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## LOCAL LAND USE REGULATIONS AS STATE CIVIL LAW: AN ANALYSIS OF THE *SANTA ROSA* COURT'S INTERPRETATION OF PUBLIC LAW 280

Peter W. Waldmeir\*

### INTRODUCTION

An enclave is a tract of land located within and surrounded by foreign territory.<sup>1</sup> Areas over which the United States exercises exclusive legislative jurisdiction, or partial jurisdiction in some instances, are commonly referred to as federal enclaves. There is early authority to the effect that, with respect to these areas, "the national and municipal powers of government, of every description, are united in the government of the nation."<sup>2</sup> The courts have also spoken in terms of political authority, dominion, and legislative power<sup>3</sup> as residing in the federal government; even the most literal view of the matter reveals that the states are generally deprived of basic legislative authority over such

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1. WEBSTER'S THIRD NEW NATIONAL DICTIONARY at 746 (3d ed. 1963).

2. Pollard's Lessee v. Hagan, 44 U.S. (3 How.) 212, 223 (1845).

3. Fort Leavenworth R.R. v. Lowe, 114 U.S. 525, 526 (1885).

tracts.<sup>4</sup> Thus, except where the state in which an enclave is located has been accorded specific statutory authority by Congress, the authority of the federal government over the enclaves is plenary. Indian reservation trust lands characterize this concept of a federal enclave.

Despite the fact that Indian tribes reside upon tracts of land which, until recently, have admitted only of federal jurisdiction and control, an Indian tribe is to be considered sovereign merely to the extent that the federal government permits it to be sovereign—neither more nor less. The term “sovereignty” has sometimes been used by Indian tribal councils in a political sense, however, without regard to the fact that, as applied to the American Indian, “sovereign” means no more than “within the will of Congress.”<sup>5</sup> While for many years the United States recognized elements of sovereignty in the Indian tribes and dealt with them by treaty, by Act of March 3, 1871 Congress prohibited further recognition of Indian tribes as independent nations.<sup>6</sup> Thereafter, the American Indian was to be regulated by act of Congress; indeed, an entire title of the United States Code has been devoted to the regulation of Indian affairs.<sup>7</sup> Accordingly, when the United States acquires lands comprising a reservation, that land becomes the territory of the United States and its inhabitants become subject to the laws of the federal government contingent upon such exceptions as Congress is empowered to levy.

One such codified exception is Public Law 280, a statute signed into law in 1953 which granted broad discretionary authority to individual states to assume both civil and criminal jurisdiction over Indian reservation trust lands located within their borders.<sup>8</sup> In states assuming

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4. *Paul v. United States*, 371 U.S. 245 (1963).

5. *United States v. Blackfeet Tribe of the Blackfeet Indian Reservation*, 364 F. Supp. 192 (D. Mont. 1973).

6. 25 U.S.C. § 71 (1970).

7. Title 25 of the United States Code; see generally Funke & Kickingbird, *The Role of Native Americans in American Legal History*, 69 *Lox. L.J.* 477-79 (1976). The power of Congress to govern the tribes by statute, rather than by treaty, has been sustained by the Supreme Court in the seminal case of *United States v. Kagama*, 118 U.S. 375 (1886).

8. In deciding *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 45 U.S.L.W. 3463 (U.S. Jan. 11, 1977) (No. 75-1674), upon which this article focuses, the Ninth Circuit was principally concerned with Act of Aug. 15, 1953, Pub. L. No. 83-280, § 4, 67 Stat. 588, 589 (1953) [hereinafter cited as P.L. 280], ceding civil jurisdiction to the states. This section is codified at 28 U.S.C. § 1360(a) (1976). Public Law 280, as adopted in 1953, is set forth below:

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

P.L. 280 jurisdiction, the Act subjected affected reservations and their inhabitants to the "civil laws of such State that are of general application

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

to private persons or property" to the extent that these laws have "the same force and effect within such Indian country as they have else-

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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, 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.

Public Law 280 was amended by Act of April 11, 1968, Pub. L. No. 90-284, §§ 401-406, 82 Stat. 73, 78-90 (1968), to read as follows:

#### 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

where within the State." The Act also subjected these reservations to state criminal laws, barred states from alienating, encumbering, or tax-

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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 judg-

ing Indian trust lands, and foreclosed the states from depriving reservation Indians of their hunting, fishing and trapping rights.

Recently, the United States Court of Appeals for the Ninth Circuit in the case of *Santa Rosa Band of Indians v. Kings County*<sup>9</sup> addressed

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ment, 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 ELECTIONS

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.

Six states were mandated to assume civil and criminal jurisdiction by Public Law 280: California; Alaska, except the Metlakatla Indian community which has concurrent jurisdiction over criminal matters; Minnesota, except over Red Lake Reservation; Nebraska, except over Omaha Reservation (retroceded); Oregon, except over the Warm Springs Reservation; and Wisconsin. Five states have constitutional disclaimers to the assumption of such jurisdiction either generally or with regard to specific subject matters: Arizona—air and water pollution laws only, ARIZ. REV. STAT. §§ 36-1801, to 1865 (1974); Montana—criminal jurisdiction only over Flathead Indian Tribe, with the option for other tribes to consent to state civil and criminal jurisdiction. No tribe has yet consented, MONT. REV. CODES ANN. §§ 83-801 to 806 (1966); North Dakota—civil jurisdiction only over consenting tribes, N.D. CENT. CODE §§ 27-19-01 to 13 (1974); Utah—civil and criminal jurisdiction upon tribal consent. UTAH CODE ANN. §§ 63-36-9 to 21 (Supp. 1973); Washington—civil and criminal jurisdiction in eight specified subject matters, e.g., civil and criminal jurisdiction over all fee patent lands on the reservations with the option for tribes to consent to total state jurisdiction. WASH. REV. CODE §§ 37.12.010 to .070 (1964). Three other states have assumed general or limited P.L. 280 jurisdiction: Florida—civil and criminal jurisdiction over all reservations, FLA. STAT. ANN. § 285.16 (West 1975); Idaho—civil and criminal jurisdiction in seven specified subject areas, with the option for tribes to consent to additional state jurisdiction. IDAHO CODE §§ 67-5101 to 5103 (1973); Nevada—civil and criminal jurisdiction, upon tribal consent, with the option for counties to opt out. NEV. REV. STAT. §§ 41.430, 194.040 (1973). See *State by State Analysis of State Jurisdiction over Indian Reservations Throughout the United States (Except Washington)*, 1 JUSTICE AND THE AMERICAN INDIAN 84-98 (National American Indian Court Judges Assoc. 1974).

This legislation was enacted during a period in which the express federal policy toward the American Indian sought to at least partially terminate federal responsibility for, and the special relationship with, the American Indian. Prior to the passage of this act, state jurisdiction over reservation trust lands was limited either to that conferred by special enactment of Congress—typically addressed to narrow subject matters—or to judicially recognized extensions of state jurisdiction conditioned on the involvement of non-Indians. Jurisdiction over civil and criminal matters between Indians on reservation lands had rested primarily in either the tribal or federal government. See generally Background Report on Public Law 280, Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975).

9. 532 F.2d 655 (9th Cir. 1975), cert. denied, 45 U.S.L.W. 3463 (U.S. Jan. 11, 1977) (No. 75-1674). The issue presented in *Santa Rosa* has been litigated with in-

itself to the P.L. 280 provision ceding civil jurisdiction over reservation trust lands. The court specifically faced the issue whether local land use regulations, adopted pursuant to state legislature directives, are applicable to Indian reservation lands located in states that have been ceded P.L. 280 civil jurisdiction. The Ninth Circuit held that county laws, embodied in local ordinances, were inapplicable to Indian trust lands on the ground that they did not constitute "state" civil laws as contemplated by P.L. 280. This article critically examines this decision with respect to the court's interpretation of the phrase "civil laws of such state," its determinations regarding the contemporary federal-Indian relationship, and the distinction drawn between state and local authority in the area of local land use regulation. After discussing the historical underpinnings of federal Indian law and reviewing the legislative history of P.L. 280, the article concludes that the Ninth Circuit erroneously decided the local regulation issue, construing P.L. 280 in a manner that frustrates congressional intent and thwarts state legislatures in their efforts to guide local authorities in the development of statewide land use programs.

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creasing frequency in both state and federal courts. Indeed, the precise issue addressed in the principle case has been previously reviewed by three district courts of the state of California; each of these courts has opined that similar land use and zoning regulations were applicable to reservation trust lands within the intent and language of P.L. 280. *Ricci v. County of Riverside*, No. 71-1134-EC (C.D. Cal. 1972) (unpublished findings of fact and conclusions of law) (county building code held applicable to Indian-constructed home on the reservation); *Rincon Band v. County of San Diego*, 324 F. Supp. 371 (S.D. Cal. 1971), *aff'd* 495 F.2d 1 (9th Cir. 1974), *cert. denied*, 419 U.S. 1008 (1974) (Douglas, J. dissenting) (county ordinance proscribing the operation of gaming houses held valid); *Madrigal v. County of Riverside*, No. 70-1893-EC (C.D. Cal. 1971) (county zoning ordinance requiring issuance of permit for staging of rock concert on reservation land held valid; *see People v. Rhoades*, 12 Cal. App. 3d 720, 90 Cal. Rptr. 794 (1970), *cert. denied*, 404 U.S. 823 (1971) (county ordinance requiring the construction and maintenance of firebreaks around reservations held valid). Moreover, another panel of the Ninth Circuit has recently observed in dicta that Congress, by enacting P.L. 280, "may have 'intended to grant to the state the full exercise of the police power,' and thus the ability to enforce, e.g., zoning ordinances . . ." *Capitan Grand Band v. Helix Irrigation District*, 514 F.2d 465, 468 (9th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3205 (U.S. Oct. 6, 1975). Although these federal district court decisions are persuasive indications of the proper interpretation of the Act's breadth, these decisions were dismissed by the Ninth Circuit on the ground of mootness, 495 F.2d 1 (9th Cir. 1974), *cert. denied*, 419 U.S. 1008 (1974), and the Circuit court's language was dicta. The Supreme Court has considered the proper relationship of P.L. 280 to the authority of local governing bodies in the area of taxation, *Bryan v. Itasca*, 423 U.S. 923 (1976), but has not granted certiorari respecting the local land use regulation issue precisely. In *Bryan*, however, the Court did note that state criminal laws are applicable to P.L. 280 reservation inhabitants. Although the Santa Rosa court nowhere addressed the issue of criminal sanctions for zoning ordinance violations, section 2403 of the Kings County Calif. Ordinance No. 269 makes it a misdemeanor for any person to violate the County's zoning ordinances. It can be thus argued, that plaintiffs' are in violation of the County's criminal ordinances which are within the recognized contemplation of P.L. 280.



## THE SANTA ROSA CONTROVERSY

The Santa Rosa Band is an Indian tribe statutorily organized pursuant to the Indian Reorganization Act of 1934,<sup>10</sup> occupying approximately 170 acres of federal trust land<sup>11</sup> located in Kings County, California.<sup>12</sup> The governing body of the Band has been formally recognized by the Secretary of Interior.<sup>13</sup> A recent survey of the reservation—or, rancheria—indicates a total resident population of approximately 144 tribal members<sup>14</sup> of which plaintiffs Barrios and Baga are a part, each residing upon separate assignments<sup>15</sup> with their families.

Prior to 1973, both families had been living in crowded,<sup>16</sup> unhealthy,<sup>17</sup> and substandard housing facilities;<sup>18</sup> neither family possessed

10. 25 U.S.C. §§ 465-478 (1970)

11. See 25 U.S.C. § 465 (1970). The United States acquired the lands of the Rancheria by a stipulated decree of the United States District Court for the former Southern District of California, No. B-66, February 28, 1921; by a deed from the Federal Land Bank of Berkeley, August 16, 1937; and, by a judgment of the United States District Court for the former Southern District of California. No. 202 Civil, September 28, 1946; Record at 255, 7078; Respondent's Brief (In Opposition to Petition for Writ of Certiorari, No. 1674, U.S.) at 4, 47 [hereinafter cited as Respondents Brief].

