



## REVIEW

**Rebecca Nagle. *By the Fire We Carry: The Generations-Long Fight for Justice on Native Land*. William Collins, 2024. 336 pp. ISBN: 978-0-00-872500-6**

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When thinking about the largest restoration of Indigenous land in the history of the United States, one might not immediately think the catalyst would be a 1999 murder case in Oklahoma. In *By the Fire We Carry*, Rebecca Nagle outlines the details of two court cases that led to this restoration, weaving in the history of the Muscogee, Cherokee, Seminole, Chickasaw, and Choctaw Nations and their continued resistance to the genocidal policies of the US that are foundational to the court rulings (223). Nagle meticulously guides the reader through these histories and the stories of many involved, creating a gripping and momentous account of two historic court rulings affirming Indigenous sovereignty and treaty rights in the US, while also weaving in her own family history and a sensitivity to the complexity of the cases. I echo Nagle here in starting this review by asking readers to take care while they read: the cases discussed hold deep wounds for the victim's families, the many others involved, and those affected by the wider history of colonial dispossession and systemic violence (4).

The book begins in Part One by outlining the first court case that brought one of the contemporary Native fights for sovereignty to the Supreme Court. On August 28, 1999 (9), Patrick Murphy murdered George Jacobs on Vernon Road. Patrick was from the Muscogee (Creek) community of Ryal, "the heartbeat of Muscogee culture. It's where elders still speak the language, where Creek Methodist and Baptist churches stand, and where, on Saturday nights, people still dance at Muscogee ceremonial grounds" (10), just north of Vernon and Vernon Road. When Murphy was prosecuted and sentenced to the death penalty by the state of Oklahoma, one piece of evidence was contested between witnesses: the location of the murder (20). Four years later, federal public defender Lisa McCalmont was investigating Murphy's case and discovered that the place where the police and prosecution had said the crime occurred was over a mile and a half away from the memorial to Jacobs that was placed at the scene of the crime (39). Nagle writes,

Many public defenders would not have given the discrepancy this much thought. What difference could a mile on a dusty road possibly make in the life or death of a condemned man? But Lisa was no ordinary public defender. Thanks to her background in geology and oil, she knew that a mile could make all the difference in the world. (42)

It was this curiosity that ultimately upheld the Muscogee reservation, and an ensuing eight others (194), and saved Patrick's life. As "[i]t turned out that the land, like much of Oklahoma, had a complicated history," so the state of Oklahoma may not have actually have authority to prosecute Murphy (42-43). Interspersed in Part One of the book is the history of forced removal and of the Five Tribes, and it is at this junction, one can see why Nagle is the right person to tell this story. Her connection to this history is personal - as a member of the Cherokee Nation, one of the Five Tribes, alongside the Muscogee Nation, forcibly displaced through the Trail of Tears. She leads the reader through the life and legacy of her great-great-great-grandfather John Ridge and his father, *SOULLY*, or Major Ridge (23), laboriously recounting *SOULLY*'s history, from the scorched earth campaigns by the colonial militias that made him and his family refugees in 1776 (25), to his political career that turned him into a traitor for many in the Cherokee Nation today (24). Telling the history of the Muscogee Confederacy, the divisive entry of Muscogee and Cherokee into the War of 1812 (30-31), the Battle of Tohopeka - "one of the largest massacres of Native Americans in US history" (33) - and the many fraudulent, genocidal, dispossessive actions and treaties by Andrew Jackson, amongst many others, Nagle leaves no detail unreported.

In speaking about this history, Nagle centers survivance. When Andrew Jackson signed the Indian Removal Act, the genocidal removal of the Five Tribes saw many people put into concentration camps and, while making the journey out west, numerous unthinkable deaths at the hands of the enforced treaties signed with the US (106-107). Tribal nations took up different tactics to try to combat the policy of ethnic cleansing before removal under the Jackson administration, and, Nagle notes, "every act of resistance helped us save what we still have - whether it's pieces of our homeland, language, ceremony, or the plain fact that we survived" (98). Nagle notes of this moment, "[w]hile it is largely forgotten, Indigenous resistance formed the first large-scale political protest movement in the United States" (73). Contesting this act in the courts led to legally defining 'domestic dependent nations' (75), undisputed Indigenous rights to land, that states could not alter rights of Indigenous nations as "Indian affairs were 'exclusively' handled by the federal government," and that treaties are the "supreme law of the land" (76). The three rulings that legally determined this continue to have global consequences for Indigenous peoples (Wolfe 2006).

