several reasons:

1. You will likely continue to write persuasive documents for clients and/or colleagues in the future. Like you, most of these people are busy. They rarely have time to review lengthy documents; these generally wind up unread in a filing cabinet or the trash. I'm hoping to help you craft documents that are concise and of use to your clients or colleagues.
2. Confining yourself to a particular page limit encourages careful editing, establishing priorities, and paring your arguments down. In general, these practices also improve the flow and impact of your writing.
3. Tightly written policy memos have a much better chance of influencing others toward a particular point of view.

## Grading Rubric for Policy Assignments Assignments

Student's Name: \_\_\_\_\_

Date: \_\_\_\_\_

Assignment: \_\_\_\_\_

Course: \_\_\_\_\_

4=A    3=B    2=C    1=D    0=F

Writing Characteristic	Performance Descriptions	Performance Level
<b>Follows Directions</b>	4= responds fully and appropriately to the assignment in timely fashion 3= responds reasonably well to assignment in timely fashion 2= responds acceptably to assignment in timely fashion 1= some significant failure to respond to assignment, or untimely 0= wholly fails to respond to assignment, and/or untimely	
<b>Thesis</b>	4= easily identifiable, clear and concise, insightful, and appropriate for assignment 3= identifiable, clear, and appropriate 2= somewhat difficult to identify, unclear, and/or slightly inappropriate for assignment 1= very difficult to identify, unclear, and/or inappropriate for assignment 0= unidentifiably, unclear, and/or wholly inappropriate for assignment	
<b>Use of Evidence</b>	4= appropriate source information (typically primary) used to support thesis and buttress all arguments made in essay, excellent integration of quoted/paraphrased material into writing. 3= appropriate source information used to support thesis and to buttress most arguments, good integration of sources into writing 2= sometimes weak use of source information (excessively secondary), inadequately supports thesis and/or sub-arguments, weak integration of quoted/paraphrased material into writing 1= very weak use of source information (excessively secondary), fails to support thesis and/or sub-arguments, very weak integration of material into writing 0= wholly failures to use sources appropriately	
<b>Analysis, Logic and Argumentation</b>	4= all ideas progress logically from an identifiable thesis, compelling justifications are offered to support thesis, counter-arguments are anticipated and addressed, appropriate connections are made to outside material 3= thesis is generally supported by logically compelling assertions and appropriate connections 2= insufficient support for some arguments, assertions are vague or lack focus, support offered is sometimes irrelevant, tangential or repetitive 1= lacks support for arguments, unfocused, uses irrelevant information to support thesis 0= wholly fails to related evidence to thesis statement	
<b>Organization</b>	4= coherent and clear, all paragraphs support thesis statement, each paragraph supports its topic sentence, excellent transitions 3= mostly coherent, generally supports thesis, good transitions 2= often lacks coherence, mixed support for thesis, transitions often missing or weak 1= incoherent, lacks support for thesis, transitions weak and often missing 0= wholly incoherent, unsupportive of thesis and lacking in transitions	
<b>Clarity and References</b>	4= excellent command of language, proper use of grammar/writing conventions, few to no misspelled words, correct word choice, excellent variety and complexity of sentence structure, uses proper citation format 3= good command of language, generally proper use of grammar/writing conventions, minimal misspelled words, largely good word choice, some variety and complexity in sentence structure, generally uses proper citation format 2= generally proper use of grammar/writing conventions, but with simple sentences generally lacking variety/complexity in structure, acceptable citation format 1= weak use of language, poor grammar, and numerous mechanical errors undermine coherence, weak citation format 0= extremely weak use of language/poor grammar, and pervasive errors seriously undermine coherence, improper citation format	
<b>Grade</b>		/24
<b>Additional Comments:</b>		

## (Sample) MEMORANDUM

**TO:** President of the United States

**FROM:** [names]

**SUBJECT: Re-organizing the Government to Combat the WMD Threat**

**DATE:** xx / xx / xxxx

The proliferation of nuclear, chemical, and biological weapons is the most serious threat to U.S. security today, and will remain so far into the future. Whereas combating proliferation is an inherently government-wide mission, the existing national security architecture has resulted in a series of agency-specific efforts that are often poorly coordinated and fail to take advantage of important synergies. Re-organizing the government to meet the WMD threat therefore requires reforms that strengthen White House management of nonproliferation programs, expand interagency counterproliferation capabilities, and improve WMD-related intelligence.