12. The Santa Rosa Rancheria is located near the town of Lemoore, California, but does not impinge upon its boundaries.

13. Record at 78,79,255, *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 485 U.S.L.W. 3463 (U.S. Jan. 11, 1977) (No. 75-1674); Respondent's Brief, *supra* note 11 at 5; see 25 U.S.C. § 476 (1970).

14. HERSHIN, TRUMBO, & COOK, REPORT TO THE CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, SMALL PARCEL SURVEY OF THE SANTA ROSA RANCHERIA 1-2 (1976) [hereinafter cited as HERSHIN REPORT].

15. An "assignment" is defined in the court's opinion as a plot of trust land. 532 F.2d at 657.

16. There are approximately three nuclear family units per house on the Santa Rosa Rancheria. HERSHIN REPORT, *supra* note 14, at 2. Some of the reservation's houses have as many as 14 people living in them. *Id.*

17. Inadequate living conditions on the Santa Rosa Rancheria and other Indian reservations significantly affect the health of Indian residents. The California Advisory Commission on Indian Affairs reported in 1970 that, among California Indians, "the death rate from influenza and pneumonia is more than twice that of the total population; tuberculosis, six times; [and] accidents, four times . . ." CALIFORNIA ADVISORY COMMITTEE ON INDIAN AFFAIRS, FINAL REPORT 21 (1969). Even more striking, "the average age at death for Indians is twenty years less than the average for all Californians." *Id.* In testimony given before the Subcommittee on Indian Affairs of the United States Senate, Assistant Surgeon General and Director of the Indian Health Services Dr. E.A. Johnson emphasized this direct connection between Indian health problems and the living environment to which reservation Indians are most often subject. *Hearings on Indian Housing Before the Subcommittee on Indian Affairs, Committee of Interior and Insular Affairs*, United States Senate, 94th Cong., 1st Sess. 19-20 (1975). See Brief of Amicus Curiae, State of California Department of Housing and Community Development (in Opposition to Petition for Writ of Certiorari, No. 75-1674, U.S., June 4, 1976).

18. The Santa Rosa Rancheria Housing Assistance Plan [hereinafter cited as H.A.P.], prepared pursuant to § 104(a)(4) of the Housing and Community Develop-

sufficient financial resources to independently improve their inadequate housing and sanitation facilities.<sup>19</sup> Indicative of the Santa Rosa Rancheria's substandard housing environment is the fact that, prior to the summer of 1976, only 18 permanent homes had been constructed in the community to accommodate 144 residents.<sup>20</sup> Even these homes, most of which were built by the Bureau of Indian Affairs, have been rapidly deteriorating and require extensive rehabilitation if they are to provide a "decent, safe, and healthy living environment."<sup>21</sup> However, in comparison with the housing conditions of other California reservations, the Santa Rosa Rancheria's housing plight is not exceptional.<sup>22</sup>

In an attempt to alleviate the apparent distress of low income Indians residing in such substandard housing, the Bureau of Indian Affairs (BIA) maintains a Housing Improvement Program (HIP).<sup>23</sup>

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ment Act of 1974, 42 U.S.C. § 5304 (Supp. V, 1975) and submitted to the U.S. Department of Housing and Urban Development as part of the Rancheria's 1976 Title I Block Grant Application, notes that all housing on the Rancheria is "substandard". A substandard dwelling unit is defined in the H.A.P. as "one which contains a condition which places the occupants thereof in a situation which is unsafe and/or unhealthy and therefore unfit and undignified for human habitation." Brief of Amicus Curiae, State of California Department of Housing and Community Development (in Opposition to Petition for Writ of Certiorari, No. 75-1674, U.S., June 4, 1976) at 6 n.1.

19. 532 F.2d at 657.

20. HERSHEN REPORT, *supra* note 14, at 1-2.

21. *Id.*

22. The California Advisory Commission on Indian Affairs reported to the California Governor and Legislature in 1966 that:

[T]he conditions under which Indians live in California are the lowest of any minority group. Housing is grossly inadequate: living quarters are small, crowded and poorly furnished; existing houses are structurally unsound; foundations are lacking in many cases; the building materials used, together with faulty electrical wiring and the unsafe use of gas, kerosene, and wood stoves, constitute a constant menace to life; houses generally provide the minimum necessary protection for extreme climatic conditions. Reports from federal, state and local agencies agree with the commission's findings: from 30 to 50 percent of the homes need complete replacement and 40 to 60 percent need improvements; taken together, this means that 90 percent of all homes need replacement or repairing to provide adequate living quarters for California Indians.

CALIFORNIA ADVISORY COMMISSION ON INDIAN AFFAIRS, PROGRESS REPORT TO THE GOVERNOR AND LEGISLATURE ON INDIANS IN RURAL AND RESERVATION AREAS 10 (1966). Furthermore, in 1974 the Bureau of Indian Affairs conducted an inventory of the housing needs of California Indians residing on state trust lands. This survey concluded that, of 1,611 Indian-occupied units, 891 were in substandard condition; of those 891 substandard units, 579 were dilapidated beyond repair and required replacement. It was also reported that 593 requests to secure additional reservation housing were received by the Bureau; these requests were submitted by California reservation Indians who did not have housing of any sort. SACRAMENTO AREA OFFICE, BUREAU OF INDIAN AFFAIRS, CONSOLIDATED HOUSING INVENTORY ON-TRUST LAND HOUSING CHART (1974).

23. The BIA's Housing Improvement Plan is authorized by 25 U.S.C. § 13 (1970). HIP funds are derived from Act of Aug. 10, 1972, Pub. L. No. 92-369, 86 Stat. 508 appropriations. The BIA has promulgated comprehensive guidelines and criteria for the provision and administration of HIP services.

Through this Program, in 1972, the BIA informed the governing body of the Santa Rosa Band that a limited amount of funds would be made available to the Rancheria's members for use in acquiring or improving reservation housing facilities.<sup>24</sup> In response to this announcement, in February of 1973 both plaintiffs applied to the BIA for HIP assistance to purchase mobile homes. The units selected by Barrios and Baga cost \$6,189.75 and \$7,140.00, respectively.<sup>25</sup>

The plaintiffs' requests for HIP assistance were evaluated by the BIA; Barrios and Baga were determined to be eligible for HIP assistance; and, the BIA found that the purchase of the particular mobile homes selected would comply with the standards and further the purposes of the HIP.<sup>26</sup> On the basis of its evaluation, the BIA granted both applicants \$3,500.00, which represented the maximum amount of assistance permitted for the acquisition of new reservation housing.<sup>27</sup> Subsequently, acting in coordination with the HIP, the Indian Health Service (IHS)<sup>28</sup> made plans to provide water and plumbing to these newly purchased mobile homes.<sup>29</sup> Plaintiffs were then informed<sup>30</sup> by Kings County that their mobile homes were required to comply with that political subdivision's Zoning Ordinance and Building Structures Ordinance;<sup>31</sup> absent such compliance, the Coun-

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24. Record at 81,84; Respondent's Brief, *supra* note 11, at 6.

25. Respondent's Brief, *supra* note 11, at 8.

26. *Id.* at 49.

27. 532 F.2d at 657.

28. The Indian Health Service is a branch of the Department of Health, Education and Welfare. It has been established pursuant to the authority conferred generally by 42 U.S.C. § 2001-2005f (1970), and specifically by 42 U.S.C. § 2004(a) (1970). IHS funds are appropriated under Act of May 25, 1971, Pub. L. 92-18, 85 Stat. 40.

29. While plaintiffs Barrios and Baga were seeking Housing Improvement Program assistance, the Indian Health Service was engaged in a widespread project to upgrade selected California Indian reservation water systems, including those of the Santa Rosa Rancheria. The Health Service was also attempting to provide water and sanitation systems to Housing Improvement Program funded housing on several rancherias; the Barrios and Baga mobile homes were included in this design. Record at 107-115, Respondent's Brief, *supra* note 11, at 11. The National Environmental Policy Act, 42 U.S.C. § 4321 (1970), mandates that plans be submitted for each of these IHS undertakings and that an environmental assessment of each plan be considered. *See Davis v. Morton*, 469 F.2d 593 (10th Cir. 1972).

30. 532 F.2d at 657.

31. Kings County, a governmental subdivision of the State of California, has enacted a Zoning Ordinance (KINGS COUNTY CALIF. ORDINANCE No. 269) [hereinafter cited as ORDINANCE] requiring the establishment of "a zoning plan designating certain districts and regulations controlling the use of land, the density of population, the uses and locations of structures, the height and bulk of structures, the open spaces about structures, the appearance of certain uses and structures, the areas and dimensions of sites and regulations . . . ." ORDINANCE, *supra*, § 103 ("Components of the Zoning Ordinance"). The purposes and objectives of the Kings County Zoning Ordinance are

ty<sup>32</sup> would forbid the use of these facilities.<sup>33</sup>

The area of Kings County in which the Santa Rosa Rancheria is located, and on which the plaintiffs' units were to be located, is designated as a General Agricultural District pursuant to Zoning Ordinance 402.<sup>34</sup> Under this designation, the use of a mobile home as a residence is a permitted use contingent upon securing the discretionary administrative approval of the County Planning Director,<sup>35</sup> acting as Zoning Administrator.<sup>36</sup> Upon each application, such approval may be granted for a maximum of two years.<sup>37</sup> Although discretionary, such administrative consent is customarily given<sup>38</sup> provided the applicant submits a site plan<sup>39</sup> and the proposed use does not substantially depart from the purposes and intent of the Zoning Ordinance.<sup>40</sup>

Furthermore, in order to obtain the County Planning Director's approval of the proposed land use, each applicant is required to pay a \$30.00 fee<sup>41</sup> to compensate the County for its expenses in preparing and administering an environmental impact assessment.<sup>42</sup> All Califor-

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stated to be, "to preserve, protect, and promote the public health, safety, peace, comfort, . . . , and general welfare," ORDINANCE, *supra*, § 101 ("Purposes and objectives of the ordinance"), in furtherance of the County's general plan for land use and development. *Id.* See also ORDINANCE, *supra*, § 1709 ("Nonconforming uses and structures").

32. Kings County is a governmental subdivision of the State of California, possessing such powers and jurisdiction over the lands and persons therein as are conferred by the laws and Constitution of that state. The County is authorized to exercise home rule by the State Constitution and within its jurisdiction exercises the state's police power. See CAL. CONST. art. 11, § 7, which states: "A county or city may make and enforce within its limits all local, police, sanitary and other ordinances and regulations not in conflict with general laws."

33. § 2403 of KINGS COUNTY CALIF. ORDINANCE No. 269 states that it will be a misdemeanor for any person to violate the County's zoning ordinances. Section 2403 also provides that any person who violates those ordinances shall be subject either to a fine not to exceed \$500 or to imprisonment for a period not to exceed six months, or both.

34. ORDINANCE, *supra* note 31, § 402; 532 F.2d at 657.

35. ORDINANCE, *supra* note 31, § 107.

36. ORDINANCE, *supra* note 31, § 402(c)(7).

37. *Id.*

38. Affidavit of Charles Gardner, Planning Director, Kings County, marked Defendant's Exhibit AA, cited in Petitioner's Brief for Certiorari, [hereinafter cited as Petitioner's Brief] at 4. This affidavit states that the records of Kings County reveal that of 287 applications submitted for such renewal in recent years, all have been approved. This affidavit also notes that Kings County has routinely approved such applications, provided the mobile home is the only dwelling on the site.

39. Sections 1802 and 2102 of the ORDINANCE, *supra* note 31, enumerate those details which must be included in the site plan.

40. ORDINANCE, *supra* note 31, §§ 1801, 1803.

41. 532 F.2d at 658.

42. Under sections 2101 *et seq.* of KINGS COUNTY ORDINANCE No. 269, *supra* note 31 (site plan), the County Planning Director is required to review certain factors in considering the environmental impact assessment.

nia agencies, boards, and commissions are mandated to prepare and consider impact reports pursuant to the California Environmental Quality Act<sup>43</sup> prior to approving any land use which "arguably will have an adverse environmental impact."<sup>44</sup> The County's Building and Structures Ordinance similarly requires homeowners to acquire permits for water, electrical, and sanitation facilities.<sup>45</sup> Fees charged by the County for these permits and inspection services totalled \$19.20 for each of the plaintiff's mobile homes.<sup>46</sup> Thus, both Barrios and Baga were assessed a total fee of \$49.20 to comply with the County's relevant ordinances.

