

Embodied Sovereignty: Race, Gender, and Sexual Regulation in Oklahoma's Fourteenth Amendment History

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This paper reinterprets Oklahoma as a constitutive site in the making of US constitutional modernity by tracing how race, gender, sexuality, and sovereignty have been regulated through intimate governance under the Fourteenth Amendment. Oklahoma's appellate litigation and landmark Supreme Court cases reveal how constitutional meaning is forged through contests over embodied life: who may associate, reproduce, move, and claim protection, and under what sovereign authority. These rights are defined over the twentieth and twenty-first centuries through nearly twenty cases from Oklahoma. The through-line is that constitutional authority in and over Oklahoma took shape not at the margins of modernity but at its center, where questions about bodies and belonging repeatedly forced doctrinal innovation.

Theoretical and Historiographical Contributions

Rather than treating "social" regulation as peripheral to constitutional development, this study foregrounds the legal production of embodiment. In equal protection, reproductive liberty, sex discrimination, and federal Indian law, Oklahoma generated turning points that constitutionalized bodily governance. The analysis situates these cases within Jim Crow state-building, eugenic administration, feminist and queer legal mobilization, and ongoing struggles over tribal sovereignty. By centering Oklahoma's case law, the paper reframes US constitutional modernity as a project co-constituted by racial hierarchy, gender ordering, sexual regulation, and contested jurisdiction.

Methodology

The project employs legal-historical analysis integrating judicial opinions in both the US Supreme Court and Oklahoma state courts, statutory debates, and administrative/public

discourse. Close reading of opinions supplies the doctrinal language that scaffolded regulatory authority over intimacy and embodied difference. Secondary histories of Jim Crow and Indian law contextualize these doctrinal moves within political economy and settler colonial governance.

Case Studies

Oklahoma's early statehood regime codified racial separation across nearly every sphere of daily life—schools, marriage, transportation, and public accommodations. At the center of the first legislature's project was the rapid construction of a racial order: lawmakers "wrote segregation into law with Senate Bill Number One... banned interracial marriages... [and] segregated many public facilities," even becoming "the first state in the Union to segregate public pay telephone booths."¹ These laws did more than segregate public space; they structured racial proximity and mobility, embedding hierarchy into the intimate governance of bodies.

This state-level project of regulating racial presence and political membership soon intersected with federal constitutional review. In *Guinn v. United States* (1915), the Supreme Court struck down Oklahoma's "grandfather clause," declaring it "void because it violates the Fifteenth Amendment" and condemning mechanisms that made antebellum racial status "the controlling and dominant test of the right of suffrage."² *Guinn* thus exposed how the same racial logic driving everyday segregation also operated through seemingly neutral administrative devices that restricted access to the ballot. Together, Oklahoma's statutory regime and the

¹ Oklahoma Historical Society, "Segregation," *The Encyclopedia of Oklahoma History and Culture*, noting the first legislature's Senate Bill No. 1, anti-miscegenation felonies, and segregation of facilities, including the 1915 telephone-booth statute.

² *Guinn & Beal v. United States*, 238 U.S. 347 (1915) ("The so-called Grandfather Clause... is void because it violates the Fifteenth Amendment"; provisions making pre-Amendment conditions the test of suffrage are "in conflict with, and void under" the Amendment).

Court's intervention reveal how racial orders were maintained through both physical separation and juridical techniques that determined who counted as a political subject.

The state's regulation of embodied life extended beyond racial boundaries and into the domain of reproduction. Oklahoma's Habitual Criminal Sterilization Act transformed bodily autonomy into a constitutional question under the Fourteenth Amendment. When the Supreme Court invalidated the statute in *Skinner v. Oklahoma*, it emphasized that "[m]arriage and procreation are fundamental to the very existence and survival of the race,"³ warning that "the power to sterilize... may have subtle, far reaching and devastating effects... [leaving a person] forever deprived of a basic liberty."⁴ If *Guinn* targeted racialized exclusion from political participation, *Skinner* confronted the state's attempt to control reproductive capacity; a different but equally consequential mode of determining whose bodies were permitted to shape the future polity. In linking equal protection to fundamental rights, *Skinner* not only repudiated eugenic governance but also established constitutional guardrails that would shape later privacy and reproductive autonomy jurisprudence.⁵

The regulation of sex and gender soon followed a parallel constitutional trajectory. In *Craig v. Boren* (1976), Oklahoma once again became the jurisdiction through which the Supreme Court articulated a more precise framework for evaluating state classifications. By striking down the state's gender-differentiated 3.2 percent beer law and announcing that "classifications by gender must serve important governmental objectives and must be

³ *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

⁴ *Skinner*, 316 U.S. at 541–42 (sterilization's "subtle, far-reaching and devastating effects"; need for "strict scrutiny" of classifications).

