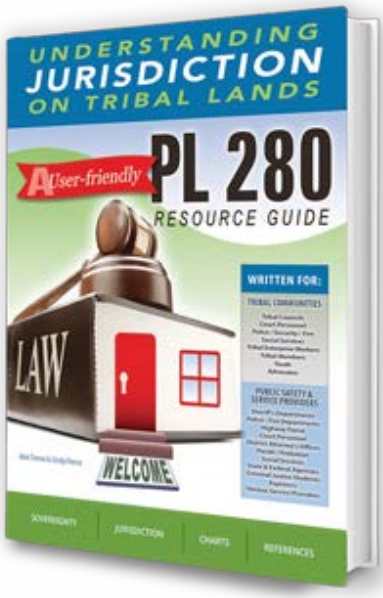

An interactive article - excerpts from "A User-friendly PL 280 Resource Guide"

Concurrent Jurisdictions

Tribal, Federal and State Jurisdictions

Quick Links

Indian tribes have the inherent and fundamental right, as sovereign nations, to govern their people and territories.

"We have repeatedly recognized the Federal Government's longstanding policy of encouraging tribal self-government. This policy reflects the fact that Indian tribes retain 'attributes of sovereignty over both their members and their territory,' to the extent that sovereignty has not been withdrawn by federal statute or treaty."
Iowa Mut. Ins. Co. v. LaPlante, 480 US 9 (1987)

The powers of Indian tribes, "powers of local self-government which have never been terminated by law or waived by treaty," [1] remain intact – even if a tribe is not currently exercising their full jurisdictional powers. [2] Public Law 280 (PL 280), which was enacted by the US Congress in 1953, did not divest the tribes of their concurrent jurisdictional authority. PL 280 authorized State jurisdiction within a limited scope of authority and for specific purposes.

> *"Congress has … acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation …absent governing Acts of Congress, the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them."*
>
> *Williams v. Lee, 358 US 217, 220-221 (1959)*

Quick Links

The Indian Tribal Justice Act, 25 USC § 3601, clearly expresses how the United States has recognized, through the years, the inherent powers of Indian tribes:

*"**Congressional findings:***

- *Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes.*

- *Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems.*

- *Tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments."*

Sovereignty equals self-government. Self-government equals having authority over one's jurisdictional area. "[J]urisdiction is an integral" part of sovereignty which involves "the power to make and enforce rules, resolve disputes and conflict … and maintain a stable and safe environment." [3]

With that said, it must be remembered that Indian tribes have existed since time immemorial, each tribe having their unique history that shaped their existence. Therefore, tribal governments may not be exactly organized like our federal or state governments. Tribal governments reflect the history, culture, and the will of their people. These differences between tribal and federal/state governments can sometimes present various challenges – to all governmental entities interacting.

Sometimes it may even appear like a game of tug-of-war between tribal, federal and state governments. Certainly, tensions will exist where conflicting interests also exist. This difference in views and priorities will always cause varying degrees of "abrasion" [4] between governments. This is inevitable and should not be seen as unusual because "precisely the same sort of conflicts often exist between non-Indian local communities with differing priorities." [5]

Quick Links

Indian tribes' inherent right to self-govern

The Indian Tribal Justice Act

The uniqueness of tribal governments

Indian tribes are quasi-sovereign and anomalous

A tribal government, often having a very different set of priorities than state and local governments, will operate on a different timetable and in accordance with the will of their constituents. When different governments necessarily interact with each other, there will not always be exactly the same interests or concerns. These differences can be compounded when cultural and philosophical diversity is added to the mix. Historical relationships can also dictate the political interaction one government may have with another. Many policies and practices of federal and state governments, through the years, have had a significant impact on tribal governments. The historical relationship Indian tribes have experienced with federal and state governments, have left tribal governments with the need to remain vigilant in protecting their sovereignty, along with their traditional cultures and values.

Something to recognize, specifically in PL 280 areas, is the toll PL 280 took on a tribe's ability to build up their criminal justice system. A government's criminal justice system (i.e. the three elements: law enforcement, courts and corrections) is very costly, yet crucial for the effective operation of that government. PL 280 did not directly take monies away from the tribes affected by its enactment. However, decisions were made at the federal level to stop funding criminal justice systems of tribes within PL 280 areas. Federal authorities reasoned that tribal criminal justice needs could be met entirely through the state systems.

This reasoning disregarded the fact that a tribe retains concurrent jurisdiction over their people and territories. It also gave little regard for the impact this would have on the state system which received no funding for added services it would need to provide. Either way, it hurt tribal communities because they were denied funding for building up their much needed criminal justice system, and state-level response and services to tribal communities have often fell short due to the financial strain additional services have had on state budgets.

"Congress, we are told, passed Pub.L. 280 not as a measure to benefit the States ..."
Washington v. Confederated Bands & Tribes of the Yakima Indian Nation, 439 US 463, 498 (1979)

> *"Our relations with Indian tribes have 'always been … anomalous … and of a complex character' … 'we have also recognized that the tribes remain quasi-sovereign nations which, by governmental structure, culture, and source of sovereignty are in many ways foreign to the constitutional institutions of the Federal and State Governments.'"*
>
> *Santa Clara Pueblo v. Martinez, 436 US 49, 71 (1978)*

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Indian tribes' inherent right to self-govern

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Different priorities for different governments

Tribal governments protect their sovereignty

PL 280's impact on tribal criminal justice systems

Endnotes

[1] *"Powers of Indian Tribes"* Opinion of Solicitor Margold, U.S. Dept. of the Interior, Office of the Solicitor, Oct. 25, 1934, accessible on the Office of the Solicitor's website, archives of the decisions of the Dept. of the Interior dating from July 1881 to Dec. 1994 at http://www.doi.gov/solicitor/decisions.html

[2] "The fact that the Tribe had not set up a system to punish certain of its members does not mean that it lacked the power to do so. It merely failed to exercise its jurisdiction." *US v. Jackson*, 600 F.2d 1283 (9th Cir. 1979)

[3] "In the context of a government's sovereignty, jurisdiction is an integral, inherent aspect of authority, involving the power to make and enforce rules, resolve disputes and conflict within the community, and maintain a stable and safe environment through the application of criminal laws." Jimenez, Vanessa J. and Song, Soo C., *Concurrent Tribal and State Jurisdiction Under Public Law 280*, American University Law Review (1998)

[4] *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 665, 664 (1975)

[5] Id.