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BACKGROUND REPORT ON PUBLIC LAW 280

PREPARED AT THE REQUEST OF

HENRY M. JACKSON, *Chairman*

COMMITTEE ON INTERIOR AND INSULAR AFFAIRS
UNITED STATES SENATE



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MEMORANDUM OF THE CHAIRMAN

To: Members of the Senate Committee on Interior and Insular Affairs:

During the 1950's the national Indian policy sought to end or "terminate" the Federal responsibility for, and special relationship with, Indian tribes. The ultimate effect of this policy on Indian tribes would mean that all statutes pertaining to Indians would no longer be applicable; that the Federal programs and services provided to Indians solely on the basis of their status as Indians would cease; and that Federal protection would no longer be provided for Indian lands and other natural resources.

It was during this era that Public Law 280 was adopted by the 83d Congress and signed into law by President Eisenhower on August 15, 1953. The express purpose of this public law was to grant broad discretionary authority to the States to assume civil and criminal jurisdiction over Indian reservations within their borders. Prior to the passage of Public Law 280, State jurisdiction over Indian reservations was prescribed by specific statutes approved by Congress or judicially recognized because of the involvement of non-Indians. And jurisdiction over civil and criminal matters between Indians on their reservations was vested in either tribal governments or the Federal Government.

The Public Law 280 legislation was approved by Congress in the face of strenuous Indian opposition and denied consent of the Indian tribes affected by the Act. In its final form the statute gave five States civil and criminal jurisdiction over all but three tribes within those States, and gave the United States authority to grant similar jurisdiction to all other States.

The Indian community viewed the passage of Public Law 280 as an added dimension to the dreaded termination policy. Since the inception of its passage the statute has been criticized and opposed by tribal leaders throughout the Nation. The Indians allege that the Act is deficient in that it failed to fund the States who assumed jurisdiction and as a result vacuums of law enforcement protection have occurred in certain Indian reservations and communities. They contend further that the Act has resulted in complex jurisdictional problems for Federal, State and tribal governments.

With this background the Committee requested the American Law Division of the Library of Congress to prepare a report on Public Law 280. The Committee envisioned that the report would serve as an educational and informational document for the Indian community, Members of Congress and other interested individuals and organizations. The Committee wishes to commend Mr. David M. Ackerman, legislative attorney, American Law Division, for his thorough legal research and preparation of the background paper.

This report merits the study by all interested parties in this complex issue. I am hopeful that it will stimulate fresh thinking and new approaches to the resolution of the many problems imposed on the Indian community, the States, and the Federal Government, by Public Law 280.

HENRY M. JACKSON, *Chairman.*

LETTER OF TRANSMITTAL

THE LIBRARY OF CONGRESS,
CONGRESSIONAL RESEARCH SERVICE,
Washington, D.C., March 18, 1975.

To: Senate Committee on Interior and Insular Affairs
Attention: Forrest Gerard
From: American Law Division
Subject: Background Paper on Public Law 280

Enclosed is the report you requested on the history and development of Public Law 280 giving the States the option of assuming criminal and civil jurisdiction over Indian country. I hope it is responsive to your needs. If you wish additional assistance or want to discuss the report, please call on us.

DAVID M. ACKERMAN,
Legislative Attorney.

BACKGROUND REPORT ON PUBLIC LAW 280

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BACKGROUND REPORT ON PUBLIC LAW 280

OVERVIEW

Public Law 280 was adopted by the 83rd Congress and signed into law by President Eisenhower on August 15, 1953. It was adopted during a period in which the expressed federal policy toward Indians sought to terminate federal responsibility for, and special relationships with, Indian tribes. The avowed purpose of Public Law 280 was to give all of the states the option of assuming civil and criminal jurisdiction over Indian reservations within their borders. Prior to that time, state jurisdiction over Indian reservations was limited to that conferred by special acts of Congress or judicially recognized because of the involvement of non-Indians. Jurisdiction over civil and criminal matters between Indians on their reservations rested with either the tribal governments or the federal government.

As adopted in 1953, the statute subjected, with three exceptions, the Indian tribes in five specified states to the civil and criminal jurisdiction of those states, and gave the consent of the United States to the assumption of such jurisdiction by all other states. The right to initiate the assumption of such jurisdiction was given entirely to the states. Despite the objections of several Indian representatives, no requirement that the consent of the Indian tribes affected be obtained was included.

The statute barred the states that assumed jurisdiction under it from alienating, encumbering, or taxing Indian trust lands, and from depriving the Indians of their hunting, fishing, and trapping rights.

In 1968 the statute was significantly amended to include the requirement that tribal consent to a state's assumption of criminal and/or civil jurisdiction be obtained before such jurisdiction could be effective and that such consent be manifested by majority vote in a tribal referendum. The amendments also authorized the federal government to accept the retrocession of jurisdiction from those states that had assumed it under the 1953 statute. The amendments were adopted through complicated legislative maneuvering bypassing the House Committee on Interior and Insular Affairs, which had initiated the adoption of Public Law 280 in 1953. The amendments came at a time of growing dissatisfaction both in Congress and in the Administration with the policy of termination of Federal responsibility for Indian tribes and of increasing support for a new policy of self-determination.

Extensive litigation concerning Public Law 280 has upheld its constitutionality, delimited the requirements necessary for state assumptions of jurisdiction to be valid, clarified the scope of the exception granted Indian fishing rights but left in doubt the scope of the bar to state encumbrances of Indian trust lands, and affirmed that the federal government has discretionary authority to accept a state's offer of retrocession either in whole or in part.

STATE JURISDICTION PRIOR TO THE ADOPTION OF PUBLIC LAW 280

In Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831), Chief Justice John Marshall described the peculiar status of Indian tribes in the U.S. in the phrase "domestic dependent nations,"[1/] implying that they were both sovereign and subject at the same time. Expanding on this view as it related to the question of whether a state could enforce its laws on an Indian reservation in the seminal case of Worcester v. State of Georgia, 31 U.S. (6 Pet.) 515 (1831), he termed Indian tribes to be "distinct political communities, having territorial boundaries, within which their authority is exclusive." 31 U.S. at 556. This case concerned whether the state of Georgia could enforce its laws on the Cherokee reservation within its boundaries. The Supreme Court held that the state could not:

> The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the government of the United States. 31 U.S. (6 Pet.) 560-61.

In other words, Indian tribes were perceived as distinct nations, with some of the powers of any sovereign state. Conquest rendered the tribes

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1/30 U.S. (5 Pet.) at 21.

subject to the legislative power of the U.S. as conferred upon Congress by Article I, Section 8, of the Constitution, giving Congress the power "to regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes." But except as it might be expressly qualified or overridden by Congress, the internal sovereignty of the Indian tribes to govern themselves was thought to be unimpaired. Consequently, the states could exercise no jurisdiction over Indians on their reservations. The governance of the Indian tribes was a matter for the Indians themselves and for the Federal government.

This exclusion of state jurisdiction has not been absolute, however.

> The general notion...that an Indian reservation is a distinct nation within whose boundaries state law cannot penetrate, has yielded to closer analysis when confronted...with diverse concrete situations. Kake Village v. Egan, 369 U.S. 60, 72 (1962).

Thus state criminal law was early held to be applicable to offenses committed by Indians off the reservation.[2/] It was also held to be applicable to offenses committed on the reservation by non-Indians against non-Indians.[3/] On the civil side, the validity of state taxation of personalty belonging to a non-Indian within Indian country has been sustained,[4/] and Indians have been permitted to sue non-Indians in state courts.[5/]

2/Hunt v. State, 4 Kan. 6 (1866).

3/U.S. v. McBratney, 104 U.S. 621 (1881).

4/Thomas v. Gay, 169 U.S. 264 (1898).

5/Felix v. Patrick, 145 U.S. 317 (1882).

Nevertheless, the basic policy regarding state jurisdiction articulated in Worcester has persisted.[6/] The general principles have been summarized as follows:

> ...control of Indian affairs has been delegated, under the Constitution, to the Federal Government....(S)tate jurisdiction in any matters affecting Indians can be upheld only if one of two conditions is met: either that Congress has expressly delegated back to the state, or recognized in the state, some power of government respecting Indians; or that a question involving Indians involves non-Indians to a degree which calls into play the jurisdiction of a state government. Felix Cohen, Handbook of Federal Indian Law (1942), p. 117.

Congress has on several occasions adopted legislation providing for state jurisdiction over various matters. Thus in the General Allotment Act of 1887,[7/] Congress provided that the descent and distribution laws of the states would apply to lands allotted under the Act.[8/] In 1929 it authorized the states to enforce on Indian reservations their sanitation and quarantine laws, to make inspections for health and educational purposes, and to enforce compulsory school attendance. 45 Stat. 1185; 25 U.S.C. 231. In 1940 it

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6/See Williams v. Lee, 358 U.S. 217, 219 (1959).