⁵ Rachel Gur-Arie, "*Skinner v. Oklahoma* (1942)," *Embryo Project Encyclopedia* (2016), on strict scrutiny and the repudiation of eugenic administration; see also Michael J. Davis, "*Skinner v. Oklahoma*: How Two McAlester Lawyers...", *Oklahoma Bar Journal* (May 2023).

substantially related to achievement of those objectives,”⁶ the Court refused to accept sex-based regulation justified by broad social generalizations. It cautioned that “proving broad sociological propositions by statistics is a dubious business,” rejecting sex as an “accurate proxy” for conduct.⁷ Crucially, *Craig* did not arise in isolation but emerged from a longer Oklahoma and national regulatory history. After the repeal of Prohibition, the state carved out a special category of “non-intoxicating” 3.2 percentage beer and preserved a sex-specific age differential well into the 1970s.⁸ Positioned against this backdrop, *Craig* illustrates how the Court’s equal protection doctrine evolved in response to the state’s persistent efforts to govern gendered behavior; efforts that, like those concerning race and reproduction, policed embodied participation in public life.

The final arena in which Oklahoma shaped constitutional meaning is the governance of Indigenous sovereignty and jurisdiction. In *McGirt v. Oklahoma* (2020), US Supreme Court Justice Neil Gorsuch grounded the opinion in a constitutional ethic of fidelity to treaty promises: “On the far end of the Trail of Tears was a promise... Because Congress has not said otherwise, we hold the government to its word.”⁹ By affirming that the Muscogee (Creek) Nation’s reservation remained “Indian country” absent explicit congressional disestablishment, the Court reconfigured which sovereign—federal, tribal, or state—could exercise authority over crimes involving Native people.¹⁰

Yet this doctrinal restoration of tribal territorial authority was soon complicated by *Oklahoma v. Castro-Huerta* (2022), which held that “the Federal Government and the State

⁶ *Craig v. Boren*, 429 U.S. 190, 197–98 (1976) (Brennan, J.) (“classifications by gender must serve important governmental objectives and must be substantially related...”).

⁷ *Craig*, 429 U.S. at 204 (“proving broad sociological propositions by statistics is a dubious business”).

⁸ Michael Graham, “*Craig v. Boren*: Sex Discrimination, 3.2% Beer, and the Clash between Oklahoma Law and the Equal Protection Clause,” *Oklahoma Politics* (1999), on 3.2% beer politics and the long-standing sex-based age differential.

⁹ *McGirt v. Oklahoma*, 591 U.S. ____ (2020) (Gorsuch, J.) (“On the far end of the Trail of Tears was a promise... Because Congress has not said otherwise, we hold the government to its word.”).

¹⁰ *McGirt*, holding Creek lands remain “Indian country” for Major Crimes Act purposes.

have concurrent jurisdiction to prosecute crimes committed by non-Indians against Indians in Indian country,” and asserted that states possess criminal jurisdiction unless it is affirmatively preempted.¹¹ Scholars have characterized the decision as a stark departure that “erod[es] tribal sovereignty” and creates a “buck-passing” dynamic with tangible consequences for Native communities.¹²

Placed in sequence, *McGirt* and *Castro-Huerta* illuminate the embodied stakes of jurisdictional struggle. The question of which sovereign’s courts and law enforcement systems prevail has direct implications for the safety, mobility, family integrity, and access to justice of Indigenous women, Two-Spirit, trans, and gender-diverse people. Read together, these cases underscore how sovereignty is not an abstract legal status, but a lived condition shaped by overlapping authorities whose decisions govern intimate and often life-defining encounters with the state.

Conclusion

From *Guinn* through *Skinner*, *Craig*, *McGirt*, and *Castro-Huerta*, Oklahoma has served as a generator of constitutional meaning in which the Fourteenth Amendment’s reach over racial hierarchy, gender ordering, sexual governance, and sovereignty has been repeatedly renegotiated. These cases reveal that American constitutional modernity is not merely institutional; it is embodied. By centering Oklahoma, we see how constitutional authority has been constructed

¹¹ *Oklahoma v. Castro-Huerta*, 597 U.S. ____ (2022) (Kavanaugh, J.) (States and Federal Government hold concurrent jurisdiction over non-Indian on Indian crimes in Indian country; “The default is that States have criminal jurisdiction in Indian country unless... preempted.”)

¹² Adam Crepelle, Timothy Purdon, and Brendan Johnson, “Passing the Buck: The Perils of *Oklahoma v. Castro-Huerta*,” *Denver Law Review* (2024) (jurisdictional “pass-the-buck” risks, sovereignty erosion); Bethany R. Berger, “*Oklahoma v. Castro-Huerta*’s Constitutional Mistakes,” *Stanford Law Review* (2025) (criticizing doctrinal shift)

in and through contests over intimacy, reproduction, racial proximity, and jurisdictional power, and how those contests continue to structure lived experiences of the state.