

PUBLIC LAW 280 AND CONCURRENT TRIBAL AUTHORITY

The United States recognizes Indian tribes as "domestic dependent nations," with retained sovereignty over their members and territory. Tribes do not draw their powers from any source of federal law. Rather, they are the inherent powers of sovereigns that pre-exist the federal union. Congress has the power to adjust inherent tribal powers, but courts will ordinarily conclude that tribal powers remain intact absent a "clear indication" of congressional intent to limit them. Among tribes' inherent powers is the authority "to exercise criminal jurisdiction over all Indians" and the power to arrest and detain non-Indians and deliver them to state authorities for prosecution under state laws.

Under the federalist structure, exclusive authority over Indian affairs is vested in the federal government. As a result, states lack authority to prosecute Indians for crimes committed within Indian country without congressional authorization. ("Indian country" is defined in federal law to include all areas within a reservation, trust allotments, and dependent Indian communities. Courts interpret this to include all lands held in trust for tribes or their members.) In 1834, Congress first addressed crime in Indian country by enacting the General Crimes Act (also known as the "Inter-racial Crimes Act"), which extends federal criminal jurisdiction to crimes between Indians and non-Indians.

In the early 1950s, Congress perceived a lack of law enforcement and judicial services in many areas of Indian country. That concern became the central focus of legislation commonly known as P.L. 280. P.L. 280 required six states to assume criminal and civil jurisdiction over all or part of Indian country within those states and provides that the General Crimes Act and the Major Crimes Act shall not apply within those areas of Indian country. P.L. 280 also authorized other states to voluntarily opt to assume criminal and/or civil jurisdiction over Indian country. The Federal Government retains concurrent jurisdiction to prosecute under the Major Crimes Act and General Crimes Act in the so-called "option states."

Congress enacted various provisions in 1968 to limit the further extension of P.L. 280. The 1968 provisions require tribal consent, by majority vote of the adult members, before any further states could assume jurisdiction over any areas of Indian country and authorize states to "retrocede" P.L. 280 jurisdiction back to the federal government.

The Supreme Court undertook its most complete analysis of P.L. 280 in *Bryan v. Itasca County* in 1976, which involved the question whether P.L. 280 authorized states to exercise civil regulatory and taxation authority over Indians within the covered areas of Indian country. The court found that it did not. The court reasoned that P.L. 280 reflected Congress's concern with the lack of law enforcement and judicial resources for Indian country and meant to allow states to provide those two services only. Moreover, the court explained,

nothing in [P.L. 280's] legislative history remotely suggests that Congress meant the Act's extension of civil jurisdiction to the States should result in the undermining or

destruction of such tribal governments as did exist and the conversion of the affected tribes into little more than private, voluntary organizations.

In 1987, in *California v. Cabazon Band of Mission Indians*, the Supreme Court explained that P.L. 280 did not authorize California to enforce its gaming laws in Indian country. The court distinguished between civil/regulatory laws and criminal/prohibitory laws, allowing states to enforce only the latter in Indian country. The distinction between civil/regulatory and criminal/prohibitory laws hinges on whether a state completely forbids conduct or simply regulates how it is undertaken. Because of that distinction, states may not enforce regulatory laws against Indians in Indian country, even though state law might impose a criminal sanction for their violation.