7/24 Stat. 388, amended Act of March 3, 1901, Sec. 9, 31 Stat. 1058; 25 U.S.C. 348.

8/The effect of this grant of authority was substantially limited, however, by subsequent enactments conferring upon the Secretary of the Interior the power to determine heirs and to partition allotments. See Cohen, Handbook of Federal Indian Law (1942), p. 118.

granted the state of Kansas criminal jurisdiction over offenses committed on the reservations in that state. 54 Stat. 249.

Indicating the growing momentum of the policy of termination, Congress after World War II adopted transfers of civil and/or criminal jurisdiction to particular states with increasing frequency. Thus in 1946 it gave North Dakota criminal jurisdiction over the Devils Lake Reservation. 60 Stat. 229. In 1948 it gave Iowa criminal jurisdiction over offenses on the Sac and Fox Indian Reservations (62 Stat. 1161) and New York criminal jurisdiction over offenses committed on the reservations of that state. 62 Stat. 1124; 25 U.S.C. 232. In 1949 it conferred upon California civil and criminal jurisdiction over the Agua Caliente Indian Reservation. 63 Stat. 705. In 1950 it gave New York civil jurisdiction over the tribes in that state. 64 Stat. 845; 25 U.S.C. 233.

Nevertheless, absent these special grants of jurisdiction to the states by Congress or the judicial recognition of state jurisdiction due to the involvement of non-Indians, state jurisdiction over civil and criminal matters on Indian reservations prior to the adoption of Public Law 280 was precluded. Such jurisdiction resided either in the tribes themselves or in the Federal government.

POLICY CONTEXT OF PUBLIC LAW 280

U.S. policy toward Indian tribes can be said to have oscillated between the view that they are conquered but nonetheless sovereign peoples with a distinct cultural identity and the view that they are to be assimilated into the dominant culture as rapidly as possible. After the period of conquest had largely ended, President Arthur called in 1881 for a policy that would "introduce among the Indians the customs and pursuits of civilized life and gradually absorb them into the mass of our citizens."[9/] Implementing this policy Congress in 1887 adopted the Indian General Allotment Act.[10/] This Act broke up tribal holding and distributed Indian land to individual Indians in 40, 80, or 100 acre allotments to encourage the Indians to become family farmers.

As the decades passed, it became clear that this policy did not result in economic self-sufficiency and caused substantial diminution in Indian landholdings (from 138 million acres in 1887 to 48 million acres in 1934).[11/] Consequently, after receiving grim reports on the prevalence of depressed economic, educational, and health conditions on the Indian reservations, Congress adopted the Indian Reorganization Act of 1934.[12/] The Act

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9/Chester A. Arthur, First Annual Message to Congress, (Dec. 6, 1881), cited in National American Indian Court Judges Association, Justice and the American Indian I (1974), p. 20.

10/Act of Feb. 8, 1887; 24 Stat. 388.

11/W. Brophy & S. Aberle, The Indian: America's Unfinished Business (1966), p. 20, cited in Donald L. Burnett, Jr., "An Historical Analysis of the 1968 'Indian Civil Rights' Act," Harvard Journal on Legislation 9: 557, 564 (May, 1972).

12/Act of June 18, 1934, 48 Stat. 984; 25 U.S.C. 461 et seq.

ended the allotment policy established in 1887 and attempted to stabilize and strengthen tribal organizations by encouraging a limited degree of self-government, under the supervision of the Department of Interior. The Act also established various assistance programs intended to help the Indian tribes to become economically self-sufficient.[13/]

However, during the 1940's and early 1950's several Congressional committees became increasingly impatient with the pace at which Indian self-sufficiency was being attained and with the growing size of the Bureau of Indian Affairs (BIA), and sought to articulate a more explicit policy of terminating Federal responsibility for Indians. As early as 1943 the Senate Committee on Indian Affairs issued a scathing report on the BIA and called for its abolition:[14/]

> While the original aim was to make the Indian a citizen, the present aim appears to be to keep the Indian an Indian and to make him satisfied with all the limitations of a primitive life.
>
> The Bureau has been concerned with building up a system instead of service; attempting to build self-perpetuating institutions; making material improvements for the Indian Service at the expense of Indian life; furnishing physical relief that was not needed nearly so much as economic and civic encouragement; breaking down assisting agencies; segregating the Indian from the general citizenry; condemning the Indian to perpetual wardship; making the Indian the

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13/Ibid.

14/"Survey of Conditions Among the Indians of the United States," Senate Report No. 310, 78th Congress, 1st Session (June 11, 1943).

> guinea pig for experimentation; grouping the Indian for convenience of supervision for which they are presumed to exist; tieing him to the land in perpetuity; forcing a conventional type of education on him; attempting to compel all Indians to engage in agriculture and stock raising under the supervision of an extension department which is an end in itself. 15/

The Committee called for the elimination or transfer to the states of the BIA's special programs for Indians and for the pursuit of a policy that would "not differentiate them (Indians) from other citizens."16/

In 1947 the Senate Post Office and Civil Service Committee, in hearings on how to reduce the size of the federal bureaucracy, obtained from the Acting Commissioner of the Office of Indian Affairs the statement that:

> It is our function to bring the Indians to a point economically and socially where the services rendered by the Federal Government now will no longer be needed. 17/

The Committee then prodded the Acting Commissioner into producing, apparently for the first time, a general timetable for the termination of federal services to particular tribes.18/

15/Ibid., pp. 17-18.

16/Ibid., p. 20.

17/Hearings on S. Res. 41 before the Committee on Civil Service, United States Senate, 80th Congress, 1st Session (1947), statement of William Zimmerman, Jr., Acting Commissioner, Office of Indian Affairs, p. 77.

18/Ibid., p. 547.

In 1952 the House adopted a resolution mandating its Committee on Interior and Insular Affairs to investigate, among other matters, "the manner in which the Bureau of Indian Affairs has performed its functions of studying the various tribes, bands, and groups of Indians to determine their qualifications for management of their own affairs without further supervision of the Federal government."[19] In its initial report on this investigation, the Subcommittee established to do the investigation articulated its beliefs as to the proper course for Federal Indian policy as follows:

> It is the belief of the committee that all legislation dealing with Indian affairs should be directed to the ending of a segregated race set aside from other citizens. It is the recommended policy of this committee that the Indians be assimilated into the Nation's social and economic life. The objectives in bringing about the ending of the Indian segregation are: (1) the end of wardship or trust status as not acceptable to our American way of life, and (2) the assumption by individual Indians of all the duties, obligations, and privileges of free citizens. [20]

Finally, in 1953 the policy of termination came to full flower when Congress adopted House Concurrent Res. 108, which stated in part as follows:

> (I)t is the policy of Congress, as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship....[21]

19/House Res. 698, 82nd Congress, 2nd Session (July 1, 1952).

20/House Rept. No. 2503, 82nd Congress, 2nd Session (Dec. 15, 1952), p. 124.

21/H. Con. Res. 108, 83rd Congress, 1st Session (1953); H. Rept. No. 841; S. Rept. No. 794.

The resolution stated it to be the sense of Congress that certain named tribes and the tribes in four specified states "be freed from Federal supervision and control and from the disabilities and limitations specially applicable to Indians." As explained by the House Report, the "limitations specially applicable to Indians" included their exclusion from the general civil and criminal jurisdiction of their respective states.

22/H. Rept. No. 841, 83rd Congress, 1st Session (July 15, 1953).

CONGRESSIONAL PASSAGE OF PUBLIC LAW 280: 1953

(A) Predecessor Bills

Concurrently with the development of the policy of termination, bills to transfer civil and/or criminal jurisdiction over Indian country to the states had been introduced and favorably received. The bills took two forms: (1) to provide for civil and/or criminal jurisdiction over Indian country in particular states; and (2) to provide for civil and/or criminal jurisdiction over Indian country on a general basis. Congressional passage of bills providing for state jurisdiction over Indian country in particular states has been noted above (see p. 6).

80th Congress: In the late 1940's pressure for a bill of general application began to take precedence. In 1948 the House adopted, and the Senate Committee on Interior and Insular Affairs reported favorably, a bill to confer on every state concurrent criminal jurisdiction over offenses committed by or against Indians in Indian country.[23/] The bill would have permitted, but not required, the states to exercise concurrent jurisdiction over offenses committed in Indian country and to enforce state criminal laws on the reservations. The reason for the bill was expressed in the report of the House Committee on Public Lands:

> The need of this legislation arises from the fact that in certain instances, Indian tribes do not

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23/H.R. 4725, 80th Congress, 2nd Session (1948); H. Rept. No. 1506 (March 4, 1948); S. Rept. No. 1142 (April 20, 1948)

> enforce the laws covering offenses committed by Indians.... H. Rept. No. 1506, 80th Congress, 2nd Session (1948).