Both Barrios and Baga lacked sufficient funds to purchase the required permits.<sup>47</sup> Each refused to comply with the Kings County ordinances and withheld the required fees. Moreover, plaintiffs instituted an action in federal district court,<sup>48</sup> seeking declaratory and injunctive relief to establish that Kings County was without jurisdiction to enforce its various ordinances on the Rancheria insofar as those ordinances interfered with the provision of BIA and IHS services to the Band and its members. The Santa Rosa Band, many of whose members were also awaiting HIP mobile home grants, also joined the action.<sup>49</sup> The United States District Court for the Eastern District of California granted plaintiffs' motion for summary judgment in an unpublished opinion of October 11, 1973, holding that under P.L. 280 the County had no jurisdiction to enforce its specific ordinances on the Santa Rosa trust lands.<sup>50</sup> Defendants appealed.<sup>51</sup>

On appeal, the Ninth Circuit affirmed the district court's holding

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43. California Environmental Quality Act, CAL. PUB. RES. CODE §§ 21100-76 (Deerings, 1976).

44. *No Oil, Inc. v. Los Angeles*, 13 Cal. 3d 68, 529 P.2d 66, 69 (1974); *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 263 n.8 (1972); *Burger v. County of Mendocino*, 45 Cal. App. 3d 212 (1975).

45. KINGS COUNTY CODE, ch. 5; see ORDINANCE, *supra* note 31, § 2104; accord, CAL. HEALTH & SAFETY CODE §§ 17910-95, 18000-80 (Deerings, 1976).

46. Record at 120-121, 127; Petitioner's Brief, *supra* note 38, at 4; Respondent's Brief, *supra* note 11, at 53.

47. 532 F.2d at 658.

48. *Santa Rosa Band of Indians v. Kings County*, Civ. No. F-836 (E.D. Cal. Oct. 12, 1973) (modified findings of fact and conclusions of law); see Respondent's Brief, *supra* note 11, at 47-59.

49. 532 F.2d at 658.

50. Respondent's Brief, *supra* note 11, at 60-62.

51. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), rehearing denied, No. 74-1565 (9th Cir. March 26, 1976), cert. denied, 45 U.S.L.W. 3463 (U.S. Jan. 11, 1977) (No. 74-1674).

that county land use laws are not applicable to Indian trust lands located in P.L. 280 states;<sup>52</sup> as a result, plaintiffs were not subject to the Kings County ordinances at issue. In fashioning this conclusion, the court rested on four interrelated arguments. The court first ruled that in subjecting Indians to "those civil laws of such State . . . that are of general application to private persons or private property . . . elsewhere within the State,"<sup>53</sup> Congress only envisioned the application of "state" civil laws to Indian reservation trust lands and not mere "local regulations" or "county" ordinances.<sup>54</sup> In making this distinction, the court determined the Act to be ambiguous,<sup>55</sup> applied a canon of construction most favorable to the Indians,<sup>56</sup> discarded the argument that P.L. 280 is patently assimilationist in nature,<sup>57</sup> and erected a boundary between state and local laws which depended upon the enacting authority's territorial jurisdiction.<sup>58</sup> Second, the court ruled that P.L. 280, in prohibiting the imposition of any "regulation of the use" of Indian trust property "in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto,"<sup>59</sup> precluded the application of county land use laws inconsis-

52. Six states have assumed Public Law 280 jurisdiction. These states include California, Alaska, Minnesota, Nebraska, Oregon, Wisconsin, and Washington; 28 U.S.C. § 1360 (1970); *see* *Snomish County v. Seattle Disposal Co.*, 70 Wash. 668, 425 P.2d 22, 25, *cert. denied*, 389 U.S. 1016 (1967).

53. 28 U.S.C. § 1360(a) (1970) provides:

(a) Each of the States or Territories 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 or Territory to the same extent that such State or Territory has jurisdiction over other civil causes of action, and those civil laws of such State or Territory 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 or Territory:

<i>State or Territory of</i>	<i>Indian country affected</i>
Alaska _____	All Indian country within the Territory
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

54. 532 F.2d at 659-64. *But see id.* at 660 n.5.

55. *Id.* at 659-60.

56. *Id.* at 660-61.

57. *Id.* at 661-64.

58. *Id.* at 659-60.

59. 28 U.S.C. § 1360(b) (1970) provides:

Nothing in this section shall authorize the alienation, encumbrance, or

ent with 25 CFR § 1.4,<sup>60</sup> which deprives counties of the authority to regulate the use of Indian trust property.<sup>61</sup> The court upheld the validity of the regulation against charges that it unlawfully revoked the jurisdiction conferred by P.L. 280 and that it lacked specific statutory authorization<sup>62</sup> on the ground that the regulation was reasonably related to and effectuated an independent statutory provision.<sup>63</sup> Third, the Ninth Circuit found that, contrary to the express language of P.L. 280,<sup>64</sup> the Kings County building and local zoning ordinances were "inconsistent" with various federal statutes authorizing federal agencies<sup>65</sup>

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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.

60. 25 C.F.R. § 1.4 (1973) provides:

(a) Except as provided in paragraph (b) of this section, none of the laws, ordinances, codes, resolutions, rules or other regulations of any State or political subdivision thereof limiting, zoning or otherwise governing, regulating, or controlling the use or development of any real or personal property, including water rights, shall be applicable to any such property leased from or held or used under agreement with and belonging to any Indian or 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.

(b) The Secretary of the Interior or his authorized representative may in specific cases or in specific geographic areas adopt or make applicable to Indian lands all or any part of such laws, ordinances, codes, resolutions, rules or other regulations referred to in paragraph (a) of this section as he shall determine to be in the best interest of the Indian owner or owners in achieving the highest and best use of such property. In determining whether, or to what extent, such laws, ordinances, codes, resolutions, rules or other regulations shall be adopted or made applicable, the Secretary or his authorized representative may consult with the Indian owner or owners and may consider the use of, and restrictions or limitations on the use of, other property in the vicinity, and such other factors as he shall deem appropriate. [30 F.R. 7520, June 9, 1965]

61. 532 F.2d at 664-68.

62. *Id.* at 665.

63. 25 U.S.C. § 465 (1934). Despite the Ninth Circuit's determination that 25 C.F.R. § 1.4 (1965) is valid, it has been held in *Organized Village of Kake v. Egan*, 369 U.S. 60, 63 (1902) and *Hynes v. Grimes Packing Co.*, 337 U.S. 86 (1949) that the Secretary of Interior may not exceed his authority by revoking congressionally granted limited state jurisdiction. Two district courts have held the regulation invalid. *See Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371, 377-378 (S.D. Cal. 1971), *vacated* 495 F.2d 1 (9th Cir. 1974); *Norvell v. Sangre de Cristo Dev. Inc.*, 372 F. Supp. 348 (N.M. 1974) *rev'd on other grnds.* 519 F.2d 370 (10th Cir. 1975). The court in *County of San Bernardino v. LeMar*, 271 Cal. App. 2d 718, 76 Cal. Rptr. 547 (1969) held that the Secretary's regulation authorized a California county to apply a Mobile Homes Park Act, CAL. HEALTH & SAFETY CODE §§ 18200-20 (Deering, 1976) to a non-Indian lessee of Indian trust property. *Contra*, *Sangre de Cristo Dev. Corp. v. City of Santa Fe*, 84 N.M. 343, 503 P.2d 323 (1972) (non-P.L. 280 state).

64. 28 U.S.C. § 1360(b) (1970).

65. 532 F.2d at 668.

to administer Indian assistance programs.<sup>66</sup> Lastly, the court determined that P.L. 280's proscription of the imposition of "encumbrances"<sup>67</sup> on Indian trust lands precluded Kings County from regulating the use of such property.<sup>68</sup> The court thus departed from a trend of decisions promulgated by various California federal district courts<sup>69</sup> and state courts<sup>70</sup>, as well as another Ninth Circuit panel<sup>71</sup> and an Eighth Circuit decision<sup>72</sup>, holding such local laws applicable to Indian reservation trust lands subject to P.L. 280. The County petitioned the Supreme Court for writ of certiorari<sup>73</sup>, which was recently denied without opinion.<sup>74</sup>

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66. The programs addressed by the Ninth Circuit in this regard include the Housing Improvement Program and the Indian Health Service, discussed at notes 20-32 *supra* and accompanying text.

67. *Id.*

68. Although this argument is interrelated with each of those proffered by the court in reaching its conclusion, a detailed treatment of the encumbrance issue is beyond the scope of this article. The court in *People v. Rhoades*, 12 Cal. App. 3d 720 (1970), held that the term "encumbrance" as used in P.L. 280 should be interpreted narrowly to ban the creation of an interest or right in land and not to prohibit traditional exercises of land use regulation through local governing body authority; *contra*, *Snomish County v. Seattle Disposal Co.*, 70 Wash. 2d 668, 425 P.2d 22 (1967), *cert. denied*, 389 U.S. 1016 (1967). Such an interpretation is consistent with the federal policy to prevent Indians from being divested of their lands. *See generally* *United States v. Waller*, 243 U.S. 452 (1917); *Lykins v. McGrath*, 184 U.S. 169, 171-172 (1902); *see also* F. Cohen, *Federal Indian Law* (1958), at 787-803; Comment, *State Jurisdiction Over Indian Land Use: An Interpretation of the "Encumbrance" Savings Clause of Public Law 280*, 9 LAND & WATER L. REV. 421 (1974).

69. *United States v. Humboldt County and State of California*, No. C-74-2526 RFP (N.D. Cal. 1976) (unpublished findings of fact and conclusions of law); *Agua Caliente Band v. City of Palm Springs*, 347 F. Supp. 42 (C.D. Cal. 1972); *Ricci v. County of Riverside*, No. 71-1134-EC (C.D. Cal. 1972) (unpublished findings of fact and conclusions of law); *Rincon Band v. County of San Diego*, 324 F. Supp. 371 (S.D. Cal. 1971); *Madigral v. County of Riverside*, No. 70-1893—EC (C.D. Cal. 1971) (unpublished findings of fact and conclusions of law). *See generally* Note, *The Extension of County Jurisdiction Over Indian Reservations in California: Public Law 280 and the Ninth Circuit*, 25 HASTINGS L.J. 1451 (1974) [hereinafter cited as Note].

70. *People v. Rhoades*, 12 Cal. App. 3d 720, 90 Cal. Rptr. 794 (1970), *cert. denied*, 404 U.S. 823 (1971).

71. *Capitan Grand Band v. Helix Irrigation District*, 514 F.2d 465, 468 (9th Cir. 1975) (dictum that Congress, in passing Public Law 280, "may have 'intended to grant to the states the full exercise of the police power,' and thus the power to enforce, e.g., zoning ordinances or gambling ordinances . . ."), *cert. denied*, 44 U.S.L.W. 3205 (U.S. Oct. 6, 1975). The *Rincon Band*, *Madigral*, and *Ricci* cases, *see* note 69 *supra*, were dismissed by the Ninth Circuit on the ground of mootness. 495 F.2d 1 (9th Cir. 1974), *cert. denied*, 419 U.S. 1008 (1974).

72. *Omaha Tribe of Indians v. Peters*, 516 F.2d 133, 137 (8th Cir. 1975).

73. *Santa Rosa Band of Indians v. Kings County*, No. 75-1674 (May 18, 1976, U.S.).

74. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975), *cert. denied*, 45 U.S.L.W. 3463 (U.S. Jan. 11, 1977) (No. 75-1674).