### **Strengthen White House Management of Nonproliferation Programs**

The Departments of Energy (DOE), State, Defense (DOD), Commerce, and Homeland Security (DHS) all contribute to U.S. nonproliferation efforts, but receive insufficient top-level program guidance and coordination. For example, DOE did not learn of Libya's decision to abandon its nuclear program until it was revealed in the press. Moreover, DOE had no plan in place to dismantle Libya's nuclear assets despite its central role in performing such activities. Finally, proliferation detection R&D projects are currently managed by a community of end users that have overlapping needs but rarely communicate with each other.

To prevent future interagency breakdowns, the White House should designate a new senior-level Nonproliferation Policy and Program Director (NPD) to oversee all U.S. government nonproliferation programs. The NPD will chair a new National Security Council Policy Coordinating Committee on Nonproliferation (PCC) that will set overarching nonproliferation goals and priorities, develop an interagency strategic plan to achieve those goals and priorities, identify and assign missions and responsibilities to appropriate agencies, and coordinate program execution. To improve proliferation detection R&D, the NPD and PCC will also design an interagency technology development plan that will integrate and prioritize the needs of various technology end users across the government with the capabilities of the U.S. national laboratory system, private industry, and top universities. The Office of Management and Budget (OMB) will work with the new NPD and PCC to develop a multi-year interagency nonproliferation program budget, and will apply performance measures to monitor program management and implementation.

Although the NPD and the PCC will require little additional funding, past attempts at White House policy coordination – such as the Office of Homeland Security – have sunk into irrelevance because of agency resistance. To avoid suffering a similar fate, the NPD and PCC must possess clearly delineated authority and high level backing. In particular, the NPD should enjoy unambiguous control over nonproliferation policy and program budgets. The PCC should require agency participation at the Under Secretary level. Most important, the NPD and PCC must receive consistent, visible support from the President.

### **Expand Interagency Counterproliferation Capabilities**

The U.S. military and homeland security communities must be able to rapidly respond to proliferation emergencies. To provide this capability, the United States should create and train “Proliferation Risk Mitigation Teams” – akin to the Department of Homeland Security’s Nuclear Emergency Search Teams (NEST) – comprised of DOD special operations forces (SOF), CIA operatives, and DOE technical specialists. These teams will be capable of securing nuclear storage facilities and other sensitive infrastructure during combat operations or in response to the collapse of central authority in states that possess nuclear assets that are attractive to terrorists. They will also provide logistical and operational support to the Energy Department’s “Global Cleanout” program that seeks to return stockpiles of weapons-usable highly enriched uranium to Russia and the United States. Finally, they will engage in extensive “red-teaming” simulations in order to foster better situation awareness and preparedness.

Operational control of Proliferation Risk Mitigation Teams will pose a major challenge. Congress may object to placing the teams under CIA control in light of the agency’s past abuses. Moreover, DOD will be reluctant to assign SOF personnel to the teams if they will be placed under the command authority of a different agency. Given the types of operations in which the teams are likely to engage, DOD operational control would therefore seem most appropriate. The teams will cost approximately \$500 million annually to train and equip. To provide the necessary funding, the United States should cancel the Missile Defense Agency’s Airborne Laser program, which has been plagued by cost overruns and schedule delays.

### **Improve WMD Intelligence**

The effectiveness of U.S. nonproliferation and counterproliferation efforts ultimately depends on the quality of WMD intelligence. Unfortunately, the U.S. intelligence community has a poor track record of detecting both state-level and sub-state WMD proliferation. It failed to anticipate India’s nuclear test in 1998, produced flawed assessments of the threat from Saddam Hussein’s Iraq, and only belatedly uncovered the nuclear black market smuggling ring of Pakistani scientist A.Q. Khan. In addition, the intelligence community remains unable to provide reliable information on the status of nuclear programs in North Korea and Iran.

To improve community-wide WMD intelligence collection and analysis, the United States should, per the recommendation of the recent WMD commission, create a new National Counter Proliferation Center (NCPC). The Center would report directly to the new Director for National Intelligence and set requirements for WMD-related human, imagery, and signals collection for the entire intelligence community. It would also house an analytical division that would provide high-quality, actionable intelligence assessments to customers across the U.S. government, including the new White House NPD.

The NCPC will require approximately \$1 billion in annual funding. Given this price tag, Congress may resist creation of the NCPC until it can determine whether recent legislation will effectively address current intelligence community deficiencies. Moreover, CIA already operates an analytical unit devoted to WMD intelligence (WINPAC) that will fiercely resist encroachment upon its turf. The NCPC should therefore function as both a consumer and independent reviewer of WINPAC intelligence products while avoiding disruptive turf battles. Competition between WINPAC and the NCPC could result in higher-quality intelligence products from both.