Although the Interior Department agreed that "tribal law and order enforcement has completely broken down,"[24] it nevertheless opposed the bill because it did not provide that Indian consent first be obtained before state jurisdiction could be effective and because the Department favored the greater flexibility permitted by the state-by-state approach.[25] The House committee opposed including an Indian consent provision because "any Indian reservation under the dominance of a criminal element would not be able to institute (State) police protection by majority vote".[26]

The House Committee added an amendment to the bill as introduced providing that state concurrent jurisdiction would apply only in those states where Indians had been granted suffrage in state and local elections. This amendment was added to accommodate the opposition of the tribes of New Mexico, who did not have suffrage. They complained that without suffrage they were not permitted to sit on juries in state courts, and thus it would be inequitable to subject them to state jurisdiction.[27]

24/Letter from Oscar L. Chapman, Under Secretary of Interior Department, to Rep. Welch, chairman of House Committee on Public Lands, reprinted in H. Rept. No. 1506, op. cit.

25/Ibid.

26/H. Rept. No. 1506, op. cit.

27/Ibid.

The bill passed the House on March 15, 1948. The Senate Committee on Interior and Insular Affairs added an amendment clarifying that concurrent state jurisdiction would apply to felonies as well as misdemeanors, and recommended that the bill be passed.[28] Congress adjourned before the bill was taken up on the Senate floor, however.

81st Congress: An identical bill was introduced in the 81st Congress and hearings were held, but no further action was taken.[29]

82nd Congress: A similar bill (excluding the suffrage limitation) was again introduced in the 82nd Congress and hearings were held by the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs.[30] During hearings on the bill its sponsor (Rep. D'Ewart--Mont.) proposed to add three amendments: (1) to limit the bill to those states whose members asked to be included (which Rep. D'Ewart said would limit it to Minnesota, North Dakota, South Dakota, Montana, California, Wyoming, and Washington); (2) to provide for Indian consent before state jurisdiction could become effective;

28/S. Rept. No. 1142, op. cit.

29/H.R. 1537. Reference to subcommittee hearings was made by Rep. D'Ewart in hearings on "State Legal Jurisdiction in Indian Country", House Committee on Interior and Insular Affairs, 82nd Congress, 2nd Session (1952).

30/H.R. 459; Hearings on "State Legal Jurisdiction in Indian Country," Subcommittee on Indian Affairs of House Committee on Interior and Insular Affairs, 82nd Congress, 2nd Session (Feb. 28-29, 1952).

and (3) to preserve Indian hunting and fishing rights.[31] The amendments were offered to meet some of the objections of the Interior Department to the original bill. The Department was still urging a state-by-state approach because "Indians should retain the maximum control over their intratribal affairs," because state laws were unfamiliar to them and they might be subjected to discriminatory treatment in the state courts, because on some Indian reservations the tribal courts and police system were functioning effectively, and because some states were not willing to assume the additional burden and responsibility of law enforcement on Indian reservations.[32]

The Department, however, was not satisfied by Rep. D'Ewart's amendment providing for tribal referenda before state jurisdiction could become effective. The Department now favored instead a process of consultation with the tribes, on the grounds that referenda were costly, it was difficult to get out a sizable vote on such an issue, and some tribes with "a completely inadequate law and order code and...policing system" might vote against state jurisdiction.[33]

31/Ibid., p. 5.

32/Ibid., pp. 11-12: Letter from Dale E. Doty, Assistant Secretary of the Interior, to John Murdock, chairman of House Committee on Interior and Insular Affairs, Jan. 10, 1952, outlining departmental objections to H.R. 459.

33/Ibid., statement of Dillon S. Myer, Commissioner of Indian Affairs, pp. 26-27.

The Department, however, expressed its agreement with the general principle that "the State(s) should take over the responsibility for law enforcement" but with the proviso that it only occur "as fast as it is possible and feasible."[34/] The Department, consequently, proposed a substitute bill that provided several contributions to what eventually became Public Law 280 in the next Congress.

The Department's substitute included the following elements:

(a) a provision providing for state criminal jurisdiction over offenses committed by or against Indians in Indian country, limited to states specified in an accompanying table and flexible enough to exempt certain reservations within a particular state (new states thus could assume jurisdiction by the simple expedient of getting their name added to the table);

(b) a provision preserving concurrent Federal criminal jurisdiction;

(c) a provision protecting Indian rights regarding the ownership or taxation of trust and restricted Indian land, and Indian hunting, trapping, and fishing rights;

(d) a provision eliminating the Federal liquor laws barring the sale of liquor to Indians in those areas in which the states assumed jurisdiction;

(f) a provision providing for state civil jurisdiction in named states, but excepting Indian trust or restricted property; and

(g) a technical amendment repealing the 1949 transfer of jurisdiction to California over the Agua Caliente Indian Reservation (California was to be given state-wide jurisdiction by this substitute).[35/]

34/Ibid., p. 25.

35/Ibid., pp. 28-30. The Department had had introduced a virtually identical bill to its proposed substitute only nine days before its testimony on H.R. 459, but that bill (H.R. 6695) was referred not to the Interior Committee but to the Judiciary Committee.

Nevertheless, the Committee acceded to the Department's suggestions only to the extent of restricting the states upon which it would confer criminal jurisdiction. On March 25, 1952, the Committee unanimously reported a revised version of Rep. D'Ewart's bill, H.R. 459, to confer criminal (but not civil) jurisdiction on the states of Montana, South Dakota, and Wyoming. The bill provided for tribal referenda before state jurisdiction would be effective, preserved concurrent Federal jurisdiction, and protected Indian hunting, trapping, and fishing rights.

It should be noted that the testimony of Indian representatives before the subcommittee was, with the exception of the representatives of the Yakima and Colville tribes of Washington, favorable to the conferral of civil and criminal jurisdiction upon the states. Most conditioned this approval, however, upon the inclusion of a provision requiring tribal referenda before such jurisdiction could be effective.[36] Several couched their testimony favoring state jurisdiction in terms of escaping the "oversupervision and overregulation" of BIA. Purl Willis, on behalf of the Mission Indians of Southern California, said starkly:

> There is but one issue: either approve this bill and thus recognize California Indians as human beings entitled to equality under law, or delay... and perpetuate and make permanent the iron rule of the Indian Bureau.[37]

36/ The representative of the Indians of California opposed requiring tribal referenda because of the expense and the peculiar situation of California Indians. Ibid., pp. 101-106.

37/ Ibid., p. 67.

All of the Indian representatives adamantly opposed the Interior Department's suggested approach of tying together the questions of state jurisdiction and repeal of the Indian liquor laws. Felix Cohen, testifying on behalf of the Association on American Indian Affairs and several individual tribes, urged the separation of those questions so that Indians could "vote yes or no upon the application of State law without having a bottle dangling in front of their noses at the time they vote."[38/]

In any case, the committee's revised version of H.R. 459 was adopted by the full House, without debate, on March 25, 1952, but no further action was taken on the bill during the remainder of the 82nd Congress.

(B) House Consideration, 83rd Congress

Individual bills were introduced early in the 83rd Congress to transfer civil and criminal jurisdiction over Indian country in each of the states of California, Minnesota, Nevada, Oregon, and Wisconsin. The House Subcommittee on Indian Affairs took the California bill, H.R. 1063, and turned it into a bill of general application. As amended

38/Ibid., p. 48

and as reported favorably by the full committee,[39/] the bill contained the following provisions, all of which (with the exception of Section 8) remained in the bill through final passage:

(1) Sections 1 and 2 of the bill conferred criminal jurisdiction on five states, with specified exceptions, according to the following table:

State of	Indian Country Affected
California	All Indian country within the state.
Minnesota	All Indian country within the state, except the Red Lake Reservation.
Nebraska	All Indian country within the state.
Oregon	All Indian country within the state, except the Warm Springs Reservation.
Wisconsin	All Indian country within the state, except the Menominee Reservation.

Section 2 also expressly stated that this conferral of criminal jurisdiction did not authorize the states to tax, encumber, or otherwise alienate the real and personal property of the Indians, including water rights, held in trust for them by the United States or subject to a restriction against alienation imposed by the United States; to regulate the use of such property in any manner inconsistent with a Federal treaty, agreement, statute, or to deprive the Indians of any hunting, trapping, or fishing rights provided by Federal treaty, agreement, or statute.