AN HISTORICAL BACKGROUND: THE INDIAN SOVEREIGNTY  
DOCTRINE THROUGH THE POLICY OF ASSIMILATION

The courts and legislatures of the federal and state governments have continually struggled to embrace and define their unique relationship<sup>75</sup> with the American Indian.<sup>76</sup> Since 1831,<sup>77</sup> the federal government's policy with regard to federal Indian law has oscillated between two distinct poles: one pole characterizing the tribes as the extension of a sovereign people with a distinct cultural heritage, and the other mandating that the American Indian be assimilated into the dominant culture as rapidly as possible.<sup>78</sup>

Clearly, the pendulum of congressional policy has swung full circle since the statement of Chief Justice John Marshall in 1831 that "[t]he treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the government of the Nation,"<sup>79</sup> to the statement of Justice Frankfurter in 1962 that "Congress has to a substantial degree opened the doors of reservations to state laws, in marked contrast to what prevailed in the time of Chief Justice Marshall."<sup>80</sup> In view of this fluctuation, the unique relationship

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75. As described by Carole E. Goldberg in her article on the development of Indian law:

Although many separatist and culturally distinct groups have resided in the United States, the Indians have presented special legal problems because their culture is closely tied to the land, because they occupied much of North America prior to the European and the American westward expansion, because they were specially subjected to Federal control in the United States Constitution, and because the Government of the United States reserved areas of land for them in trust under treaties ending years of warfare.

Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 535 (1975) [hereinafter cited as Goldberg].

76. See generally F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* (1942); M. PRICE, *LAW AND THE AMERICAN INDIAN* (1973); J. WISE, *THE RED MAN IN THE NEW WORLD DRAMA* (1971); Goldberg, *supra* note 75; Funk & Kickingbird, *The Role of Native Americans in American Legal History*, 69 LOY. L.J. 474 (1976), and sources cited therein; Note, *supra* note 69.

77. It was in 1831 that Chief Justice John Marshall wrote the opinions that have formed the basis for the proposition that Indian tribes do not admit of state jurisdiction except insofar as a federal intention has been expressed to the contrary. See *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832). See also *United States v. Kagama*, 118 U.S. 375 (1886); *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956); *Barnes v. United States*, 205 F. Supp. 97, 100 (D. Mont. 1962).

78. See Goldberg, *supra* note 75, at 536; Note, *supra* note 69, at 1463-1469.

79. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 519 (1831).

80. *Organized Village of Kake v. Egan*, 369 U.S. 60, 75 (1962).

between the American government and the Indian people must be examined in light of emerging statutory and judicial trends.<sup>81</sup>

Although the trend of modern case law is to avoid reliance on platonic notions of Indian sovereignty<sup>82</sup> and tends to look instead to the various federal statutes and treaties which define the limits of state power,<sup>83</sup> the Indian sovereignty doctrine cannot be discarded as surplusage in attempting to analyze federal Indian policy. Accordingly, this section will explore the antecedents and evolution of that policy, analyzing the tribe not only as a separate sovereign but also critically examining the assimilationist trend more recently evidenced by both Congress' and the court's actions culminating in P.L. 280.<sup>84</sup>

### *The Tribe as a Separate Sovereign*

The Constitution of the United States<sup>85</sup> expressly vests in Congress the power "to regulate commerce . . . with the Indian tribes."<sup>86</sup> By virtue of this clause, it has been ruled that "intercourse" with an Indian tribe encompasses commerce affecting both Indian territory and those states embracing such territory, the power of Congress being superior to that of the states.<sup>87</sup> This federal power is as broad and as free from restrictions as is congressional power to regulate commerce with foreign nations. In this respect, congressional commerce clause power is neither affected by the magnitude of the traffic, nor by the extent of the intercourse.<sup>88</sup> Thus, Congress may stipulate with

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81. *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973).

82. *Kennerly v. District Court*, 400 U.S. 423, 427 (1971); see *McClanahan v. Arizona State Tax Commissioner*, 411 U.S. 164, 172 (1973).

83. *McClanahan v. Arizona State Tax Commissioner*, 411 U.S. 164, 172 (1973).

84. Throughout this article, emphasis will be placed on both statutory construction and trends in congressional policy. Federal Indian common law principles are largely inapplicable in this instance given the statutory nature of the issue presented in *Santa Rosa* and the court's treatment of the language presented in Public Law 280.

85. As early as 1886, in *United States v. Kagama*, 118 U.S. 375 (1886), the Supreme Court found an additional source of power in the Constitution to regulate the Indian tribes. In this regard the Court stated:

[T]his power of Congress to organize territorial governments, and make laws for their inhabitants, arises not so much from the clause in the Constitution in regard to disposing of and making rules and regulations concerning the territory and other property of the United States, as from the ownership of the country in which the territories are, and the right of exclusive sovereignty which must exist in the national government, and can be found nowhere else.

*Id.* at 380, see *United States v. Blackfeet Tribe of Blackfeet Indian Reservation*, 364 F. Supp. 192, 195 (D. Mont. 1973).

86. U.S. CONST. art. I, § 8, cl. 3: see *United States v. Holliday*, 70 U.S. (3 Wall.) 407 (1865).

87. *United States v. Forty-three Gallons of Whiskey*, 93 U.S. 188 (1876).

88. *Perrin v. United States*, 232 U.S. 478 (1914).

whom and upon what terms Indians shall deal and is empowered to determine what articles shall be considered contraband.<sup>89</sup>

In *Cherokee Nation v. Georgia*,<sup>90</sup> Chief Justice John Marshall noted this peculiar status of the Indian tribes. Marshall described the tribes as "domestic dependent nations,"<sup>91</sup> implying that they were sovereign yet subject to the laws of the federal government concurrently. Expanding on this view in the seminal case of *Worcester v. Georgia*,<sup>92</sup> which presented the issue of whether a state could enforce its civil laws on Indian lands located in Georgia, the Chief Justice reiterated his position and characterized the tribes as "distinct political communities, having territorial boundaries, within which their authority is exclusive."<sup>93</sup> Holding that the state of Georgia did not have jurisdiction to enforce its laws on local tribal lands, the Court stated:

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.<sup>94</sup>

Pursuant to this "policy of leaving Indians free from State jurisdiction [which] is deeply rooted in our Nation's history,"<sup>95</sup> the courts have

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89. In determining what restrictions are essential to the protection of Indian "wards", Congress is vested with a wide discretion. It has been held that congressional action in this respect must be accepted and given full force and effect by the courts, unless judged to be purely arbitrary. *Id.* at 486. This power to regulate commerce is, of course, terminated when Congress abandons its guardianship and subjects the Indians to the laws of the state in which they reside. *Anderson v. Gladden*, 293 F.2d 463 (9th Cir. 1961).

In view of the expansive power of Congress guaranteed by article I, section 8, clause 3 of the Constitution, it has been held that Congress may prohibit all Indian intercourse except under federal license. *United States v. Parton*, 132 F.2d 886 (4th Cir. 1943). In the exercise of this proscription, the Commissioner of Indian Affairs is empowered to grant or refuse the issuance of such license. 25 U.S.C. § 261 (1970). Section 262 of Title 25 provides for this authority and establishes that the Commissioner may exercise such rules and regulations as he may prescribe. It was under this clause of the Constitution that the federal government prohibited as criminal the possession, manufacture, sale, or introduction of alcoholic beverages within Indian country. *See, e.g., United States v. Nice*, 241 U.S. 591 (1916).

90. *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831).

91. *Id.* at 21.

92. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

93. *Id.* at 556.

94. *Id.* at 560-61.

95. *Rice v. Olsen*, 324 U.S. 786, 789 (1945).

held that Indian tribes enjoy a status paramount to that of the states.<sup>96</sup> They have been considered dependent yet subordinate nations, possessed of all powers which are limited only to the extent expressly ceded to the federal government.<sup>97</sup> Indeed, under the Indian Reorganization Act of 1934,<sup>98</sup> Congress has encouraged the continuing formation and exercise of tribal self-government on Indian trust lands.<sup>99</sup> As stated by the Ninth Circuit, "Congress had in mind a distribution of jurisdiction which would make the tribal government over the reservation more or less the equivalent of a county or local government in other areas within the state . . . ."<sup>100</sup>

### *Relaxation of the Worcester Doctrine*

At first blush, it would appear that the exclusion of state jurisdiction has been absolute; this impression is, however, somewhat illusory. The Supreme Court has recently indicated that Indian reservations are to be regarded, within limits presently being developed by the Court, as subject to certain state laws which do not conflict with federal laws and, to a lesser degree, with tribal self-government.<sup>101</sup> "The general notion . . . that an Indian reservation is a distinct nation within whose

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96. *Barta v. Oglala Sioux Tribe*, 259 F.2d 553 (8th Cir. 1958).

97. *Colliflower v. Garland*, 342 F.2d 369 (9th Cir. 1965).

98. 25 U.S.C. §§ 465-478 (1970).

99. *United States v. Mazurie*, 419 U.S. 544 (1975). See generally Israel & Smithson, *Indian Taxation, Tribal Sovereignty and Economic Development*, 49 N.D.L. REV. 267 (1973); Goldberg, *A Dynamic View of Tribal Jurisdiction to Tax Non-Indians*, 40 L. & CONTEMP. LEGAL PROBS. 166 (1976).

100. 532 F.2d at 663. Furthermore, in conformity with the theory that Indian tribes are distinct political communities, tribes have been recognized by the federal government to possess the right to make laws and regulations for the government and protection of their persons and property consistent with the Constitution and laws of the United States. *United States v. Mazurie*, 419 U.S. 544 (1975). This right of self-government and its duration is a matter of public policy and Congress may assume full control over or relinquish control of the Indian tribes and their affairs whenever such action is deemed to be desirable. *United States v. Choctaw Nation*, 193 U.S. 115 (1904); see 25 U.S.C. §§ 476, 1301 (1970). See also *United States v. Mazurie*, 419 U.S. 544 (1975). Furthermore, Indian tribes have been given the power to establish courts to enforce their laws and regulations. *United States v. Sosseur*, 181 F.2d 873 (7th Cir. 1950). To a significant degree, the jurisdiction of these tribal courts is exclusive as to matters involving tribal affairs. *Whyte v. District Court of Montezuma County*, 140 Cal. 334, 346 P.2d 1012 (1959), in suits against Indians arising on the reservation, *Rincon Band of Mission Indians v. City of San Diego*, 324 F. Supp. 371 (S.D. Cal. 1971), and in the prosecution of violations of criminal regulations established by the tribe, *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956).

101. Compare *Organized Village of Kake v. Egan*, 369 U.S. 60, 67-68, 71-75 (1962), with *Williams v. Lee*, 358 U.S. 217, 220-21 (1959). Compare *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973), with *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973).

boundaries state law cannot penetrate, has yielded to closer analysis when confronted . . . with diverse concrete situations."<sup>102</sup> Although this judicial position has been expressed most clearly in recent opinions, it is not remiss to note that state criminal law was early held to be applicable to offenses committed by Indians off the reservation<sup>103</sup> as well as to offenses committed by non-Indians against non-Indians on reservation lands.<sup>104</sup> With similar regard to the application of state civil laws, the validity of the state's authority to tax personalty belonging to a non-Indian but located within Indian trust land has long been sustained<sup>105</sup> and Indians have been permitted to sue non-Indians in state court.<sup>106</sup>

Beyond these judicial extensions of state jurisdiction, Congress has increasingly relaxed the *Worcester* doctrine over the past century, adopting legislation providing for state assumption of jurisdiction over certain previously exempt matters. For example, in 1887 Congress enacted the General Allotment Act.<sup>107</sup> This act authorized the division of reservation land among individual Indians in an attempt to hasten the allottees' eventual assimilation into society.<sup>108</sup> The Act also provided for the application of state descent and distribution laws to affected reservation lands.<sup>109</sup> Furthermore, as a result of a House Report making an unfavorable comparison between those services offered by the Indian Service and those offered by the states,<sup>110</sup> Congress in 1929 authorized state legislatures to enforce their sanitation and quarantine laws on Indian reservations, to make inspections for health and educational purposes, and to enforce compulsory school attendance.<sup>111</sup> Similarly, the Secretary of the Interior was authorized in 1934 to enter into contracts with the states to extend state medical, welfare, agricultural, and educational assistance programs to reservation

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102. 369 U.S. at 72.

