

Public Law 280

Tribal and State Jurisdiction in California Indian Country

Presentation Overview

- Historical background to California Indian policy;
- Fundamental principles of Federal Indian Law and jurisdiction in Indian Country;
- Public Law 280 text, purpose and effect; and
- Practical application and interpretation of Public Law 280.

California Indians

- 2010 Census reported almost 600,000 in California who self-identify as having American Indian / Alaska Native heritage.
- Currently 106 federally recognized tribes* second only to Alaska
- Approximately 550,000 acres of tribal trust lands and another 63,000 acres of Individual trust allotments.

California Indian Trust Land Map



This map constitutes a representation of the general distribution and location of Indian Land in the State. It does not address questions of boundary or area which an accurate survey may disclose. It is to be used on an "as-is" basis as no liability for damages arising from errors or omissions is assumed.

CALIFORNIA Tribal & Federal Lands

- | | |
|--------------|-----|
| BIA (Tribal) | FS |
| BLM | FWS |
| BOR | NPS |
| Private Land | DOD |

0 10 20 30
Scale in Miles



Map Production: January 1999
Federal Lands: U.S. Geological Survey, 1995
Indian Lands: U.S. EPA R0 GIS Center, 1995

California Indian Pre-contact Tribal Territories



Mission Period: Christianization

- First of 21 Spanish missions est. 1769 in San Diego
- 310,000 California Indians
- 500 distinct bands in 105 tribal groupings
- By 1800, Indian population reduced to 150,000
- Mexican Congress secularized the missions in 1833 and by 1837, the last of the Franciscans had abandoned California
- Estimated CA Indian population 1870 12,000



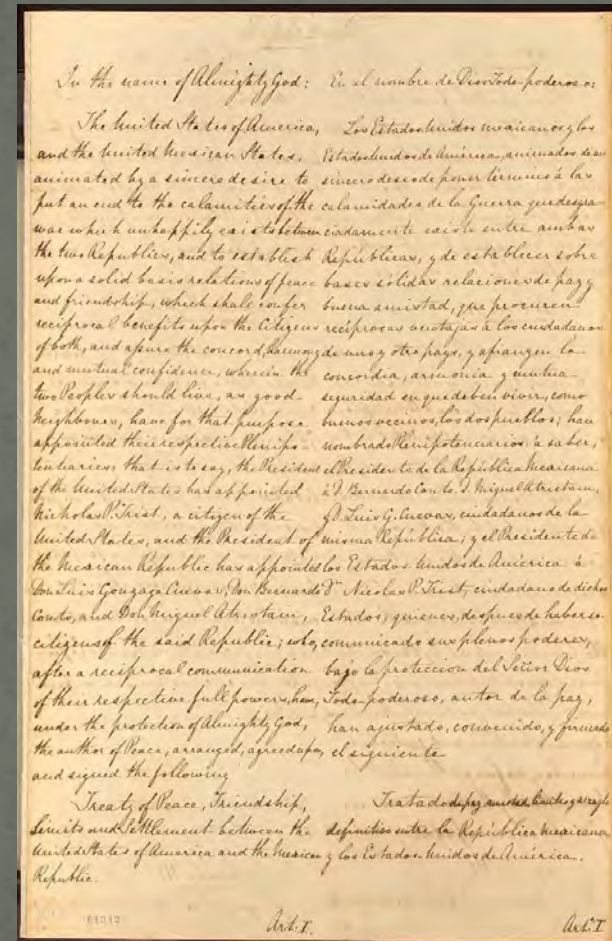
Other Immigrants

- Russian Fort Ross (est'd 1812)
- Russian occupation appears to have had little lasting impact on California tribes
- 1820's: trappers and settlers begin arriving from US and Canada
- 1832-33 Hudson's Bay Co. Expedition



Acquisition of California

- Treaty of Guadalupe Hidalgo (Feb. 2, 1848)
- Mexico & Spain had acknowledged Indian title to lands that had been settled and were in use
- California is to acknowledge Mexican land title



Goldrush

- Gold discovered at Sutter's Mill on January 24, 1848
- California becomes the most racially diverse society in history

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Goldrush and Aftermath

- Acceleration of European impact upon Indians
 - Disease
 - Genocide
 - Occupation of lands
 - Destruction of natural resources
 - Denial of voting and property rights (land and weapons)
 - Servitude
- Inability of federal government to legitimize Mexican and Spanish land grants

Goldrush and Aftermath

- Servitude: Act for the Government and Protection of Indians (April 1850)
 - "any person wishing to obtain Indian children could appear before a county or district judge to prove that the children had been obtained with the consent of their parents or the consent of 'persons having the care or charge of such children.'"
- Servitude also imposed on children and adults as a penalty for homelessness and testimony of another crime

Goldrush and Aftermath

- Genocide
 - In 1851, Gov. Peter Burnett, famously declared, "A war of extermination will continue to be waged between the races until the Indian races become extinct."
 - organized campaigns to hunt and kill Indians
 - 25 cent per scalp bounty placed on Indians, paid by the federal government and the sale of state bonds.