Section 2 also provided that the two major Federal criminal statutes specially applicable to Indian country, 18 U.S.C. 1352-1353, would not apply in the above-named areas.

(2) Sections 3 and 4 conferred upon the same states, with the same exceptions, civil jurisdiction over Indian country. Section 4 also expressly stated

39/H. Rept. No. 848, 83rd Congress, 1st Session (1953)

that this conferral of civil jurisdiction did not authorize the states to tax, encumber, or alienate any real or personal property, including water rights, held in trust for the Indians by the United States or otherwise subject to a restriction against alienation imposed by the United States; to regulate the use of such property in any manner inconsistent with a Federal treaty, agreement, statute, or regulation; or to assume jurisdiction over the determination, in probate proceedings or otherwise, of the ownership or right to possession of such property.

Section 4 also provided for the privacy of Indian tribal ordinances or customs in the settlement of civil causes of action, to the extent that such ordinances or customs did not conflict with applicable state law.

(3) Section 5 repealed the civil and criminal jurisdiction given California over the Agua Caliente Indian Reservation in 1949 (63 Stat. 705), in order to assure uniformity in the jurisdiction granted California by this bill.

(4) Section 6 of the bill gave the consent of the U.S. to any future assumption of civil and criminal jurisdiction by the states whose enabling acts and constitutions contained an express disclaimer of state jurisdiction over Indian country. (A report from the Department of Interior suggested that eight states had such disclaimers--Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.) Section 6 provided that these states could assume jurisdiction by appropriately amending their constitutions or statutes.

(5) Section 7 of the bill gave the consent of the U.S. to the future assumption of civil and criminal jurisdiction by any of the other states.

(6) Section 8 of the bill removed the Indians made subject to state criminal jurisdiction from the application of the federal Indian liquor laws, which made criminal the sale of liquor to Indians and the possession of liquor in Indian country.

It should be noted that the bill as amended accomplished a transfer of jurisdiction only in the five specified states. In all other states the transfer of jurisdiction could only be accomplished upon the initiative of the state involved. However, no barrier to the assumption of jurisdiction by a state other than its own willingness to do so was erected by the bill: no further expression of consent or approval needed to be obtained from the federal government, nor did a state need to obtain the consent of, or even consult with, the Indian tribes within its territory that would be affected.

The report from the Department of the Interior on the bill[40/] stated that BIA had consulted with state and local authorities and with Indian groups only in the five states named in the bill and in two additional states--Nevada and Washington. The Department noted that "Indian groups in those States were, for the most part, agreeable to the transfer of jurisdiction...", but that objections had been received from at least five Indian tribes.

40/Letter from Orme Lewis, Assistant Secretary of the Interior, to Rep. Miller, chairman of the House Committee on Interior and Insular Affairs, July 7, 1953, contained in House Report No. 848, 83rd Congress, 1st Session (July 16, 1953).

The Red Lake Band of Chippewa Indians in Minnesota was said to unanimously oppose the extension of state jurisdiction because "State law would not be of any benefit to tribal members and...tribal members should (first) be given an opportunity by referendum to accept or reject the extension of State jurisdiction." The Warm Springs Tribe of Oregon was reported to oppose state jurisdiction because of a "fear that its members would not be treated fairly in the State courts." The Menominee Tribe of Wisconsin, the Department stated, opposed state jurisdiction because "its tribal organization was capable of maintaining order on the reservation and...its people are not yet ready to be subjected to State laws."[41/] The Committee accommodated the objections of these tribes by excepting them from the conferral of jurisdiction on their states.

However, the Department of Interior's report also noted that the Colville and Yakima Tribes of Washington opposed state jurisdiction because of a "fear of inequitable treatment in the State courts and fear that the extension of State law to their reservations would result in the loss of various rights."[42/] Washington was one of the states with an express constitutional disclaimer of jurisdiction over Indian country and consequently under Section 6 of the bill could only assume jurisdiction by some future act. However, the amended bill provided no exception

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41/Ibid.

42/Ibid.

for these tribes from that possible future extension of jurisdiction by the state of Washington. Nor did the bill provide any similar protection to any tribe in any other state that might object to the state's future assumption of jurisdiction over it.

The Committee report on H.R. 1063 stressed not only lawlessness on the reservations in justification of the bill but also the policy of termination. The report stated that H.R. 1063 and other legislation it was then considering had two coordinate aims:

> First, withdrawal of Federal responsibility for Indian affairs wherever practicable; and termination of the subjection of Indians to Federal laws applicable to Indians as such.[43/]

More specifically, the purposes of H.R. 1063 were stated to be: (1) to remedy what the Committee termed a "hiatus in law enforcement on Indian reservations; and (2) to further the acculturation of the Indians.

> The States lack jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country, with limited exceptions. The applicability of Federal criminal laws in States having Indian reservations is also limited.... As a practical matter, the enforcement of law and order among the Indians in the Indian country has been left largely to the Indian groups themselves. In many States, tribes are not adequately organized to perform that function; consequently, there has been created a hiatus in law enforcement authority that could best be remedied by conferring criminal jurisdiction on States indicating an ability and willingness to accept such responsibility.

43/House Report No. 848, op. cit.

Similarly, the Indians of several States have reached a stage of acculturation and development that makes desirable extension of State civil jurisdiction to the Indian country within their borders. Permitting the State courts to adjudicate civil controversies arising on Indian reservations, and to extend to those reservations the substantive civil laws of the respective States insofar as those laws are of general application to private persons or private property, is deemed desirable.44/

The Department of Interior's report on the bill45/ appeared to be limited to a recital of facts. Nevertheless, despite the Department's previously expressed preference for a state-by-state approach, the House Committee termed the Department's position "favorable."46/

The Committee issued its report on H.R. 1063 on July 16, 1953. On July 27, the bill was taken up on the floor of the House, and was adopted without debate.47/

(C) Senate Consideration, 83rd Congress

Two days later, on July 29, 1953, the Senate Committee on Interior and Insular Affairs reported the bill without amendment.48/ The Committee report broke no new ground, and was largely a reprint of the House committee report.

On August 1 the bill was taken up on the floor of the Senate and, with one amendment, was passed by voice vote. The amendment adopted

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44/Ibid.

45/See footnote 40.

46/H. Rept. No. 848, op. cit.

47/99 Cong. Rec. 9962 (July 27, 1953).

48/S. Rept. No. 699, 83rd Congress (July 29, 1953).

deleted from the bill Section 8, concerning the applicability of Federal liquor laws to the Indians in the states assuming criminal jurisdiction. The argument made for the amendment was that another bill already adopted by the Senate dealt with the subject more comprehensively.[49/]

(D) Final Passage

Later the same day (August 1) the bill as amended by the Senate was brought before the House on a motion to concur in the Senate amendment. Without debate, the House concurred in the deletion of Section 8, and sent the bill to the President for his signature.[50/]

On August 15, 1953, President Eisenhower, although expressing "grave doubts" about parts of the bill, signed it into law:

> I have...signed it because its basic purpose represents still another step in granting complete political equality to all Indians in our Nation.
> ....
> My objection to the bill arises because of the inclusion in it of sections 6 and 7. These sections permit other States to impose on Indian tribes within their borders, the criminal and civil jurisdiction of the State, removing the Indians from Federal jurisdiction, and, in some instances, effective self-government. The failure to include in these provisions a requirement of full consultation in order to ascertain the

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49/99 Cong. Rec. 10782-84 (August 1, 1953).

50/99 Cong. Rec. 10928 (Aug. 1, 1953).

wishes and desires of the Indians and of final Federal approval, was unfortunate. I recommend, therefore, that at the earliest possible time in the next session of the Congress, the act be amended to require such consultation with the tribes prior to the enactment of legislation subjecting them to State jurisdiction, as well as approval by the Federal Government before such legislation becomes effective.51/

51/Statement by President Eisenhower, August 15, 1953, reprinted in 102 Cong. Rec. 399 (Jan. 12, 1956).

AMENDMENT OF PUBLIC LAW 280

Public Law 280 was first amended in 1954 to bring the Menominee Tribe of Wisconsin, at the tribe's request, within the civil and criminal jurisdiction of that state.[52] It was amended again in 1958 to give the territory of Alaska civil and criminal jurisdiction over Indian tribes within its boundaries.[53] (In 1970, however, criminal jurisdiction was returned to the Metlakatla Indian community.[54])

Finally, in 1968 the law was significantly amended to require that the consent of the affected Indian tribes be obtained by referendum prior to the assumption of civil and/or criminal jurisdiction by a state, and to permit any state that had assumed civil and/or criminal jurisdiction to retrocede all or part of it back to the United States.[55] These amendments were adopted, after complicated legislative maneuvering, as part of a larger series of measures on Indian rights, which were themselves added to an omnibus civil rights package.