103. *Hunt v. State*, 4 Kan. 6 (1866).

104. *Draper v. United States*, 164 U.S. 240 (1896).

105. *Thomas v. Gay*, 169 U.S. 264 (1898).

106. *Felix v. Patrick*, 145 U.S. 317 (1892).

107. 24 Stat. 389, amended Act of March 3, 1901, § 9, 31 Stat. 1058; 25 U.S.C. § 348 (1946).

108. *Organized Village of Kake v. Egan*, 369 U.S. 60, 71 (1962).

109. 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 F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 118 (1942).

110. H.R. REP. NO. 2135, 70th Cong., 2d Sess. (1929); see UNITED STATES DEPARTMENT OF THE INTERIOR, *FEDERAL INDIAN LAW* (1958); L. MERIAM, *PROBLEMS OF INDIAN ADMINISTRATION* (1928).

111. 45 Stat. 1185, amended Act of Aug. 9, 1946, c.930, 60 Stat. 962; 25 U.S.C. § 231 (1946).

Indians.<sup>112</sup> Throughout the 1940's, this trend became more salient, with increasing congressional authorization of state civil and criminal jurisdiction over the previously sheltered reservations.<sup>113</sup>

Nevertheless, absent either a special grant of jurisdiction to the states or the judicial recognition of such jurisdiction,<sup>114</sup> the basic policy enunciated in *Worcester* has persisted.<sup>115</sup> The recognized relationship between the federal government and the American Indian—as prescribed by the Constitution, the uninterrupted exercise of power by Congress for more than a century, and the repeated declaration of the courts<sup>116</sup>—is that of a superior and inferior, whereby the latter is placed under the care and control of the former.<sup>117</sup> The Indians have been held to be wards of the nation exclusively and, with some exceptions, owe no allegiance to the states and receive no protection from them.<sup>118</sup> Free to exert its guardianship in any manner it deems appropriate and empowered to adjust its stance to meet new or changing conditions provided no fundamental right is violated,<sup>119</sup> Congress has authority to

112. 25 U.S.C. § 452 (1936).

113. In 1946, Congress gave North Dakota criminal jurisdiction over the Devils Lake Reservation. 60 Stat. 299. Two years later, the federal government ceded criminal jurisdiction over the Sac and Fox Indian Reservations to the state of Iowa, 62 Stat. 1161, and afforded the state of New York criminal jurisdiction over offenses committed on the reservations of that state. 25 U.S.C. § 232 (1970). Congress in 1949 conferred upon California civil and criminal jurisdiction over the Agua Caliente Indian Reservation, 63 Stat. 705, and in 1950 granted New York the authority to exercise civil jurisdiction over the tribes in that state. 25 U.S.C. § 233 (1950).

114. These general principles have been summarized in the following manner:

[C]ontrol 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 the 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.

F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 117 (1942).

115. See *Williams v. Lee*, 358 U.S. 217 (1959) and cases cited therein.

116. See, e.g., *De Lima v. Bidwell*, 182 U.S. 1 (1901); cf. *Inter-Island Steam Navigation Co. v. Hawaii*, 305 U.S. 306 (1938). See also *Shively v. Bowlley*, 152 U.S. 1 (1893).

117. E.g., *United States v. Payne*, 264 U.S. 446 (1924).

118. E.g., *United States v. Klamath and Mosadic Tribes*, 384 U.S. 119 (1965). See also *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973); *Warren Trading Post v. Arizona Tax Commission*, 380 U.S. 685 (1965). Indeed, in *Kagama v. U.S.*, 118 U.S. 375 (1886), the Court stated:

These Indian tribes are the wards of the nation . . . Because of the local ill feeling, the people of the states where they are found are often their deadliest enemies. From their weakness and helplessness so largely due to the course of dealing of the federal government with them, and the treaties in which it has been promised, there arises the duty of protection and with it the power.

*Id.* at 383-384.

119. 118 U.S. at 383-84.

pass laws and to authorize measures it perceives as necessary to protect the Indians' persons and property and to prevent interference by the state in exercise of those measures.<sup>120</sup>

### *Congressional Assimilationist Policy*

The federal government is under no obligation to perpetually continue this historical relationship of guardian and ward. It is for Congress, and not for either the courts or the Indians, to determine when the interests of the Indian people require that the contemporary government-Indian relationship be modified or terminated.<sup>121</sup> As stated in *Robinson v. Sigler*:<sup>122</sup>

The inherent police power of the states applies both to Indians and to Indian country, except to the extent that the federal government has preempted the field, and therefore the federal government may withdraw from the field and turn jurisdiction back to the states when it chooses to do so.<sup>123</sup>

The federal government's expressed desire to assimilate the Indian people and thereby to at least partially withdraw from the field of federal preemption dates as far back as 1881, when President Chester Arthur called 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."<sup>124</sup> Attempting to implement this policy, Congress adopted the Indian General Allotment Act.<sup>125</sup> The Act was intended to effectuate the policy of assimilation by encouraging the

120. *E.g.*, *United States v. 4,450.72 Acres of Land*, 27 F. Supp. 167 (D.C.D. Minn. 1939), *aff'd sub nom.*, *Minnesota v. United States*, 125 F.2d 636 (8th Cir. 1942).

121. *Cramer v. United States*, 261 U.S. 219 (1923). In this regard, Congress alone has the power to determine whether emancipation shall be partial or complete. *See, e.g.* *United States v. Ramsey*, 271 U.S. 467 (1926); *State v. Phelps*, 93 Mont. 277, 19 P.2d 319 (1933).

122. *Robinson v. Sigler*, 187 Neb. 144, 187 N.W.2d 756 (Neb. 1971), *appeal dismissed*, 404 U.S. 987 (1971).

123. *Id.* at 759. In *Anderson v. Gladden*, 293 F.2d 463, 468 (9th Cir. 1961), the court stated that the "power over Indians [is] not so inherently or exclusively federal as to apply beyond the extent to which the federal government has preempted the field, and the federal government [can] thus withdraw from the field and turn the subject matter back to the states when it chooses to do so." The Supreme Court in *Mattz v. Arnett*, 412 U.S. 481 (1973), mandated that any "congressional determination to terminate must be expressed on the face of the Act or be clear from the surrounding circumstances and legislative history." *Id.* at 504-05.

124. Chester A. Arthur, First Annual Message to Congress (Dec. 6, 1881), *cited in* 1 NATIONAL AMERICAN INDIAN COURT JUDGES ASSOCIATION, *JUSTICE AND THE AMERICAN INDIAN* 20 (1974).

125. 24 Stat. 388, Act of Feb. 8, 1887, as amended 25 U.S.C. § 331 *et seq.* (1970).

Indians to become family farmers through the division and distribution of tribal lands in 40, 80, or 100 acre allotments.<sup>126</sup> It soon became clear to Congress, however, that this particular method of assimilation did not result in economic self-sufficiency as intended, but instead culminated in the severe diminution of Indian landholdings (from 138 million acres in 1887 to 48 million acres in 1934).<sup>127</sup>

Consequently, having received reports on the prevalence of depressed economic, educational, and health conditions on the Indian reservations, Congress adopted the Indian Reorganization Act of 1934.<sup>128</sup> This Act ended the allotment policy established in 1887 and, unlike its predecessor, attempted to stabilize and strengthen tribal organization by encouraging a limited degree of self-government under the supervision of the Department of the Interior.<sup>129</sup>

Throughout the 1940's and early 1950's, however, several congressional committees voiced increasing concern regarding both the sluggish pace at which Indian self-sufficiency was being attained and the growing size of the BIA. These committees sought to articulate a more explicit and efficient policy to realize the termination of federal responsibility for the Indians. Thus, in 1942 the Senate Committee on Indian Affairs issued a piercing report<sup>130</sup> on the effectiveness of the BIA, attacking it on the ground that "[w]hile the original aim [of the BIA] was to make the Indian a citizen, the present aim appears

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126. The thrust of this Act centered on attempts:

to convert the Indians to the conventional land owning white farmer . . . to break up tribal assets (i.e., reservations) into additional allotments, to terminate historical tribal governments, and to suppress Indian customs and tribal laws. As a result, some tribal governments virtually disintegrated or had lost a great deal of their original vigor and importance.

Haas, *Ten Years of Tribal Government Under I.R.A.*, 5 (U.S. Indian Service Pamphlet, 1947); see W. BROPHY & S. ARBERLE, *THE INDIAN: AMERICA'S UNFINISHED BUSINESS* (1966).

127. W. BROPHY & S. ARBERLE, *THE INDIAN, AMERICA'S UNFINISHED BUSINESS* 20 (1966); see Burnett, *An Historical Analysis of the 1968 'Indian Civil Rights Act'*, 9 HARV. J. LEGIS. 557 (1972).

128. Act of June 18, 1934, 48 Stat. 984, as amended 25 U.S.C. §§ 461 *et seq.* (1963).

129. The purposes of the Act were: (1) to curtail Indian or federal governmental alienation of those reservation lands as was deemed necessary for the present and future support of the Indian wards; (2) to provide for the purchase of land for those presently landless Indians anxious to and capable of making a living on the acquired lands; (3) to stabilize tribal organizations by vesting such organizations with limited authority; (4) to permit Indian tribes to equip themselves with the devices of modern business operations through their formation into business corporations; (5) to establish a system of financial credit for Indians; (6) to provide Indians with the means to attain collegiate and technical training; and, (7) to clear the way for qualified Indians to hold positions in the Federal Indian Service. S. REP. NO. 1080, 73d Cong., 2d Sess. (1934).

130. *Survey of Conditions Among the Indians of the United States*, S. REP. NO. 310, 78th Cong., 1st Sess. (1943).



to be to keep the Indian an Indian and to make him satisfied with all the limitations of a primitive life."<sup>131</sup> The report continued, calling for the abolition of the Bureau<sup>132</sup> and for the pursuit of a policy that would "not differentiate them [Indians] from other citizens."<sup>133</sup> The report also proposed eliminating or transferring to the states the BIA's special programs for Indians.<sup>134</sup>

Furthermore, in 1947 at hearings held to consider the reduction of the federal bureaucracy's size,<sup>135</sup> the Senate Post Office and Civil Service Committees 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 will no longer be needed."<sup>136</sup> The Committee then prodded the Acting Commissioner into producing, for the first time, a general timetable for the termination of federal services to particular tribes.<sup>137</sup>

Perhaps more far-reaching and critical than the Senate Committee on Indian Affairs' report<sup>138</sup> was House Resolution 698.<sup>139</sup> Adopted in 1952, this resolution mandated the House Committee on Interior and Insular Affairs to investigate "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

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131. *Id.* at 17. The Committee's report took a satirical turn at this point, continuing its attack on the Bureau of Indian Affairs:

The Bureau has been concerned with building up a system instead of a 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 guinea pig for experimentation; grouping the Indian for convenience of supervision for which they are presumed to exist; tying 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.

*Id.* at 17-18.

132. *Id.*

133. *Id.* at 20.

134. *Id.*

135. *Hearings on S. Res. 41 Before the Committee on Civil Service*, 80th Cong., 1st Sess. (1947).

136. *Id.* at 77. (Statement of William Zimmerman, Jr., Acting Commissioner, Bureau of Indian Affairs).

137. *Id.* at 547.

138. *Id.*

139. H.R. Res. 698, 82d Cong., 2d Sess. (1952).

Federal Government.”<sup>140</sup> The initial report on this investigation stated the following:

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.<sup>141</sup>

The logical extension of this trend to realize a seemingly absolute policy of termination and assimilation peaked in 1953 when Congress adopted House Concurrent Resolution 108.<sup>142</sup> This resolution stated in pertinent part:

[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 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.<sup>143</sup>

Certain named tribes in addition to tribes situated in four specified states were to “be freed from Federal supervision and control and from the disabilities and limitations specially applicable to the Indians,”<sup>144</sup> including their exclusion from the “general” civil and criminal jurisdiction of their respective states.<sup>145</sup>

### *The Evolution of Public Law 280*

Even more profound than these expressions of judicial opinion<sup>146</sup> and congressional policy<sup>147</sup> regarding assimilation of the American

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140. *Id.*

141. H.R. REP. NO. 2503, 82d Cong., 2d Sess., 124 (1952).

142. H.R. CON. RES. 108, 67 STAT. B132, 83d Cong., 1st Sess. (1953); H.R. REP. NO. 841, 83d Cong., 1st Sess. (1953); S. REP. NO. 794, 83d Cong., 1st Sess. (1953).