California Statehood

- California Act of Admission (Sept. 9, 1850)
- Congress did not reserve federal jurisdiction over Indian land
- Public lands not disposed of by Act of Congress passed to State of California



18 Un-ratified Treaties (1851-1852)



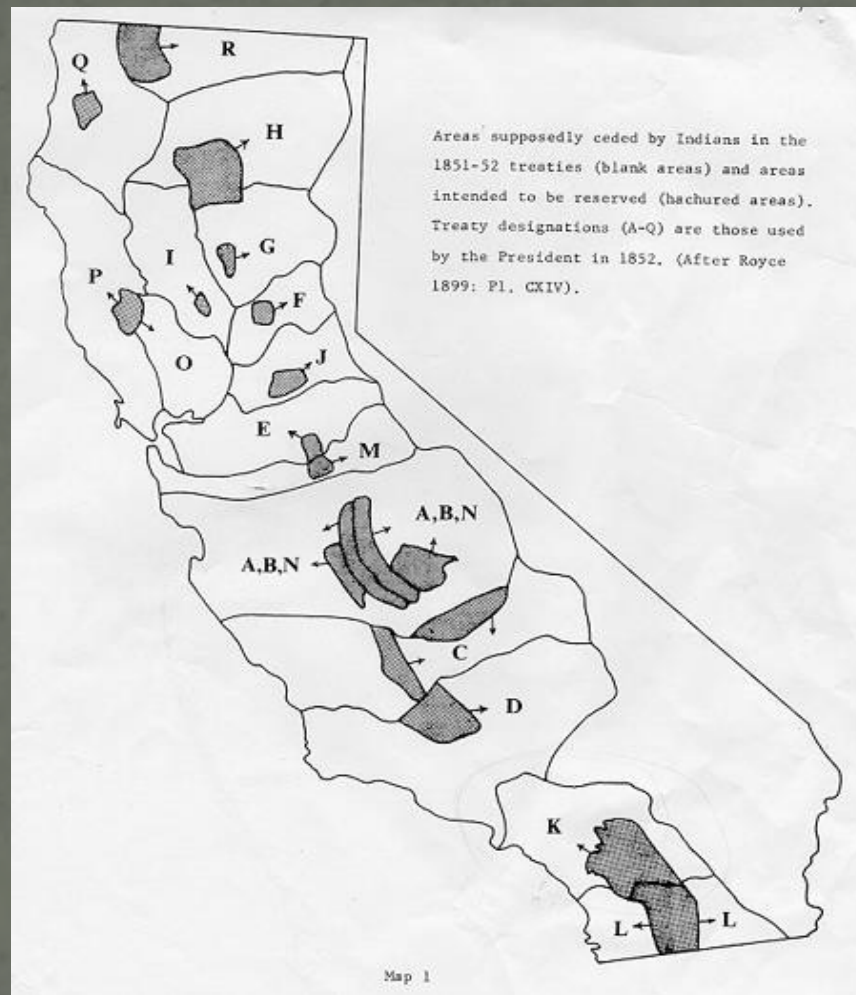
18 Un-ratified Treaties (1851-1852)

- Negotiation by Indian agents who knew nothing about California tribes or geography
- Parties likely did not have common language
- “Taken altogether, one cannot imagine a more poorly conceived, more inaccurate, less informed, and less democratic process than the making of the 18 treaties in 1851-52 with the California Indians”

Robert Heizer, 1972

18 Un-ratified Treaties

(1851-1852 – Reserved about 8.5 million acres)



18 Un-ratified Treaties (1851-1852)

- Treaties set aside large but remote portions of the State for Indian Tribes
- California urged Congress not to ratify
- Result was homelessness for California Indians
- Indian “squatters” would be massacred or dispersed

California Land Claims Act (1851)

- Required presentation of Mexican land claims to Board of Land Commissioners within 2 years
- Absent claim, lands passed to public domain
- Held to have effectively extinguished Indian land claims in California (see *Barker v. Harvey* (1901) 181 U.S. 481, 21 S.Ct. 690, 45 L.Ed. 963 and *United States v. Title Ins. & Trust Co.* (1924) 265 U.S. 472, 44 S.Ct. 621, 68 L.Ed. 1110)

Four Reservations Act (1864)

- Authorized the creation of four Indian reservations in California
- Only three created pursuant to this Act

Continued Public Antipathy

- “It has become a question of extermination now. It is a mercy to the red devils to exterminate them. Treaties are played out. There is only one kind of treaty that is effective - cold lead.