After removal, the Five Tribes' new lands and reservations in Oklahoma were divided and disintegrated again in the late 1800s when the "US government decided rather than push Native people onto shrinking reservations, it would assimilate Native people to white society by privatizing their land" through allotment (134). This, alongside the unfolding court case, is the subject of Part Two of the book,



highlighting how the Dawes Act of 1887 would turn communal land into private property and thus turn tribal citizens into “self-serving capitalists” (139), even though many nations voted down the proposal (140). This “brought a wave of new investment, and before the ink was dry on the allotment agreements, oilmen swarmed Indian Territory” (153). Nagle outlines how the oil boom, alongside other natural resource extraction and property development, led to Native land being ‘grafted’ through “lease, sale, swindle, stealing, deception, fraud, and sometimes violence” (155). However, while allotted land was leased and sold, restrictions on allotted land meant that tribal citizens still owned most of the land (156). When Oklahoma became a state, restrictions were reduced through the racial system of blood quantum and only remained for some land owned by people with a certain degree of “Indian blood” (158). The life of Millie Naharkey, a Native woman whose land was drilled for oil and never saw any of the profits, or any freedom or justice in her lifetime, due to being deemed legally incompetent and placed under an oppressive guardianship, exemplifies the unjust treatment of Native peoples at the hands of the oil and gas industry detailed in the book (173-4).

Fast forward to 2016 and *Murphy* was heard by the Tenth Circuit Court of Appeals with the Muscogee Nation now participating in the case to argue their reservation still existed as it had never been disestablished by Congress (79-82). When the Court upheld the reservation, Oklahoma appealed the decision, and the case went to the Supreme Court in 2018. Nagle describes the apprehension and small chance of success in the Supreme Court due to a long history of rulings that, “rather than uphold the law to protect Indigenous nations, [...] remade the law to fit settlers’ needs,” and the “sheer ignorance of its justices” (121). Nagle notes, “Supreme Court justices are no better or worse than the general public; most people don’t know what a federally recognized tribe is, how jurisdiction works on a reservation, or how treaties fit into our Constitution” (121). The contradictions in the history of federal law with Indigenous nations and the unpredictability of those interpreting the law meant the defense had no way to know how the court case would go or if they would win (122). In the Supreme Court, Oklahoma’s lawyer couldn’t provide proof that the reservation had ever been disestablished, relying instead on a faulty history of allotment (125-126) and falsified statistics of how many people in prison could be released if Oklahoma ceased to have authority over the territory (129).

When the decision wasn’t released by the Supreme Court in the summer of 2019, it fell to another appeal, that of Jimcy McGirt, to decide the status of the reservation (150). McGirt had seen *Murphy*’s case on TV and knew his crime took place on the Muscogee reservation, yet he was prosecuted by the state of Oklahoma. “For Muscogee leaders, it was hard to think a case involving the sexual abuse of a child would determine the status of their reservation” (152), writes Nagle, yet when McGirt’s case went to the Supreme Court, the fate of the reservation was decided (152). The decision came on July 9th, 2020, and was written by Supreme Court

Justice Neil Gorsuch, “a textualist” who “believes it is the role of the courts to interpret, not create, law” (171). Seeing this, Nagle writes that, before she’d even read the verdict, she “started screaming,” knowing that the court had ruled in favour of the defendants as Congress had never disestablished the reservation, despite Oklahoma arguing it had intended to (185).