143. H.R. CON. RES. 108, 67 STAT. B132, 83d Cong., 1st Sess. (1953); H.R. REP. NO. 841, 83d Cong., 1st Sess. (1953); S. REP. NO. 794, 83d Cong., 1st Sess. (1953).

144. H.R. CON. RES. 108, 67 STAT. B132, 83d Cong., 1st Sess. (1953); H.R. REP. NO. 841, 83d Cong., 1st Sess. (1953); S. REP. NO. 794, 83d Cong., 1st Sess. (1953).

145. H.R. REP. NO. 841, 83d Cong., 1st Sess. (1953).

146. See notes 85-106 *supra* and accompanying text.

147. See notes 107-145 *supra* and accompanying text.

Indian and the termination—at least partially<sup>148</sup>—of the tradition of exclusive federal jurisdiction, was the concurrent adoption of bills transferring either mandatory or consensual civil and/or criminal jurisdiction to the states. Unlike previously discussed statutes and bills ceding jurisdiction to specified states over particular reservations and subject-matters,<sup>149</sup> these manifestations operated to confer state jurisdiction generally; beginning in the late 1940's, the developing congressional policy had transcended its confinement to particular instances and had evolved into an expansive grant of authority to the states.

For example, in 1948, during the 80th Congress, the House of Representatives adopted a bill to confer upon each state concurrent jurisdiction over criminal offenses committed by or against Indians in Indian country.<sup>150</sup> This bill, H.R. 4725, would have permitted, but not required, individual states to exercise such concurrent jurisdiction through the enforcement of state criminal laws.<sup>151</sup> Although the Interior Department agreed with the premise upon which H.R. 4725 was based, that "tribal law and order has completely broken down,"<sup>152</sup> it nonetheless opposed the bill's adoption. In assuming this position, the Department was of the opinion that Indian consent should be obtained prior to the effectiveness of such transfer and noted favorably the greater latitude permitted by the traditional state-by-state approach to cession.<sup>153</sup>

Although the House committee considering H.R. 4725 opposed the suggested inclusion of a consent provision,<sup>154</sup> it did narrow the scope of H.R. 4725 as introduced, amending the bill to provide that such

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148. See notes 121-145 *supra* and accompanying text.

149. See notes 109-116 *supra* and accompanying text.

150. H.R. 4725, 80th Cong., 2d Sess. (1948). The reason given for the development of this bill was expressed in the report of the House Committee on Public Lands as follows: "The need of this legislation arises from the fact that in certain instances, Indian tribes do not enforce the laws covering offenses committed by Indians . . ." H.R. REP. NO. 1506, 80th Cong., 2d Sess. (1948). The Senate Committee on Interior and Insular Affairs reported this bill favorably. S. REP. NO. 1142, 80th Cong., 2d Sess. (1948).

151. H.R. REP. NO. 4725, 80th Cong., 2d Sess. (1948).

152. Letter from Oscar L. Chapman, Under Secretary of Interior, to Rep. Welch, Chairman of the House Committee on Public Lands, reprinted in H.R. REP. NO. 1506, 80th Cong., 2d Sess. (1948) [hereinafter cited as H.R. REP. NO. 1506].

153. H.R. REP. NO. 1506, *supra* note 152; see notes 136-45 *supra* and accompanying text.

154. H.R. REP. NO. 1506 *supra* note 152. The House committee opposed the inclusion of a consent provision on the ground that "any Indian reservation under the dominance of a criminal element would not be able to institute [state] police protection by majority vote." *Id.*

jurisdiction would be applicable only in those states in which Indians had been granted suffrage in state and local elections.<sup>155</sup> This qualification was attached in response to fears expressed by New Mexico tribal members who had not been granted suffrage; their concern centered upon the potential for inequitable treatment in state courts as a result of their having been denied jury participation. Shortly after the bill passed the House on March 15, 1948, the Senate Committee on Interior and Insular Affairs annexed an amendment to the bill clarifying the nature of the offenses covered thereby<sup>156</sup> and recommending that the proposed legislation be passed.<sup>157</sup> Congress adjourned, however, before H.R. 4725 was addressed on the floor.

A similar bill, H.R. 459,<sup>158</sup> which did not include the suffrage limitation, was introduced in the 82nd Congress in 1952. During the hearings of the Subcommittee on Indian Affairs of the House Committee on Interior and Insular Affairs, three amendments were proposed.<sup>159</sup> Although these amendments, particularly a tribal consent amendment, were apparently offered to quiet some of the objections voiced earlier by the Interior Department to H.R. 4725, that Department continued to urge a state-by-state approach to the assumption of concurrent jurisdiction; as Interior stated, "Indians should retain the maximum control over their intratribal affairs."<sup>160</sup> The Interior Department supported this position on the grounds that: state laws were unfamiliar to the Indians; affected Indians might be subjected to discriminatory treatment in the state courts; the tribal courts and police systems of some Indian reservations were functioning effectively in the absence of proposed state intervention; and, some states were unwilling to assume the additional burden and responsibility—financial and other-

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155. H.R. REP. NO. 1506, *supra* note 152.

156. This amendment stated that concurrent state jurisdiction would apply to both felonies and misdemeanors. S. REP. NO. 1142, 80th Cong., 2d Sess. (1948).

157. S. REP. NO. 1142, 80th Cong., 2d Sess. (1948); H.R. 1537, 81st Cong., 1st Sess. (1949). Reference to subcommittee hearings was made by Rep. D'Ewart in *Hearings on State Legal Jurisdiction in Indian Country Before the House Committee on Interior and Insular Affairs*, 82d Cong., 2d Sess. (1952) [hereinafter cited as *Hearings on State Legal Jurisdiction*].

158. H.R. 459, 82d Cong., 1st Sess. (1952).

159. *Hearings on State Legal Jurisdiction*, *supra* note 157. Representative D'Ewart stated that this amendment would limit the conferral of such jurisdiction to California, Minnesota, Montana, North Dakota, South Dakota, Washington, and Wyoming. *Id.* at 5. Three of these states would later assume Public Law 280 jurisdiction.

160. *Hearings on State Legal Jurisdiction*, *supra* note 157, at 11-12; Letter from Dale E. Doty, Assistant Secretary of the Interior, to John Murdock, Chairman of the House Committee on Interior and Insular Affairs (Jan. 10, 1952) (outlining departmental objections to H.R. 459).

wise—of reservation law enforcement.<sup>161</sup> Despite the subcommittee's concession on the tribal referendum issue, the Interior Department remained dissatisfied, favoring instead a process of "consultation" with the tribes.<sup>162</sup> The Department favored this approach on the grounds that proposed referenda would be too costly, that it would be difficult to realize a sizeable vote on the issue, and that some tribes with "a completely inadequate law and order code and . . . police system" might vote against such cession of criminal jurisdiction to the states.<sup>163</sup> Nevertheless, Interior expressed its agreement with the general principle underlying H. R. 459, that "the State[s] should take over the responsibility for law enforcement," subject, however, to the condition that cession occur only "as fast as it is possible and feasible."<sup>164</sup>

Contrary to the position taken by the Interior Department, the testimony of Indian representatives before the subcommittee was, with the exception of representatives from the Yakima and Colville tribes of Washington, favorable to the conferral of both criminal and civil jurisdiction on the states.<sup>165</sup> Most conditioned this approval, however, on the inclusion of a provision mandating the agency—opposed referenda machinery prior to cession of such jurisdiction.<sup>166</sup> Several of the representatives couched their testimony favoring cession in terms of escaping the "oversupervision and overregulation"<sup>167</sup> of the BIA.<sup>168</sup> Characteristic of the testimony of this group was the statement of Purl Willis of the Mission Indians of Southern California, that: "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."<sup>169</sup>

Having made its recommendations to the subcommittee and having heard the testimony of the Indian representatives, the Interior Department proposed a substitute bill to H.R. 459.<sup>170</sup> This measure

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161. *Id.*

162. *Hearings on State Legal Jurisdiction*, *supra* note 157, at 26-27 (statement of Dillon S. Meyer, Commissioner of Indian Affairs).

163. *Id.*

164. *Id.* at 25.

165. *Id.* at 101-02.

166. The representative for the Indians of California opposed requiring tribal referenda because of the expense and particular situation of those tribes. *Id.* at 101-02.

167. *Id.* at 67.

168. For the congressional attitude on this same issue, *see* notes 130-41 *supra* and accompanying text.

169. *Hearings on State Legal Jurisdiction*, *supra* note 157, at 67.

170. *Id.* at 28-30.

provided several contributions to what eventually became P.L. 280 in the following Congress. It included the following elements: (1) a provision providing for state criminal jurisdiction over offenses committed by or against Indians in Indian country; (2) a provision preserving concurrent federal criminal jurisdiction; (3) a provision protecting Indian rights regarding ownership or taxation of trust and restricted Indian lands and Indian hunting, trapping, and fishing rights; (4) a provision eliminating federal liquor laws barring the sale of liquor to Indians in those areas in which the states assumed jurisdiction;<sup>171</sup> (5) a provision providing for state civil jurisdiction in named states, but excepting Indian trust or restricted real property; and significantly, (6) a technical amendment repealing the 1949 transfer of civil and criminal jurisdiction to California over the Aqua Caliente Indian Reservation<sup>172</sup> thereby conferring upon California state-wide rather than specific reservation civil jurisdiction.<sup>173</sup> The House Committee acceded to suggestions of the Interior Department only to the extent of limiting those states upon which concurrent jurisdiction would be conferred<sup>174</sup> and approving the repeal of the Aqua Caliente Reservation jurisdictional transfer.

Although no further action was taken on the bill during the remainder of the Eighty-Second Congress, the stage had been set for the passage of P.L. 280.

Individual bills were introduced early in the following session of Congress to transfer civil and/or criminal jurisdiction over Indian

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171. In testimony before the subcommittee, all of the Indian representatives adamantly opposed the Interior Department's suggested approach of tying together the issues of assumption of state jurisdiction and the repeal of the federal 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 the Indians could "vote yes or no upon the application of state law without having a bottle dangling in front of their noses." *Id.* at 48.

172. Act of October 5, 1949, Pub. L. 322, 63 Stat. § 705; see notes 302-31 *infra* and accompanying text.

173. The Department had introduced a virtually identical bill to its proposed substitute only nine days before its representative's testimony on H.R. 459. That bill, H.R. 6695, 82d Cong., 2d Sess. (1952), was referred, however, to the Judiciary Committee rather than to the Interior Committee.

174. *Hearings on State Legal Jurisdiction*, *supra* note 157, at 67. On March 25, 1952, the Committee unanimously reported a revised version of Representative D'Ewart's bill, H.R. 459, which would confer criminal but not civil jurisdiction on the states of Montana, South Dakota, and Wyoming. The revised bill provided for the necessity of tribal referenda prior to the assumption of effective state jurisdiction, preserved concurrent federal criminal jurisdiction, and provided for the protection of Indian hunting, trapping, and fishing rights. This version was adopted by the full House without debate on the same day but no further action was taken on the bill during the remainder of the Eighty-second Congress.

country to the states of California, Minnesota, Nevada, Oregon, and Wisconsin.<sup>175</sup> The House Subcommittee on Indian Affairs subsequently modeled the bill that was to be later enacted as P.L. 280 after H.R. 1063 which conferred civil and criminal jurisdiction on the state of California alone.<sup>176</sup> The report from the Department of the Interior

175. H.R. REP. NO. 848, 83d Cong., 1st Sess. (1953), *reprinted in* [1953] U.S. CODE CONG. & AD. NEWS 2409 [hereinafter cited as H.R. REP. NO. 848].