Chico Courant, 1866:

End of Treaty Power (1871)

- Congress withdrew the Executive and Senate's authority to negotiate and ratify treaties with Indian tribes
 - Acknowledgement that Tribes lacked sufficient sovereign power to compel compliance with treaties
 - Concealed in obscure provision of an appropriations bill

Post 1871 treatment of California Indians

- Mission Indians Relief Act (1891);
- Rancheria Appropriation Acts (1906-1930)
- Indian Citizenship Act (1924);
- California Indians Jurisdiction Act (1928);
- Indian Reorganization Act (1934);
- Indian Claims Settlement Commission (1946); and
- Termination Era (1953-1968).

Key Concepts in Indian Law:

- “Indian Country”
- Tribal Sovereignty
- Domestic dependent nations
- Plenary congressional authority
- Fiduciary/trust relationship
- Government to government relationship

Indian Country Defined

(18 U.S.C. 1151)

- "Indian country" means
 - (a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation
 - (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state, and
 - (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same.

TRIBAL SOVEREIGNTY

- Is the power of American Indian tribes grounded in their inherent and retained sovereignty to make their own laws and be governed by those laws.
- It is the right of tribes to have control over their lands, resources and the people who come onto those reservations.
- Tribes are separate and distinct sovereigns in the same way that the federal and state governments are separate and distinct sovereigns

Tribal Sovereignty

- Tribal sovereignty pre-exists the Union
- Tribes exercise retained inherent sovereignty
- Tribes are not parties to the Constitution and tribal authority is not derived from or limited by the constitution
- Tribes are subject to the will of the federal government, but generally free of the power of the states

Congressional authority over Indian affairs

- The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

U.S. Const., art. I, § 8

- Congressional authority is “plenary” Congress has absolute power over Indian tribes
 - Policy shifts: extermination/self-government/termination

Domestic Dependent Sovereignty

- Tribes exercise civil and criminal jurisdiction over:
 - Territory
 - Members
 - Non-member Indians
 - Non-Indians (civil jurisdiction only)

But

- No power of external sovereignty and are subject to “plenary” authority of congress

Jurisdictional Scheme

For Indians in “Indian Country” -

- Presumption of federal and tribal jurisdiction in Indian country, unless extinguished by Congress
- Presumption against state (and local) jurisdiction in Indian country absent express congressional authority

Jurisdictional Scheme

- Worcester v. Georgia (1832) – State laws have no force in Indian Country.

“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.”

Tribal jurisdiction

- Presumptive civil and criminal jurisdiction over Indians in Indian Country;

LIMITS

- Indian Civil Rights Act – limits sanctions that can be imposed;
- No criminal jurisdiction over non-Indians;
- Limits on civil jurisdiction over non-Indians

Criminal Jurisdiction in Indian Country

- As late as the early 1800's criminal jurisdiction vested exclusively in Tribes
 - Few non-Indians living on reservations
 - No federal law enforcement presence
 - Federal government could ignore crime until non-Indians became victims

General Crimes Act (1834)

18 U.S.C. 1152

- General laws of the United States related to offenses committed on federal lands extend to the Indian Country.
- Extends federal jurisdiction to crimes between Indians and non-Indians
- Crimes between Indians remain within exclusive tribal jurisdiction
- States retain criminal jurisdiction over crimes committed between non-Indians on reservations

Major Crimes Act (1885)

18 U.S.C. 1153

- Response to the decision in re Crow Dog (1883)
- Extends federal jurisdiction over major felonies committed by Indians
- Tribes retain power to punish Indians for such crimes

Public Law 280

(August 15, 1953)

- Cedes most federal criminal-prohibitory and civil-adjudicatory jurisdiction to PL-280 states
- Establishes concurrent tribal and state criminal jurisdiction over Indian country
- Tribal jurisdiction is not eliminated
 - Criminal jurisdiction over Indians
 - Civil jurisdiction over non-Indians

Criminal Jurisdiction in Indian Country Before 1953

- Federal jurisdiction included:
 - Federal and state defined offenses committed by Indian v. non-Indian and vice versa
 - Specified major crimes by and against Indians
 - Crimes related to federal trust responsibility
 - Liquor, hunting and fishing regulation regardless of Indian status

Criminal Jurisdiction in Indian Country Before 1953 (cont.)