As noted above, President Eisenhower, on signing Public Law 280 in 1953, urged that an Indian consultation provision soon be added to it. A bill providing for Indian consent by referendum was reported

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52/Act of Aug. 24, 1954, 68 Stat. 795.

53/Act of Aug. 8, 1958, 72 Stat. 545.

54/Act of Nov. 25, 1970, 84 Stat. 1358.

55/Act of April 11, 1968, 82 Stat. 79 (Title IV).

out by the Senate Interior and Insular Affairs Committee in 1955, and, after being modified on the floor into a simple repealer of Sections 6 and 7 of the 1953 Act, was adopted by the full Senate.[56/] The bill died, however, in the House Interior and Insular Affairs Committee.

(A) Senate Consideration, 89th Congress:

The process that ultimately resulted in the 1968 amendments began in 1961, when the Subcommittee on Constitutional Rights of the Senate Judiciary Committee undertook an extensive exploration of the legal and constitutional rights of American Indians. By 1965 the chairman of the subcommittee, Sen. Ervin (D-N.Car.), crystallized proposed legislation remedies to the problems revealed by the subcommittee's investigation in the form of eight bills and one joint resolution.[57/] Among the remedies he proposed were amendments to Public Law 280 to repeal Section 7 (under which states were authorized to assume jurisdiction without obtaining the consent of the Indian tribes affected); require that such consent be obtained prior to the assumption of jurisdiction by a state; permit the

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56/S. 51; S. Rept. No. 357, 84th Congress, 1st Session (May 17, 1955); 102 Cong. Rec. 395-400 (Jan. 12, 1956). The Department of Interior opposed the bill as reported, because the Department still favored a process of consultation with the Indian tribes regarding jurisdiction rather than a provision requiring Indian consent.

57/S. 961 through S. 968, S.J.Res. 40, 89th Congress (1965).

retrocession of jurisdiction to the federal government; and restate that tribal law has primacy in the settlement of civil disputes, so long as such law does not conflict with applicable state law.[58/]

The subcommittee held four days of hearings on the bills during 1965. In a report on its work issued in 1966, the subcommittee summarized its findings as to the need to amend Public Law 280:

> Public Law 280...was found by the subcommittee's investigation to have resulted in a breakdown in the administration of justice to such a degree that Indians are being denied due process and equal protection of the law.
>
> Some of the problems indicated in connection with Public Law 280 are:
>
> 1. Many states claim that because Public Law 280 conferred total jurisdiction over Indian reservations, subsidies from the Federal government are needed if States are to adequately enforce law on the reservation;
>
> 2. Many Indian groups have urged the repeal of Public Law 280 on the grounds that it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs and special circumstances; and

58/S. 966. The other bills would have imposed constitutional limitations on Indian tribes, provided for the appeal of criminal convictions from Indian courts to Federal courts, authorized the Attorney General to investigate complaints by Indians of deprivations of constitutional rights, directed BIA to develop a new code of Indian tribal offenses, given the United States concurrent jurisdiction with that of the states over offenses by non-Indians against non-Indians in Indian country, and amended the Major Crimes Act providing for federal jurisdiction over major felonies committed by Indians in Indian country.

> 3. Many tribes claimed that tribal laws were unnecessarily preempted by Public Law 280 and, as a consequence, they could not govern their tribal communities effectively.[59]

The subcommittee summarized the testimony of Indian representatives on the proposed amendments to Public Law 280 as follows:

> Senate bill 966 (to amend Public Law 280) drew from Indians or their representatives more support than was given to any of the other bills before the subcommittee.
>
> With few exceptions, the experience of Indian tribes under State jurisdiction, as provided for in Public Law 280, was said to be almost entirely unsatisfactory....Not all witnesses were critical of State jurisdiction..., but it is significant to note that in those instances in which satisfaction with State jurisdiction was indicated, the assumption of that jurisdiction followed State consultation with or consent of the tribes concerned.[60]

The subcommittee noted that the only amendment to S. 966 suggested by the hearings was a need to specify how the consent or lack of consent of the Indian tribes should be registered.

Nevertheless, despite the apparent consensus that had emerged in the subcommittee, no further action was taken on S. 966 or the other proffered bills during the 89th Congress.

59/S. Rept. No. 1553, 89th Congress, 2nd Session (Aug. 30, 1966), p. 8.

60/Ibid., p. 13.

(B) Senate Consideration, 90th Congress:

Sen. Ervin introduced a revised package of bills early in the 90th Congress.[61/] The proposed amendments to Public Law 280 remained the same except for the addition of a provision specifying that Indian consent or non-consent be manifested by referenda among the tribes that would be affected by a state's assumption of jurisdiction. No further hearings were held on the bills.

On Nov. 1, 1967, Sen. Ervin attempted to substitute a package of civil rights measures, including all of the Indian rights provisions, for a House-passed civil rights bill (H.R. 2516) in the Judiciary Committee, but fell short by one vote. His subcommittee then consolidated the Indian rights provisions into one bill (S. 1843), the Judiciary Committee reported it favorably to the Senate,[62/] and on Dec. 7, 1967, the full Senate adopted it by voice vote.

However, evidently believing that the House Committee on Interior and Insular Affairs, to which S. 1843 had been referred, would not take favorable action on the bill, Sen. Ervin brought his Indian rights package before the Senate again during the second session of the 90th Congress. During the early months of 1968 the Senate engaged in long debate on a House-passed civil rights bill (H.R. 2516). After a compromise that led

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61/S. 1843 through S. 1847, S.J. Res. 87, 90th Congress, 1st Session, introduced on May 23, 1967.

62/S. Rept. No. 841, 90th Congress, 1st Session (Dec. 6, 1967).

to cloture had been developed,[63] Sen. Ervin offered as a complete substitute for the compromise the same package he had unsuccessfully proposed in the Judiciary Committee-a package including the Indian rights provisions. Again, he was defeated.[64] Sen. Ervin tried again, this time with just the Indian rights package the Senate had adopted the previous December. Debate on his amendment centered not on its substance but on the questions of why the Senate should again adopt these provisions when it has already passed them in S. 1843, and whether the amendment was germane to the pending bill. In answer to the question as to why the Senate should again adopt the Indian rights provisions, Sen. Ervin candidly stated his strategy:

> Because the Dirksen substitute will go to the House, and if the House passes the Dirksen substitute, the measure will then be passed as a part of it.[65]

In other words, Sen Ervin anticipated that the civil rights bill, if passed by the Senate, would be taken to the House on a motion to concur in the Senate amendments, without first going to conference. Including the Indian rights provisions in that bill, thus, would effectively bypass the House Interior Committee, which had taken no action on S. 1843.

63/The compromise, known as the Dirksen substitute, contained not only the Federal criminal penalties for interference with persons exercising specified civil rights that the House has passed, but also anti-riot, gun control, and--most controversial of all--open housing provisions.

64/114 Cong. Rec. 5813 (March 8, 1968).

65/114 Cong. Rec. 5836 (March 8, 1968).

Nevertheless, the presiding officer ruled the Indian rights amendment non-germane. Appealing that ruling, Sen. Ervin persuaded the Senate to override, 54-28. The Senate then added the Indian rights provisions to the civil rights bill, 81-0.[66/]

(C) Policy Context:

Momentum for this action on the Indian rights provisions was fueled by growing dissatisfaction with the policy of termination. On March 6, 1968, two days before Sen. Ervin brought his Indian rights package to a vote, President Johnson sent to the Congress a message on Indians entitled "The Forgotten American."[67/] In that message President Johnson publicly repudiated the policy of termination and called for a new policy of self-determination for Indian tribes:

66/114 Cong. Rec. 5838 (March 8, 1968). In addition to the amendment to Public Law 280, the Indian rights package required tribal governments to respect various individual rights; permitted Indians detained by tribal governments to seek a writ of habeas corpus in federal court; directed the Secretary of the Interior to draw up a new model code to govern Indian tribal courts; added the crime of "assault resulting in serious bodily injury" to those major crimes over which the federal government has jurisdiction in Indian country; required rapid action by the Department of Interior on Indian attorney contracts; and directed the Secretary of the Interior to update and reissue various documents pertaining to Indian law.

67/The message was printed as H.Doc. No. 272, 90th Congress. The text is reprinted at 114 Cong. Rec. 5394 (March 6, 1968).