176. H.R. 1063, 83d Cong., 1st Sess. (1953) [hereinafter cited as H.R. 1063]. Although Public Law 280 was intended to confer concurrent jurisdiction on the state of California only, by the time that bill was reported out of the Senate the congressional intention was that "any legislation in [the] area should be on a general basis, making provision for all affected States to come within its terms . . . ." S. REP. NO. 699, 83d Cong., 1st Sess. (1953), *reprinted in* [1953] U.S. CODE CONG. & AD. NEWS 2409 [hereinafter cited as S. REP. NO. 699]. As amended and reported favorably by full committee, H.R. REP. NO. 848, *supra* note 175, the bill provided for the following provisions, all of which were retained through final passage with the exception of section 8:

- (1) Sections 1 and 2 of the bill conferred criminal jurisdictions 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 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

on H.R. 1063<sup>177</sup> stated that the BIA had consulted state and local authorities and Indian tribes regarding cession. The Department noted that "Indian groups in those States were, for the most part, agreeable to the transfer of jurisdiction . . .,"<sup>178</sup> but that objections to state assumption of jurisdiction had been received from at least five tribes.<sup>179</sup> Unlike the jurisdictional exemption provided certain named tribes of Minnesota, Oregon, and Wisconsin developed in response to these objections, however, two Washington tribes were not similarly exempted by the amended bill from the possible future extension of jurisdiction to the state of Washington; nor did the amended bill provide a method of exemption for any additional tribes potentially subject to state jurisdiction through future state acceptance.

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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 federal Indian liquor laws, which made criminal the sale of liquor to Indians and the possession of liquor in Indian country.

H.R. 1063, as amended, accomplished a transfer of jurisdiction to only five specified states. All other states could assume such jurisdiction only upon their own initiative. Unlike P.L. 280 as amended in 1968, *supra* note 8, however, no further expression of Congressional consent or approval to state assumption of jurisdiction needed to be obtained, nor did a state need to secure the consent of or confer with those Indian tribes within its territory that would be affected by such assumption.

177. Letter from Orme Lewis, Assistant Secretary of the Interior, to Representative Miller, Chairman of the House Committee on Interior and Insular Affairs (July 7, 1953) (contained in S. REP. No. 699, *supra* note 176) [hereinafter cited as July 7 Letter of Orme Lewis].

178. July 7 Letter of Orme Lewis, *supra* note 177, at 2413.

179. The Red Lake Band of Chippewa Indians in Minnesota unanimously opposed the extension of state jurisdiction on the ground that "[s]tate 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." *Id.* at 2413. The Warm Springs Tribe located in the state of Oregon was reported to oppose cession in view of the "fear that its members would not be treated fairly in the State courts." *Id.* at 2413. The Menominee Tribe of Wisconsin, the Department continued, opposed the assumption of 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." *Id.* at 2413-14. The Committee accommodated the objections of these tribes by excepting them from the conferral of jurisdiction to that state in which they resided. H.R. REP. No. 848, *supra* note 175, at 2412. The Department's report also noted, however, that the Colville and Yakima Tribes of the state of Washington opposed the cession of federal 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." July 7 Letter of Orme Lewis, *supra* note 177, at 2413. Washington was one of the states with an express constitutional disclaimer of jurisdiction over Indian country and, consequently, could assume such jurisdiction only by some future enactment of the state legislature. *Id.* at 2414.



As its justification for the enactment of H.R. 1063, the Committee on Interior and Insular Affairs' report emphasized not only lawlessness on reservations but also the congressional policy of termination.<sup>180</sup> The report stated that H. R. 1063 and other legislation concurrently under consideration had two coordinate aims: "First, the withdrawal of Federal responsibility for Indian Affairs wherever practicable; and second, termination of the subjection of Indians to Federal laws applicable to Indians as such."<sup>181</sup> Specifically, the purposes of the bill were stated to be twofold: (1) to remedy what the Committee termed a "hiatus in law-enforcement authority" on Indian reservations; and (2) to further the acculturation of the Indian.<sup>182</sup> With regard to the latter aspect, the Committee stated:

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.<sup>183</sup>

Despite the Department of Interior's consistently expressed preference for a state-by-state approach to cession,<sup>184</sup> the House Committee termed the Department's position on H.R. 1063 as "favorable."<sup>185</sup> On July 27, 1953, H.R. 1063 was adopted by the House without debate.<sup>186</sup>

Two days later, on July 29, 1953, the Senate Committee on Interior and Insular Affairs reported the bill without amendment.<sup>187</sup> On August 1, H.R. 1063 was addressed on the floor of the Senate and, with one amendment,<sup>188</sup> was passed by a voice vote.<sup>189</sup> Later that same

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180. H.R. REP. NO. 848, *supra* note 175, at 2409.

181. *Id.* at 2409.

182. *Id.* at 2412.

183. *Id.*

184. See notes 136-45 *supra* and accompanying text.

185. H.R. REP. NO. 848, *supra* note 175, at 2413. The Interior Department's report, expressed in the July 7 letter of Assistant Secretary of the Interior Orme Lewis added little to the House report. July 7 letter of Orme Lewis, *supra* note 177, at 2413-14.

186. 99 CONG. REC. 9962 (1953).

187. S. REP. NO. 699, *supra* note 176. The Senate report is largely a reprint of H.R. REP. NO. 848, *supra* note 175.

188. This amendment concerned the deletion of a section which removed those Indians made subject to state criminal jurisdiction from the application of federal Indian liquor laws which made criminal the sale and possession of liquor to or by Indians. The argument made for the amendment was that another bill dealing more comprehensively with the subject had already been adopted by the Senate. 99 CONG. REC. 10782-84 (1953).

189. *Id.*

day, the bill as amended by the Senate was brought before the House on a motion to concur.<sup>190</sup> The House concurred in the Senate amendment without debate and sent the bill to the President for his signature.<sup>191</sup> Although expressing "grave doubts" about the absence of any requirements of tribal consent prior to the imposition of state jurisdiction, on August 15, 1953, President Eisenhower signed Public Law 280, stating: "I have . . . signed it because its basic purpose represents still another step in granting complete political equality to all Indians in our Nation."<sup>192</sup> This statement symbolized the maturation of an era of 'gradual absorption' pioneered by President Chester Arthur in 1881.<sup>193</sup>

### THE HOLDING OF THE NINTH CIRCUIT IN *Santa Rosa*

The Ninth Circuit took summary cognizance of this judicial and statutory history in concluding that P.L. 280 did not grant to counties the authority to impose and enforce local land use regulations on Indian reservation trust lands. The pivotal determination of the court was that county zoning ordinances and building codes did not constitute "state" civil laws "that are of general application . . . within the State."<sup>194</sup> Judge Koelsch, writing for a unanimous court, developed this holding on the basis of three interrelated premises.

The initial foundation for the court's holding was based upon the established principle of federal Indian law that, in the absence of an express grant of authority by the federal government to a particular governmental unit, the United States exercises plenary power. Admitting that "states" *qua* states had been ceded at least partial jurisdiction by

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190. 99 CONG. REC. 10928 (1953).

191. *Id.*

192. Statement by President Eisenhower (Aug. 15, 1953), reprinted in 102 CONG. REC. 399 (1956).

193. Public Law 280 was first amended in 1954 to bring the Menominee Tribe of Wisconsin within the civil and criminal jurisdiction of that state. Act of Aug. 24, 1954, 68 Stat. 795. It was amended again in 1958 to give the then territory of Alaska civil and criminal jurisdiction over Indian tribes. Act of Aug. 8, 1958, 72 Stat. 545. In 1970, however, criminal jurisdiction was returned to the Metlakatla Indian rancheria of Alaska. Act of Nov. 25, 1970, 84 Stat. 1358.

Finally, in 1968 the enactment was significantly amended to require that the consent of affected Indian tribes be obtained by referendum prior to state assumption of P.L. 280 jurisdiction, and to permit any state that had assumed such jurisdiction to retrocede all or part of it back to the United States. Act of April 11, 1968, 82 Stat. 79 (Title IV), 25 U.S.C. §§ 1321-1326 (1970).

194. 532 F.2d at 659.

the express language of the Act,<sup>195</sup> the court then considered that same language to determine whether such a grant had been similarly afforded state political subdivisions such as Kings County. The court ruled that the statutory language was "ambiguous"<sup>196</sup> in this regard, positing that the phrase "civil laws of [the] State," admitted of two possible contrary interpretations in view of the Act's legislative history;<sup>197</sup> one interpretation would permit Indian reservations to be subject only to those civil laws enacted by the state legislature which are of statewide application, while the other would make reservation trust lands amenable to county or municipality ordinances which apply equally<sup>198</sup> to Indians and non-Indians.<sup>199</sup>

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195. *Id.* at 658-59.

196. To the contrary, it has been early held by a different panel of the Ninth Circuit that the language of Public Law 280 is "unambiguous." *Anderson v. Gladden*, 293 F.2d 464, 466 (9th Cir. 1961), *cert. denied*, 368 U.S. 949 (1961). *Contra*, *Board of County Commissioners v. Seber*, 318 U.S. 705, 713 (1943); *Snomish County v. Seattle Disposal Co.*, 70 Wash. 668, 425 P.2d 22 (1967), *cert. denied*, 389 U.S. 1016 (1967) (dissenting opinion).

197. 532 F.2d at 660. The court stated that: "The statute may be read either as only making applicable to Indian reservations those civil laws passed by the state legislature which are of statewide application, or, additionally, also to make applicable county or municipal ordinances which apply equally to Indians and non-Indians [footnote omitted]." *Id.* In a footnote to this statement, Judge Koelsch noted that the local legislation at issue was not directed solely at the reservation. *Id.* at 660 n.5. This statement of the Ninth Circuit would seem to suggest that an argument barring the application of the County's ordinances based upon equal protection grounds would fail.

198. The court was concerned that:

[S]ubjecting the reservation to local jurisdiction would dilute if not altogether eliminate Indian political control of the timing and scope of the development of reservation resources, subjecting Indian economic development to the veto power of potentially hostile local non-Indian majorities. Local communities may not share the usually poorer Indian's priorities, or may in fact be in economic competition with the Indians and seek, under the guise of general regulations, to channel development elsewhere in the community. And even when local regulations are adopted in the best of faith, the differing economic situations of reservation Indians and the general citizenry may give the ordinance of equal application a vastly disproportionate impact.

*Id.* at 664. Compare this statement of the Ninth Circuit with its ruling in vacating the district court's judgment enjoining enforcement of the particular ordinances at issue and preventing enforcement of any county ordinance

now or hereafter enacted, which incidentally 'adds expense or inconvenience' to the maintenance 'of housing facilities or appurtenances thereto' when funded by a federal agency—it might, for example, be interpreted (improperly, we think) to enjoin the County from charging Rancheria Indians the same fee for County-supplied water, for sanitation hookups, required of other County residents, or to require the County to otherwise discriminate in favor of the Indians. While controlling principles we have discussed above bar County regulation of Indian land by indirect subterfuges, they do not bar all incidental on-reservation consequences of County regulations.

*Id.* at 668-69; see notes 259-92 *supra* and accompanying text (congressional expression of opposition to discriminatory laws while concurrently promulgating the assimilation of the American Indian into the dominant society and the termination of federal supervision, responsibility, and control).

The court resolved this ambiguity in plaintiffs' favor by invoking a canon of construction stated by the Ninth Circuit as follows: "that ambiguities in Federal treaties or statutes dealing with Indians must be resolved favorably to the Indians."<sup>199</sup> Despite the paramount importance afforded this principle by the court and the obvious advantage it imports for Indian litigants, it has been ruled by the Supreme Court that the sole function of such a canon is to discover congressional intent;<sup>200</sup> it is not authority for a court to overcome the plain meaning of a congressional act in following a policy that the court believes preferable to that policy effectuated by Congress.<sup>201</sup> In applying this canon, the courts have been mandated to comply with the guideline that: "A canon of construction [requiring ambiguous statutes to be interpreted favorably to the Indians] is not a license to disregard clear expressions of tribal and congressional intent. . . . Some might wish they had spoken differently, but [the courts] cannot remake history."<sup>202</sup> Thus,

199. *Id.* at 660; see *McClanahan v. Arizona State Tax Comm.*, 411 U.S. 164, 174-75 (1973); *Menominee Tribe v. United States*, 391 U.S. 404 (1968); *Kimball v. Callahan*, 493 F.2d 564 (9th Cir. 1974); *Alaska Pacific Fisheries v. United States*, 248 U.S. 78, 89 (1918) ("statutes passed for the benefit of dependent Indian tribes are to be resolved in favor of the Indians"). See generally Note, *supra* note 69, at 1481-83. Evidencing the paramount importance the court afforded this canon in deciding *Santa Rosa*, the opinion characterized this canon as a "principle . . . somewhat more than a canon of construction akin to a Latin maxim, easily invoked and as easily disregarded." 532 F.2d at 660.