Part Three of the book takes the reader through the aftermath of the *Murphy* and *McGirt* trials. On the day of the verdicts, “across eastern Oklahoma, tribal citizens celebrated the victory with joy in abundance. But it was also joy that cut hard and deep” (185). Nagle writes, “[o]ur blood and our bones knew how much had been lost to reach this one act of justice” (185). The decision confirmed that “despite Oklahoma’s century of gaslighting tribes, the state was not different. The law applies here just like it does everywhere else” (186). In opposition to the Lockean rationale for opposition by Chief Justice John Roberts that white squatters worked hard for the land so they could lay claim to it (187), the ruling would lead to cases that also upheld the Cherokee, Seminole, Chickasaw, and Choctaw Nations’ reservations, or half of the state of Oklahoma (190).

The resonance of these cases is not that they are groundbreaking, but that they are “radical”: as Nagle writes, “Muscogee Nation wasn’t asking the Tenth Circuit to right the wrongs of history or give back their land. Their reservation, legally, was still theirs. They were simply asking the court to follow the law” (87). Throughout the history of forced displacement and removal, as well as contemporarily, laws protecting Indigenous nations have been continually ignored by the US government and states when they are “inconvenient” for them (188). In this instance, the law was followed.

A key part of the book is that it addresses the stickiness of sovereignty for many Native nations, specifically through the history of slavery and Freedmen’s status within tribal nations. The history of chattel slavery within the Muscogee, Cherokee, Chickasaw, Choctaw, and Seminole Nations meant the nations “came to be called the loaded moniker ‘the Five Civilized Tribes’” (69), in “Euroamerican parlance” as Patrick Wolfe notes (396). During removal, “over three hundred thousand enslaved people were moved from the Eastern Seaboard to the Deep South” (Nagle 102), and the prosperity of the nations after removal is partly due to enslaved labour (136). For the Cherokee Nation, in the 1828 Constitution, Black Cherokees were not permitted citizenship (69), and the Muscogee Nation adopted the same policy in their constitution in 1979 (Walker). From Nagle’s point of view,

If Indigenous nations are truly sovereign, then we are responsible for our mistakes. Like any other government, we are responsible for the harm we have caused. We cannot hold the United States accountable for the wrongs of history committed against us, but not take account for the wrong of chattel slavery. [...] On the long path of repair, citizenship is only the first step” (202).

Since the book has been published, Rhonda Grayson, a descendant of people enslaved by the Muscogee Nation whose story is featured in the book, has been granted citizenship (Walker).



Nagle's years of activism for Native rights and the six years spent reporting on this case shine through in the book (2); the minute detail give an immediacy to the unfolding court case decisions, thereby offering a profound understanding of the people, politics, and complicated relationships involved in the cases. The detail she provides highlights the stringent and colonial bureaucratic measures within the courts, for example, that landlines had to be used by those speaking during Covid hearings (164), and that traditional tribal dress isn't acceptable to wear in courtrooms but western dress is never questioned as "advocating for one side or the other" (116). Her own investigative journalism within the case is highlighted in the book where she fact-checked Oklahoma's inflated claims of criminal cases being overturned after the decision and the number of people left unprosecuted because federal and tribal courts did not have capacity (214).

Overall, throughout the book, the reader is made to understand how this decision is a "visceral sense of justice" for Nagle (3). The book enunciates what Tone Bleie, Sheryl Lightfoot, and Elsa Stamatopoulou call the "consistent active refusal to acquiesce" of Indigenous peoples in the face of settler borders and colonial policies (17). It oscillates between the history of treaty-making and the unfolding of the *Murphy* and *McGirt* court cases to piece together an engaging and accessible account of the colonial laws regarding reservations, allotment, and the broader legal history governing Native nations in the US, as well as unpacking the complex notion of sovereignty for many Native nations today. "Indigenous land, sovereignty, language, and culture are all connected. Whenever we lost land, our languages and culture also suffered" (204), writes Nagle; however, when Muscogee citizens were forcibly moved out west, "[e]ach Muscogee town took care to keep their council fire alive through these acts of cruelty. The fires they carried still burn today" (101).

*Sophia Arnold, University of Kent*

### Works Cited

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