> I propose a new goal for our Indian programs: a goal that ends the old debate about "termination" of Indian programs and stresses self-determination; a goal that erases old attitudes of paternalism and promotes partnership and self-help.
>
> ....
>
> I propose, in short, a policy of maximum choice for the American Indian: a policy expressed in programs of self-help, self-development, self-determination.68/

More specifically, President Johnson endorsed the Indian rights bill that had been passed by the Senate and was about to be brought before it again, singling out for special attention the amendments to Public Law 280:

> A new Indian Rights Bill is pending in the Congress. It would protect the individual rights of Indians in such matters as freedom of speech and religion, unreasonable search and seizure, a speedy and fair trial, and the right to habeas corpus. The Senate passed an Indian Bill of Rights last year. I urge the Congress to complete action on the Bill of Rights in the current session.
>
> In addition to providing new protection for members of tribes, this bill would remedy another matter of grave concern to the American Indian.
>
> Fifteen years ago, the Congress gave to the States authority to extend their criminal and civil jurisdictions to include Indian reservations--where jurisdiction previously was in the hands of the Indians themselves.
>
> Fairness and basic democratic principles require that Indians on the affected lands have a voice in deciding whether a State will assume legal jurisdiction on their land.
>
> I urge the Congress to enact legislation that would provide for tribal consent before such extensions of jurisdiction take place.69/

68/114 Cong. Rec. 5395 (March 6, 1968).

69/Ibid, at 5397.

This Administration dissatisfaction with the policy of termination and its fruits was matched by growing Congressional dissatisfaction as well, at least in the Senate. On Feb. 17, 1968, eighteen Senators introduced S. Con. Res. 11. The purpose of the resolution was to enunciate a new declaration of policy toward the American Indian in place of the policy of termination that had articulated by H. Con. Res. 108 in 1953. The Senate resolution stated the sense of Congress to be that

> the deplorable conditions of American Indians and Alaska natives can only be alleviated through a sustained, positive, and dynamic Indian policy with the necessary constructive programs and services directed to the governing bodies of these groups for application in their respective communities, offering self-determination and self-help features for the people involved.[70]

The Subcommittee on Indian Affairs of the Senate Interior and Insular Affairs Committee held a public hearing on this measure on March 5,, three days before the Senate voted to add the Indian rights provisions to H.R. 2516. Subsequently in the session, the resolution was adopted by the full Senate.[71]

70/S. Con. Res. 11, 90th Congress, 2nd Session, p. 2.

71/Sept. 12, 1968. The House Committee on Interior and Insular Affairs, however, took no action on the resolution. The Senate passed similar resolutions in 1971 (S.Con.Res. 26, Dec. 11, 1971) and again in 1974 (S.Con.Res. 37, May 29, 1974). These resolutions also died in the House Committee on Interior and Insular Affairs.

(D) House Consideration, 90th Congress:

Supported by these policy considerations, then, the Indian rights provisions, including the amendments to Public Law 280, were part of H.R. 2516 when it passed the Senate on March 11, 1968. As anticipated, the bill was brought directly to the House floor on a motion to concur in the Senate amendments. Most of the public debate focussed on the civil rights provisions of the bill, particularly those relating to open housing. But some attention was paid to the Indian rights provisions. Rep. Aspinall (D-Colo.), chairman of the House Interior and Insular Affairs Committee, argued for sending the bill to conference because his committee had not yet had opportunity to hold adequate hearings on the Indian rights provisisions. To do otherwise, he stated, "would be a travesty on the legislative process."[72/] On the other hand, Rep. Reifel (R-S.Dak.), the only Indian in the Congress, urged House concurrence in the Senate amendments. Of the amendments to Public Law 280, he said:

> I know of no Indian tribe in this country which has not bitterly resented the arbitrary authority invested in States under Public Law 280, and which does not now support the provision of tribal consent prior to such assumption of jurisdiction by States.[73/]

What effect this debate had on the House decision cannot be determined. In any case, spurred by public reaction to the assassination of Martin Luther King, Jr., the House chose to concur in the Senate amendments without first going to conference.[74/]

72/114 Cong. Rec. 9614 (April 10, 1968).

73/Ibid., at 9552.

74/Ibid., at 9621.

Thus, as amended in 1968, Public Law 280 no longer permitted a state to unilaterally assert its criminal and/or civil jurisdiction over Indian tribes in Indian country. Indian consent, manifested in a tribal referendum, was a prerequisite. Jurisdiction already acquired by the states under the 1953 statute, however, was not affected. In addition, the federal government was authorized to accept the retrocession, in whole or in part, of the civil and/or criminal jurisdiction assumed by a state pursuant to the 1953 statute. The 1968 amendments also continued in force the same protections for Indian rights and trust land that had been provided in the 1953 statute, and restated the primacy of Indian law in the settlement of civil disputes, except where it conflicted with applicable state law.[75/]

75/The 1968 amendments were codified differently than the 1953 statute. The 1968 amendments are now codified at 25 U.S.C. 1321-1326. What remains of the 1953 statute is codified at 18 U.S.C. 1162 and 28 U.S.C. 1360.

LITIGATION CONCERNING PUBLIC LAW 280

Litigation concerning Public Law 280 has focussed on its constitutionality, the validity of state assumptions of jurisdiction, the meaning of the exceptions to state jurisdiction provided in Public Law 280, and, since the 1968 amendments, the requirements governing the retrocession of jurisdiction to the federal government. In addition, numerous cases concern the validy of state jurisdiction asserted on grounds other than the assumption of such jurisdiction under Public Law 280.

Constitutionality

Public Law 280 has been challenged as an unlawful delegation of federal power and as violating due process and equal protection. All of the challenges have been rejected by the courts that have considered them. The unlawful delegation of federal power claim has been rejected on the grounds that the states have residual jurisdictional authority over Indians and Indian country to the extent that it has not been pre-empted by Congress in the exercise of its plenary power over Indian affairs. Public Law 280, thus, is simply a withdrawal of federal preemption.76/

76/Robinson v. Wolff, 349 F. Supp. 514, aff'd 468 F. 2d 438 (CA 8, 1972); Agua Caliente Band of Mission Indians Tribal Council v. City of Palm Springs, 347 F. Supp. 42 (D.C. C.D. Cal., 1972); Robinson v. Sigler, 187 N.W. 2d 756 (S.Ct.Neb., 1971), appeal dismissed 404 U.S. 987; Anderson v. Britton, 318 P. 2d 291 (S.Ct. Ore., 1957).

Similarly, the arguments that Public Law 280 violates either due process or equal protection because it does not apply uniformly to all Indians nationally and classifies persons on a tribal basis have been rejected. The courts have said that classification by tribe is not a suspect classification nor does it involve an invidious discrimination,[77] and consequently the proper test is whether Public Law 280 is reasonably related to a proper governmental objective. Since some tribes are in need of continued Federal supervision and protection, differential treatment cannot be said to be arbitrary or unreasonable.[78]

Validity of States Assumptions of Jurisdiction

States Named in Public Law 280: On occasion when the courts of the five states named in Public Law 280--California, Minnesota, Nebraska, Oregon, Wisconsin--have asserted jurisdiction over criminal acts committed by Indians on their reservations, a defense has been raised that the state courts lacked jurisdiction because the state legislatures had taken no affirmation action accepting the jurisdiction conferred by Public Law 280. The courts have uniformly held that the jurisdiction conferred on the five named states was effective as of the date of enactment of Public Law 280, and that state legislation accepting the jurisdiction would be redundant

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77/ Robinson v. Wolff, op. cit.

78/ Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs, op. cit.; Robinson v. Sigler, op. cit.

and unnecessary.[79] State jurisdiction in these states, thus, was immediately effective.

Section 6 States: Section 6 of Public Law 280 gave the consent of the United States to the assumption of jurisdiction by the eight states whose Enabling Acts governing their admission to the union required them to disclaim all right and title to Indian lands within their boundaries and to foreswear state jurisdiction over such lands forever. Section 6 provided that the assumption of jurisdiction by such states could not become effective "until the people thereof have appropriately amended their State constitution or statutes as the case may be." The states of Montana and Washington, both of whose constitutions reserved "absolute jurisdiction and control" over Indian lands to the Congress of the United States and provided that that disclaimer of state jurisdiction over Indian lands would be "irrevocable without the consent of the United States and the people of this state," attempted to assert jurisdiction over Indian tribes within their boundaries not by amending their constitutions but by legislative enactments. Several Indians brought before the state courts argued that the states had not validly assumed jurisdiction because they had not amended their constitutions as required by Section 6.

Their argument was rejected.[80] The courts held that in Section 6

> the underlying concern of Congress...was not that a state disclaimer be removed in any particular

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79/ Anderson v. Gladden, 188 F. Supp. 666, aff'd 293 F. 2d 463 (CA 9), cert. den., 368 U.S. 949; Robinson v. Wolff, op. cit.; Robinson v. Sigler, op. cit.; Anderson v. Britton, op. cit.