- Tribal Jurisdiction:
 - Exclusive as to all other crimes committed between Indians or without victims
 - The Indian Civil Rights Act of 1968
 - Limited tribal authority to punish crimes with imprisonment of up to one year
- State Jurisdiction
 - Exclusive as to crimes between non-Indians

Criminal Jurisdiction in Indian Country After PL-280

Offender	Victim	Jurisdiction
Non-Indian	Non-Indian	State: exclusive
Non-Indian	Indian	State: exclusive
Indian	Non-Indian	Concurrent State and tribal jurisdiction, exclusive of federal government
Indian	Indian	Concurrent State and tribal jurisdiction, exclusive of federal government
Non-Indian	Victimless	State: exclusive
Indian	Victimless	Concurrent State and tribal jurisdiction, exclusive of federal government

PL-280's Purposes

- Express congressional concern for:
 - “Lawlessness in Indian country”
 - Lack of adequate tribal fora for civil adjudication
- PL-280 is not a termination statute
- Product of assimilation policy: foster cultural integration
- Reduction of federal budget post WWII

California's Interest in PL-280

- California sought criminal jurisdiction over Indian country
 - Jurisdiction had been limited to crimes between non-Indians
 - Already had criminal jurisdiction over Agua Caliente reservation
 - Desired jurisdiction over “fragmented” reservations and rancherias
 - State concerned about the treatment of non-Indians living nearby reservations

PL-280: Criminal Jurisdiction

- PL-280 States “shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country [located in 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”

18 U.S.C. 1162

PL-280 Civil Adjudicatory Jurisdiction

- PL-280 States “shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country [located in 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”

28 U.S.C. 1360(a)

PL-280 Civil Adjudicatory Jurisdiction (cont.)

- (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.

PL-280 Exceptions

- Hunting, trapping and fishing rights secured by treaty, agreement, or statute (eg 18 USC 1165)
 - Mid-1990's tribes begin contracting with federal government to enforce these laws and receive federal commissions
- Taxation of real and personal property held in trust or subject to a restriction against alienation

PL-280 Exceptions (cont.)

- Any local laws even local criminal laws still not applicable
 - dog control, traffic laws
- State criminal laws may not affect federal trust lands or hunting and fishing laws
 - State may not evict individuals from trust lands
 - State may not penalize pollution of trust lands

State/Local View of PL-280

- PL-280 created a headache
 - Confusion over scope of jurisdiction
 - Role of tribal sovereignty
 - Civil vs. Criminal jurisdiction
 - Lack of federal funding for increased jurisdiction
 - Lack of taxing authority over federal Indian lands

Tribal View of PL-280

- Opposition at time of passage
 - Lack of consent/consultation
 - Failure to recognize tribal sovereignty and self-government
 - Imposition of unwelcome jurisdiction
 - Perception of discrimination by state agents
- Suspicion that optional States would increase their jurisdiction at will

Tribal Experience with PL-280

- Tribal experience typically is unsatisfactory
 - Absence of police presence
 - Long response times
 - Need for better community relations
 - Increase in lawlessness

Critical View of PL-280's Results

- Why has PL-280 been a source of lawlessness?
 - Absence of law enforcement
 - Federal withdrawal
 - Absence or lack of state resources
 - Lack of tribal law enforcement
 - De facto jurisdictional vacuums
 - No priority where jurisdiction is concurrent
 - Crime victims uncomfortable reporting to local officials

American Indian Policy Review Commission

(May 17, 1977)

- Articulated current federal policy
 - “Indian tribes are sovereign political bodies, having the power to determine their own membership and power to enact their own laws and enforce them within the boundaries of their reservations”
 - “the relationship which exists between the tribes and the United States is premised on a special trust that must govern the conduct of the stronger toward the weaker”

Implications of PL-280

- Jurisdiction may depend on:
 - Status of parties (Indian or not);
 - Status of lands (Indian Country or not);
 - Nature of action (criminal / civil regulatory)
- Jurisdiction may be:
 - Exclusively tribal;
 - Exclusively state;
 - Concurrent

Civil-Regulatory vs. Criminal Prohibitory Jurisdiction

- Bryan v. Atasca County, 426 U.S. 373 (1976)
 - Absent congressional intent, County could not levy a personal property tax on mobile home owned by Indian on Indian reservation
 - State's tax laws are not among "civil laws . . . of general application to private persons or private property."