*<end of sample memo>*

## (sample) EDITORIAL

### **Native Americans won an unusual legal victory at the Supreme Court. Congress could undo it.**

In a 5-to-4 ruling in [McGirt v. Oklahoma](#) earlier this month, the Supreme Court delivered a decisive legal victory for Native Americans. In a rare move, the court upheld an 1866 treaty between the Muscogee (Creek) Nation and the United States, a treaty that had established the Muscogee Nation's geographic borders. The court's decision means that much of eastern Oklahoma remains Indian land today, blocking state authorities from prosecuting First Nations individuals within the boundaries of the Muscogee Nation.

But the win may prove ephemeral. Congress could get back in the game and remold the boundaries of the Muscogee Nation.

Here are three takeaways from this landmark case.

#### **It's rare for treaties to matter to the courts**

*McGirt* upholds U.S. treaty obligations and promises that these lands will belong to the tribe in perpetuity. Remarkably, our [research](#) shows that although there are more than 370 treaties between the United States and indigenous people, treaties have historically not been persuasive to Supreme Court justices.

Using a unique data set consisting of all 104 cases involving indigenous people and tribes before the U.S. Supreme Court from 1969 to 2010, we find no relationship between the court's citation or reference to a treaty and a victory for First Nations or tribes. Indeed, the Supreme Court has rejected nearly half of the indigenous claims before it. In about 40 percent of these cases, the court cited treaties in its decision. But even when the court cites a treaty, it tends not to recognize indigenous claims.

Even though the Constitution dictates that treaties with tribes are binding federal law, the pattern of cases before the court suggests that First Nations who sign treaties with the United States are no more protected legally than members of tribes who did not. In other words, the treaties don't seem to provide much legal protection for First Nations.

Given this track record, *McGirt's* affirmation of tribal sovereignty is highly unusual.

#### **It matters who serves on the Supreme Court**

Justice Neil M. Gorsuch, appointed by President Trump and confirmed by the Senate in 2017, wrote *McGirt*. Gorsuch's presence may usher in a new era for indigenous rights before the court. Both the [National Congress of American Indians and the Native American Rights Fund supported Gorsuch's nomination](#). And upon joining the court, Gorsuch chose the first tribal citizen to serve as a Supreme Court [clerk](#).

Since joining the Supreme Court, Gorsuch has joined the four liberal justices in each of four cases involving First Nations. In each of these cases, Gorsuch makes clear that he sees treaties as binding law.

For example, in [\*Washington State Department of Licensing v. Cougar Den\*](#), Gorsuch joined liberal justices in a 5-to-4 plurality decision interpreting an 1855 treaty with Yakama Nation to grant a state gasoline tax exemption to the tribe.

In [\*Herrera v. Wyoming\*](#), the Supreme Court held that Wyoming's statehood did not void the Crow Tribe's right to hunt on unoccupied lands under an 1868 treaty, and that the Bighorn National Forest did not automatically become "occupied" when the forest was created. Although the majority opinion was written by Justice Sonia Sotomayor, Gorsuch again joined the liberal justices in this decision.

Gorsuch's affinity for tribes probably stems from his experience serving as a judge on the U.S. Court of Appeals for the 10th Circuit, a court that covers six states and 76 recognized tribes. In his 11-year appellate service, Gorsuch regularly ruled [in favor of indigenous rights](#). In *Cougar Den*, Gorsuch affirms that when the court is dealing with a tribal treaty, then the court must "give effect to the terms as the Indians themselves would have understood them," as he quotes the 1999 Supreme Court decision [\*Minnesota v. Mille Lacs Band of Chippewa Indians\*](#).

### **Congress could still interfere**

The court's decision upholds the Major Crimes Act of 1885, which put certain "major" criminal activities under federal, not state, jurisdiction, even if committed by an indigenous individual on indigenous lands. In practical terms, this means that the court overturned Jimcy McGirt's state court sentence for sex crimes. He can still be tried in a federal court. *McGirt* could also lead other indigenous individuals who were criminally convicted in state courts to appeal their sentences.

However, the court's decision invites and creates incentives for congressional action to diminish or disestablish reservation lands in Oklahoma. Because Congress never disestablished the treaty or diminished the lands, the court holds that the boundaries established by the treaty remain valid law. But the court previously established in [\*Cherokee Tobacco\*](#) in 1870 that congressional statutes would supersede previously established treaties.

That means that Congress could overturn the *McGirt* decision by changing the boundaries of indigenous lands in the eastern half of Oklahoma, thereby returning the prosecution of indigenous crimes within the reworked boundaries back to Oklahoma authorities.

The Muscogee Nation's hard-won legal victory may prove short-lived.

(see <https://www.washingtonpost.com/politics/2020/07/29/native-americans-won-an-unusual-legal-victory-supreme-court-congress-could-undo-it/>) by Rebecca A. Reid and Todd A. Curry