80/ State v. Paul, 337 P. 2d 33 (S.Ct. Wash., 1959); Quinault Tribe of Indians v. Gallager, 368 F. 2d 648 (CA 9, 1966); State of Montana ex rel McDonald v. District Court of Fourth Judicial District in and for Missoula County, 496 P. 2d 78 (S.Ct. Mont., 1972).

> way, but that it be removed in some way which would be valid and binding under state law.... Quinault Tribe of Indians v. Gallagher, 368 F. 2d 648 (CA 9, 1966).

Thus, notwithstanding disclaimers of jurisdiction in the constitutions of several states, constitutional amendments do not appear to be required under Section 6 or under the 1968 amendments (25 U.S.C. 1324). State legislative enactments can suffice in those states, if that procedure meets the requirements of state law as manifesting the consent of the people.

Section 7 States:

Section 7 of Public Law 280 gave the consent of the U.S. to the assumption of jurisdiction by states without constitutional disclaimers "at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assuption thereof." The courts have held that in these states Public Law 280 was not "a present grant of powers... (but offered) a grant of power to any state which would indicate its acceptance of that offer through appropriate future action."[81] Acceptance of that grant of power, the Supreme Court and several state courts have said, required affirmative legislative action by the state legislature:[82]/

81/In re High Pine's Petition, 99 N.W. 2d 38 (S.Ct. S.Dak., 1959).

82/Kennerly v. District Court of Montana, 400 U.S. 423 (1971); State v. Molash, 199 N.W. 2d 591 (S.Ct. S.Dak,, 1972); Morgan v. Colorado River Indian Tribe, 436 P. 2d 484 (S.Ct. Ariz., 1968), vacated on other grounds, 443 P. 2d 421; Whyte v. District Court of Montezuma County, 346 P. 2d 1012 (S.Ct. Colo., 1959), cert. den. 363 U.S. 829.

> Section 7 (of Public Law 280) conditioned the assumption of state jurisdiction on "affirmative legislative action" by the State; the Act made no provision whatsoever for tribal consent, either as a necessary or sufficient condition to the assumption of state jurisdiction. Nor was the requirement of affirmative legislative action an idle choice of words; the legislative history of the 1953 statute shows that the requirement was intended to assure that state jurisdiction would not be extended until the jurisdiction to be responsible for the portion of Indian country concerned manifested by political action their willingness and ability to discharge their new responsibility. Kennerly v. District Court of Montana, 400 U.S. 423 (1971)

Thus, the courts have held that the requirement of "affirmative legislative action by the State" was not satisfied by a tribal resolution providing for concurrent state jurisdiction in civil suits where the defendant is an Indian;[83/] by a state enactment accepting jurisdiction but conditioning that acceptance on federal subsidies that are never obtained;[84/] or by the absence in the state constitution of a disclaimer of state jurisdiction over Indian lands.[85/] The requirement for affirmative legislative action was held to be satisfied, however, by a state statute extending state jurisdiction over specified subjects and permitting additional state jurisdiction to be extended upon adoption by an Indian tribe of a resolution defining the extent of such additional jurisdiction.[86/]

83/Kennerly v. District Court of Montana, 400 U.S. 423 (1971).

84/In Re High Pine's Petition, 99 N.W. 2d 38 (S.Ct. S.Dak., 1959).

85/Whyte v. District Court of Montezuma County, op. cit.

86/Boyer v. Shoshone-Bannock Indian Tribes, 441 P. 2d 167 (S.Ct. Idaho, 1968).

(It should be noted that the 1968 amendments eliminated the requirement of affirmative legislative action in those states which do not have a constitutional disclaimer of jurisdiction. Since then, the only necessary condition appears to be the consent of the tribe affected to such jurisdiction, manifested by majority vote of the adult Indians voting in a referendum.)

However, some states have attempted to exercise selective jurisdiction over Indian country on the basis of authority outside of Public Law 280. Authority for the exercise of some state jurisdiction existed before Public Law 280 was adopted as the result of acts of Congress or judicial recognition of state jurisdiction due to the involvement of non-Indians (see pp.4-6). Public Law 280 did not interfere with such existing jurisdiction. However, in 1959 the Supreme Court, in the case of Williams v. Lee, 358 U.S. 217 (1959), articulated as the test of whether state law could be applied to Indian reservations "whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U.S. at 220. This appeared to provide for a substantial expansion of state jurisdiction over Indian country outside of Public Law 280. The test appeared to place primary emphasis on infringement of the right of tribal self-government, and did not appear to depend upon the involvement of non-Indians.

Applying this test, courts have upheld, in states that have not assumed jurisdiction under Public Law 280, a state income tax on

Indians even though they live and work on the reservation,[87] state jurisdiction over a divorce action involving two Indians where their tribes had by resolution provided for state jurisdiction over Indian domestic relations,[88/] and state regulation of a subdivision being developed by a non-Indian on land leased from Indians.[89/]

However, two recent Supreme Court decisions appear to reject the interpretation of Williams as a charter for broader state jurisdiction outside of Public Law 280. In Kennerly v. District Court of Montana, 400 U.S. 423 (1971), the court was faced with the attempted exercise of state jurisdiction over a suit by a non-Indian merchant to collect for goods sold on the reservation. The state, which had taken no affirmative legislative action to assume jurisdiction under Public Law 280, based its jurisdiction on a tribal resolution granting the state concurrent jurisdiction over such matters. The state supreme court ruled that this tribal action meant state jurisdiction could be exercised without infringing on tribal self-government, and that consequently the Williams test was satisfied.

87/Ghahate v. Bureau of Revenue, 451 P. 2d 1002 (1969).

88/State ex rel Iron Bear v. District Court, 512 P. 2d 1292 (S.Ct. Mont., 1973).

89/Norvell v. Sangre de Cristo Development Company, Inc., 372 F. Supp. 348 (DC N.Mex., 1974), appealed No. 74-1365-6 & 7 (CA 10, Oct. 26, 1974).

The Supreme Court reversed, holding that the Williams test was irrelevant because there was an act of Congress--Public Law 280--specifying how a state could assume jurisdiction. Federal law in the area of tribal Indian affairs has overriding authority, and the states must comply with it. Because Public Law 280 as adopted in 1953 made no provision for tribal consent as either a sufficient or necessary condition to the assumption of state jurisdiction, the tribal resolution depended upon in this instance was ineffective in conferring jurisdiction on the state, notwithstanding the Williams test.

More specifically, in McClanahan v. Arizona State Tax Commission, 411 U.S. 164 (1973), the Court rejected entirely the interpretation of Williams as a charter for expanded state jurisdiction over Indians without the necessity of complying with Public Law 280. In this case the state of Arizona sought to impose a personal income tax on the earnings of a Navaho Indian, derived entirely from work within the reservation. The state based its jurisdiction to impose the tax on the theory, derived from Williams, that because the tax was on individual Indians and not on the tribe or reservation as such, it did not infringe on the right of tribal self-government. The Court rejected this argument, saying

> It must be remembered that cases applying the Williams test have dealt principally with situations involving non-Indians. (Citations) In these situations, both the tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The Williams

> test was designed to resolve this conflict by providing that the State could protect its interest up to the point where tribal self-government would be affected. 411 U.S. 164, 179.

In other words, the Williams test is applicable only to those situations where there is a significant degree of involvement by a non-Indian. Absent such involvement or an act of Congress conferring jurisdiction on the state, the state must comply with Public Law 280 in asserting jurisdiction over Indian country.

Exceptions

A number of cases have focussed on the meaning of the exceptions to state jurisdiction provided in Public Law 280 for Indian land held in trust by the United States or otherwise subject to a restriction on alienation imposed by the United States and for Indian hunting, fishing, and trapping rights. It has been held that the exemption of Indians from state fishing laws, in states that have assumed jurisdiction under Public Law 280, depends on a Federal treaty, agreement, or statute providing for such rights,[90/] and that the Federal treaty, agreement, or statute relied upon can include regulations issued by the Secretary of Interior pursuant to statutory authority.[91/] Because the statutory exception accorded such rights includes the "control, licensing, or regulation thereof," the state has been held to be prohibited from enforcing its fishing laws and regula-

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90/Kake Village v. Egan, 369 U.S. 60 (1962).