Civil-Regulatory vs. Criminal Prohibitory Jurisdiction

- California v. Cabazon Tribe, 480 U.S. 202 (1987)
 - Public Law 280 does not authorize enforcement of state bingo regulations, because they are civil-regulatory laws rather than criminal-prohibitory laws

PL-280 Framework

- Civil-Regulatory Law:
 - state law generally permits conduct, subject to regulation
 - No State PL-280 jurisdiction
- Criminal-Prohibitory Law:
 - state law generally prohibits the conduct
 - PL-280 jurisdiction exists

Criminal Prohibitory Jurisdiction

- Shorthand test for criminal-prohibitory conduct:
 - Whether the conduct violates state public or implicates public safety
- In practice, this requires a case-by-case evaluation

Civil-Regulatory Jurisdiction

- Taxation of property
- Gambling regulation
- State hunting and fishing regulations
- Local land use regulations
- Building codes
- Workers compensation
- Marriage & Family Relations
- Vehicle regulation
- Boxing Regulation

Criminal-Prohibitory Jurisdiction

- Murder
- Rape
- Assault
- Battery
- Robbery
- Larceny

Grey Areas: Fire Protection

- People v. Rhodes (1970): Provisions of the Public Resources Code requiring owners of dwellings located next to forest lands to maintain a fire break, are “a valid exercise of the state's police power. It is a regulatory measure designed to preserve California's forests from conflagration” and could be applied to reservation property under PL-280.

Fire Protection

- Quechan Tribe v. McMullen (9th Cir. 1993): California laws prohibiting dangerous fireworks are criminal-prohibitory:
“the purpose of the fireworks laws is not to generate income, but rather to prohibit their general use . . . to promote the safety and health of all citizens.”



Fire Protection

- In re: the Matter of Sonoma County Fire Chief's Application for an Inspection Warrant (9th Cir. 2007). Sonoma County's fire safety codes could not be enforced against the Dry Creek Rancheria under PL-280.
 - Court also considered the existence of a "comprehensive" tribal state compact that established the tribe's obligations
 - Case attempted to apply a local code

Grey Area: Civil Commitment

- Burgess v. Watters (2005): A Wisconsin district court noted that the involuntary commitment of a tribal member for being a sexually violent predator was a civil commitment, and possibly beyond the authority of the State under PL-280

PL-280 Does Not Interfere with inherent tribal powers

- Salinas v. Barron (2008): PL-280 does not grant to state courts the authority to adjudicate a tribal membership dispute on the Pechanga reservation.
- Three Affiliated Tribes of Fort Berthold Res. v. Wold (1986): PL-280 did not waive tribal sovereign immunity to suit.

Inherent State Powers (Not PL-280 Cases)

- Puyallup Tribe v. Wash. Dept of Game (1977): State may regulate individual Indian fisherman, fishing on reservation under inherent police power to preserve a precious natural resource (steelhead salmon)
- Nevada v. Hicks (2002): The United States Supreme Court ruled that the State had inherent power to execute a search warrant on a tribal member's reservation residence in the course of an investigation of an off-reservation crime.

Inherent State Powers (Not PL-280 Cases)

- Bishop Paiute Tribe v. Inyo County (2003). Inyo County sheriffs officers executed a search warrant on a tribal casino to obtain employment records as evidence of off-reservation welfare fraud. The Tribe challenged this action and sought damages under 42 USC 1983.
- Agua Caliente Band v. Superior Court (2006). The California Supreme Court ruled that tribal sovereign immunity did not prevent the FPPC from enforcing the Political Reform Act, under the Tenth Amendment and the Guarantee Clause of the Constitution.

Tribal Law and Order Act 2010

- Signed into law July 29th, 2010;
- Allows for resumption of federal criminal jurisdiction in PL-280 states;
- Increases penalties that can be imposed by tribal courts;
- May allow tribal access to criminal reporting data bases

Resources

- Final Report, Law Enforcement and Criminal Justice Under Public Law 280, Carole Goldberg and Duane Champagne (Nov. 1, 2007)
- Planting Tail Feathers: Tribal Survival and PL-280 (UCLS Indian Studies Center, 1997) Carole Goldberg and Timothy Seward.
- Community Policing Consortium. To Protect and Serve: An Overview of Community Policing on Indian Reservations Police Foundation, ed., 2007)
- United States Commission on Civil Rights, A Quiet Crisis: Federal Funding and Unmet Needs in Indian Country (2003)