91/Metlakatla Indian Community, Annette Islands Reserve v. Egan, 369 U.S. 45 (1962).

tions against non-Indians who fish on Indians lands with tribal permission,[92] and to be barred from interfering with tribal enforcement of its own regulations.[93]

Regarding the bar in Public Law 280 to state alienation, encumbrance, or taxation of Indian real and personal property either held in trust by the United States or subject to a restriction against alienation imposed by the United States, and the bar to state regulation of the use of such property "in a manner inconsistent with any Federal treaty, agreement, statute, (or regulation)," the courts are divided on the extent to which the state can regulate Indians Lands. The Supreme Court of Washington has held that county zoning ordinances cannot be applied to the use by a non-Indian of trust land leased from the Tulalip Tribes.[94] The court reasoned that any burden upon land depreciative of its value, such as the zoning ordinance in question in this case, constitutes an encumbrance, which is barred by Public Law 280. It further held that a non-Indian lessee can benefit from the special privileges accorded Indians, because "the county cannot indirectly accomplish federally prohibited interference with property that it could not accomplish directly."[95]

92/Donahue v. California Justice Court for Klamath Trinity Judicial District, 93 Cal. Rept. 310, cert. den. 404 U.S. 990 (1971).

93/Quechan Tribe of Indian v. Rowe, 350 F. Supp. 106 (1972), appealed, No. 72-3199 (CA 9, argued, July 3, 1974).

94/Snohomish County v. Seattle Disposal Company, 425 P. 2d 22 (1967).

95/Ibid., at 26.

A lower federal court and a California court, on the other hand, have rejected this broad interpretation of the bar to state encumbrances of trust lands, and have upheld the application of city zoning laws[96] and of state fire-prevention regulations[97] to such trust lands. These courts have said that Public Law 280 was not intended to except Indian trust lands from state general welfare regulations and that the term "encumbrance" ought to be given a more limited meaning--"one denoting a burden on the land and affecting the title thereto or one impairing the power of alienation such as a mortgage, lien, easement, lease, or other disability to fee ownership."[98]

Retrocession

The 1968 amendments permitted the federal government to accept, from states that assumed jurisdiction over Indian country under Public Law 280, the retrocession of all or part of that jurisdiction, 25 U.S.C. 1323. In 1969 Nebraska, one of the five states named in Public Law 280, adopted a resolution offerring to retrocede all criminal jurisdiction, except over motor vehicle offenses, over the Omaha and Winnebago Indian Reservations. Consultation with the affected tribes by the Secretary of the Interior

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96/Agua Caliente Band of Mission Indians' Tribal Council v. City of Palm Springs, 347 F. Supp. 42 (D.C. C.D. Cal., 1972).

97/People v. Rhoades, 90 Cal. App. 3d 747 (1970).

98/Ibid., at 797.

indicated that the Omaha Tribe wished to be under federal jurisdiction but not the Winnebago Tribe. Consequently, the Secretary accepted retrocession only with respect to the Omaha Tribe. The state viewed this partial acceptance as an abuse of the Secretary's authority and therefore void. Consequently, in 1971 it rescinded its offer of retrocession, and attempted to exercise full criminal jurisdiction over the Omaha Tribe. The Tribe sought to enjoin the state's exercise of criminal jurisdiction. The courts issued the injunction, holding that the Secretary can accept retrocession of less than what a state offers, and that once he accepts retrocession, the procedure is completed: no further state action is necessary.[99/]

99/Omaha Tribe of Nebraska v. Village of Walthill, 334 F. Supp. 823, aff'd 460 F. 2d 1327, cert. den., 409 U.S. 1107 (1971).

Appendix A

Public Law 280 as Adopted in 1953

An Act to confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

Chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country."

Sec. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

Sec. 3. Chapter 85 of title 28, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

Sec. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any

applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section."

Sec. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed,[48] but such repeal shall not affect any proceedings heretofore instituted under that section.

Sec. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

Sec. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof.

Approved August 15, 1953.

Appendix B

1968 Amendments to Public Law 280

Public Law 90-284; 82 Stat. 73

An Act to prescribe penalties for certain acts of violence or intimidation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That:

TITLE IV—JURISDICTION OVER CRIMINAL AND CIVIL ACTIONS

ASSUMPTION BY STATE

Sec. 401. (a) The consent of the United States is hereby given to any State not having jurisdiction over criminal offenses committed by or against Indians in the areas of Indian country situated within such State to assume, with the consent of the Indian tribe occupying the particular Indian country or part thereof which could be affected by such assumption, such measure of jurisdiction over any or all of such offenses committed within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over any such offense committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

ASSUMPTION BY STATE OF CIVIL JURISDICTION

Sec. 402. (a) The consent of the United States is hereby given to any State not having jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country situated within such State to assume, with the consent of the tribe occupying the particular Indian country or part thereof which would be affected by such assumption, such measure of jurisdiction over any or all such civil causes of action arising within such Indian country or any part thereof as may be determined by such State to the same extent that such State has jurisdiction over other civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country or part thereof as they have elsewhere within that State.

(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute, or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.

RETROCESSION OF JURISDICTION BY STATE

Sec. 403. (a) The United States is authorized to accept a retrocession by any State of all or any measure of the criminal or civil jurisdiction, or both, acquired by such State pursuant to the provisions of section 1162 of title 18 of the United States Code, section 1360 of title 28 of the United States Code, or section 7 of the Act of August 15, 1953 (67 Stat. 588), as it was in effect prior to its repeal by subsection (b) of this section.

(b) Section 7 of the Act of August 15, 1953 (67 Stat. 588), is hereby repealed, but such repeal shall not affect any cession of jurisdiction made pursuant to such section prior to its repeal.

CONSENT TO AMEND STATE LAWS

Sec. 404. Notwithstanding the provisions of any enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil or criminal jurisdiction in accordance with the provisions of this title. The provisions of this title shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes, as the case may be.

ACTIONS NOT TO ABATE

Sec. 405. (a) No action or proceeding pending before any court or agency of the United States immediately prior to any cession of jurisdiction by the United States pursuant to this title shall abate by reason of that cession. For the purposes of any such action or proceeding, such cession shall take effect on the day following the date of final determination of such action or proceeding.

(b) No cession made by the United States under this title shall deprive any court of the United States of jurisdiction to hear, determine, render judgment, or impose sentence in any criminal action instituted against any person for any offense committed before the effective date of such cession, if the offense charged in such action was cognizable under any law of the United States at the time of the commission of such offense. For the purposes of any such criminal action, such cession shall take effect on the day following the date of final determination of such action.

SPECIAL ELECTION

Sec. 406. State jurisdiction acquired pursuant to this title with respect to criminal offenses or civil causes of action, or with respect to both, shall be applicable in Indian country only where the enrolled Indians within the affected area of such Indian country accept such jurisdiction by a majority vote of the adult Indians voting at a special election held for that purpose. The Secretary of the Interior shall call such special election under such rules and regulations as he may prescribe, when requested to do so by the tribal council or other governing body, or by 20 percentum of such enrolled adults.

Appendix C

State Assumptions of Jurisdiction Under Public Law 280[1/]

(A) States mandated to assume civil and criminal jurisdiction by Public Law 280

1. Alaska, except Metlakatla Indian community has concurrent jurisdiction over criminal matters.
2. California
3. Minnesota, except over the Red Lake Reservation
4. Nebraska, except over Omaha Reservation (retroceded)
5. Oregon, except over the Warm Springs Reservation
6. Wisconsin

(B) States with constitutional disclaimers

1. Arizona--air and water pollution laws only. Ariz. Rev. Stat. Ann. 36-1801, 36-1865 (1974).
2. Montana--criminal jurisdiction only over Flathead Indian Tribe, with option for other tribes to consent to state criminal and civil jurisdiction. No tribe has yet consented. Mont. Rev. Code Ann. 83-801 to -806 (1966).
3. North Dakota--civil jurisdiction only over consenting tribes. No tribe has as yet consented. N.Dak.Cent. Code 27-19-01 to -13 (1974).
4. Utah--civil and criminal jurisdiction upon tribal consent. Utah Code Ann. 63-36-9 to -21 (Supp. 1973).
5. Washington--civil and criminal jurisdiction in eight specified subject areas; civil and criminal jurisdiction over all fee patent land on the reservations; option for tribes to consent to total state jurisdiction. Wash.Rev.Code 37.12.010 to -.070 (1964).

(C) Other states:

1. Florida--civil and criminal jurisdiction over all reservations. Fla. Stat. Ann. 285.16 (1975).
2. Idaho--civil and criminal jurisdiction in seven specified subject areas, with option for tribes to consent to additional state jurisdiction. Idaho Code 67-5101 to -5103 (1973).
3. Nevada--civil and criminal jurisdiction, upon tribal consent, with option for counties to opt out. Nev. Rev. Stat. 41.430, 194.040 (1973).

1/This information is largely but not exclusively based on Appendix D, "State by State Analysis of State Jurisdiction over Indian Reservations Throughout the United States (Except Washington)," found in Vol. I, pp. 84-98, of Justice and the American Indian (1974) by the National American Indian Court Judges Association.