Opinions of the Supreme Court have previously disagreed with the application and definition of the canon as invoked by the Ninth Circuit, allowing its use only in those cases involving either treaties or statutes ratifying agreements with the Indians, *Antoine v. Washington*, 420 U.S. 194, 199-200 (1975), or where the statute is in the nature of a contract, *United States v. First Nat'l Bank*, 234 U.S. 245, 249 (1914); see *Capoe-man v. United States*, 440 F.2d 1002 (Ct. Cl. 1971). Public Law 280 has been held, however, not to be such a statute ratifying an agreement, but one enacted to define the federal-state relationship. *Quinault Tribe of Indians v. Gallagher*, 368 F.2d 648 (9th Cir. 1966), *cert. denied*, 387 U.S. 907 (1967).

200. *United States v. Rice*, 327 U.S. 742, 753 (1946) and cases cited therein. See generally *Thrust and Parry and Thrust and Counterthrust* in K. LLEWELLYN, *THE COMMON LAW TRADITION: DECIDING APPEALS*, App. C, 521-35 (1960); J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 185-89 (1950).

201. *United States v. Choctaw Nation*, 179 U.S. 494, 532 (1900).

202. *DeCoteau v. District Court*, 420 U.S. 425, 449 (1975). With respect to judicial interpretation of federal Indian policy, the Court stated:

But in no case has it been adjudged that the courts could by mere interpretation or in deference to its views as to what was right under all the circumstances, incorporate into an Indian treaty something that was inconsistent with the clear import of its words. It has never been held that the obvious, palpable meaning of the words of an Indian treaty may be disregarded because, in the opinion of the court, that meaning may in a particular transaction work what it would regard an injustice to the Indians. That would be an intrusion upon the domain committed by the Constitution to the political departments of the government . . . .

*Id.* at 532; accord, *United States v. First Nat'l Bank*, 234 U.S. 245 (1914).

the Ninth Circuit's reliance on this canon was subject to stringent limitations which, as will be seen, the court either did not recognize or patently abused.

In construing the statute as ambiguous and applying this canon of construction, the Ninth Circuit stated that Congress had rejected and discarded the assimilationist policy underlying P.L. 280 "in favor of policies fostering Indian autonomy, reservation self-government and economic self-development,"<sup>203</sup> with which local regulation would substantially interfere.<sup>204</sup> The court also rejected the suggestion that the legislative history of P.L. 280 indicated a congressional intent to subject Indian reservations trust lands and their inhabitants to the full panoply of state, county, and municipal laws faced by other state citizens.<sup>205</sup> Although these arguments are not entirely without merit, a critical analysis of the Act and its legislative history, coupled with an understanding of the interdependent relationship between state and local authority in the area of land use planning and environmental control, reflects a more plausible interpretation to the contrary. Such a contrary interpretation is further enhanced by the fact that the Ninth Circuit as well as each court previously involved in the interpretation of P.L. 280 has erroneously relied upon a mistakenly filed Department of Interior memorandum in their attempts to discern congressional intent.<sup>206</sup> An analysis of this previously ignored piece of legislative his-

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203. 532 F.2d at 663.

204. In a similar vein, the court urged that the imposition of such local ordinances would have "a devastating impact . . . on tribal self-rule and economic development of reservation resources." *Id.* at 661.

205. *Id.* at 661; 495 F.2d at 373-76. See Note, *supra* note 69, at 1488-1489; Goldberg, *supra* note 75, at 581.

206. The erroneously filed legislative history predominantly relied upon by the court in fashioning its conclusion that P.L. 280 was ambiguous is found in a July 7 letter from Assistant Secretary of the Interior, Orme Lewis, to Representative Miller, Chairman of the House Committee on Interior and Insular Affairs, reprinted in S. REP. No. 699, *supra* note 176. This letter is set forth below:

UNITED STATES DEPARTMENT OF THE INTERIOR,  
OFFICE OF THE SECRETARY,  
Washington 25, D.C., July 7, 1953.

MY DEAR MR. MILLER: At hearings before the Subcommittee on Indian Affairs of your committee on Monday, June 29, a request was made that this Department furnish your committee with a report reflecting the attitude of the various States and the Indian groups within those States on the question of the transfer of civil and criminal jurisdiction over Indians on their reservations to the respective States. The subcommittee also took action to amend H.R. 1063, a bill to confer civil and criminal jurisdiction on the State of California over Indians on the reservations in that State, to make it of general application rather than limit it to California and the subcommittee requested that representatives of this Department cooperate with the subcommittee in determining the States in which the amended bill should be made applicable. This is in re-

tory, as well as those factors set forth above, clearly indicates a con-

sponse to those requests.

The Bureau of Indian Affairs of this Department has consulted with State and local authorities and with the Indian groups on the question of transfer of civil and criminal jurisdiction on the States in the following States: California, Minnesota, Nebraska, Nevada, Oregon, Washington, and Wisconsin. Bills for each of the States except Nebraska and Washington are presently pending before the Congress.

In each of the States mentioned, with the exception of Nevada, State and Local authorities indicated their agreeableness to the proposed transfer of jurisdiction. In the State of Nevada authorities of some of the counties indicated their willingness to accept jurisdiction, others opposed it, and others stated they would accept such jurisdiction only with an accompanying Federal subsidy. The Indian groups in those States were, for the most part, agreeable to the transfer of jurisdiction but certain groups opposed such transfer. The following Indian tribes, each of which has a tribal law-and-order organization that functions in a reasonably satisfactory manner, objected to being subjected to State jurisdiction:

Minnesota	Red Lake Band of Chippewa Indians
Oregon	Warm Springs Tribe
Washington	Colville and Yakima Tribes
Wisconsin	Menominee Tribe

These Indian groups have expressed various reasons for their opposition to being subjected to State jurisdiction. The Red Lake Band of Chippewa Indians, in voting unanimously in opposition to the extension of State jurisdiction, observed that State law would not be of any benefit to tribal members and that the tribal members should be given an opportunity by referendum election to accept or reject the extension of State jurisdiction. The Warm Springs Tribe expressed its fear that its members would not be treated fairly in the State courts. The Warm Springs Tribe constitutes an isolated population group. The reservation is located in two counties and the seat of each county government is some distance from the reservation. It has been reported that these two counties are poorly financed and heretofore have been unable to render any appreciable assistance to the Indians on the reservation. The Colville and Yakima Tribes, in opposing State jurisdiction, expressed 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. The Menominee Tribe stated that its tribal police organization was capable of maintaining order on the reservation and that its people are not yet ready to be subjected to State laws.

The Bureau of Indian Affairs has consulted with State and local authorities and Indian groups only in the States mentioned above. However, we have other information which indicates that State authorities in Montana and South Dakota would be agreeable to a transfer of jurisdiction if such transfer were accomplished by a complete Federal subsidy. The Indians in these two States have indicated their unanimous opposition to the extension of State laws on their reservations.

It appears that there are legal impediments to the transfer of jurisdiction over Indians on their reservations in the case of a number of States. An examination of the Federal statutes and State constitutions indicates that enabling acts for the following States, and in consequence the constitutions of these States, contain express disclaimers of jurisdiction. These States are Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington. In these cases the enabling acts required the people of the proposed States expressly to disclaim jurisdiction over Indian land and that, until the Indian title was extinguished, the lands were to remain under the absolute jurisdiction and control of the Congress of the United States. In each instance the State constitution contains an appropriate disclaimer. It would appear in each case, therefore, that the Congress would be required to give its consent and the people of each State would be required to amend the State constitution before the State legally could assume jurisdiction.

This Department does not have information on the attitude and disposi-

gressional intent to subject affected Indians and their lands to local regulations as the embodiment of P.L. 280 state civil law.

#### CONSULTATION WITH LOCAL AUTHORITIES PRIOR TO CESSION

In determining that Congress did not intend P.L. 280 reservation trust lands to be made subject to local land use regulations, the Ninth Circuit concluded that "there is nothing specific in the legislative history shedding any light on whether or not Congress intended to subject reservation Indians to local civil or criminal ordinances."<sup>207</sup> In support of this statement, the court generally alluded to references in the Act's legislative history indicating that the enactment was merely intended to gradually assimilate Indians rather than to terminate their trust status;<sup>208</sup> viewed in this manner, the imposition of local land use controls would be highly inappropriate. The court was of the opinion that "civil jurisdiction was extended almost as an afterthought"<sup>209</sup> to the "perceived need to extend state criminal jurisdiction to certain California reservations."<sup>210</sup> Whether or not the references relied upon by the court are lacking in clarity, the court wholly ignored several significant references in the legislative history of P.L. 280 which clearly indicate a congressional intent to subject affected Indians to local civil laws. Although the Ninth Circuit may have been persuaded that *Santa Rosa* was summarily a case for applying a canon of construction most favorable to the Band, on closer analysis one is compelled to conclude that the legislative history of the Act is sufficiently coherent to interpret the statute in accordance with the true intent of Congress to subject P.L. 280 reservation trust lands to county ordinances, thereby precluding any substantial resort to that canon.

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tion of the State and local authorities and the Indian groups in the States, other than those listed in the second paragraph of this report.

Sincerely yours,

ORME LEWIS,

*Assistant Secretary of the Interior.*

See notes 272-300 *infra* and accompanying text for a discussion of the proper legislative history of Public Law 280.

207. 532 F.2d at 661.

208. *Id.* at 661-64. The court never identified those specific legislative materials which it perceived as supporting its interpretation of congressional policy.

209. *Id.* at 661.

210. *Id.* The court emphasized this opinion, stating further, that "[i]f anything, the legislative history indicates that Congress gave the problem little, if any thought, [in view of the sparse] legislative history indicating the congressional rationale for extending civil jurisdiction or to indicate the extent of the jurisdiction [citation omitted]." *Id.*

The Senate<sup>211</sup> and House reports<sup>212</sup> accompanying the Act are replete with references to "local" authorities. This legislative history discloses that local authorities were extensively consulted by the BIA regarding their willingness to accept the proposed transfer of jurisdiction prior to congressional action on P.L. 280.<sup>213</sup> Indeed, Nevada was not ceded jurisdiction apparently because "authorities of some counties have indicated their willingness to accept jurisdiction, others opposed it, and still others stated they would accept such jurisdiction only with an accompanying Federal subsidy."<sup>214</sup> The reports also noted that the Act was consistent with pending federal legislation which would transfer responsibility for certain Indian health and welfare programs to state, county, or municipal subdivisions.<sup>215</sup>

Further support for the proposition that political subdivisions were intended to exercise P.L. 280 civil authority is found in the July 7, 1953 memorandum of the Assistant Secretary of the Interior to the Chairman of the House Committee on Interior and Insular Affairs.<sup>216</sup> This memorandum confirmed the fact that the BIA had consulted with state and local authorities about the transfer of civil and criminal jurisdiction on the states and their political subdivisions;<sup>217</sup> that state and local authorities indicated their agreeableness to the proposed transfer of jurisdiction;<sup>218</sup> that Nevada counties were opposed to the transfer of jurisdiction;<sup>219</sup> and, that the BIA had consulted with state and local authorities only in those states enumerated in the bill, not having gathered further "information on the attitude and disposition of the State and local authorities" in states other than California, Minnesota, Nebraska, Nevada, Oregon, Washington, and Wisconsin.<sup>220</sup> This memorandum substantially mirrored the House Report, both confirming the congressional intention to transfer civil jurisdiction to local as well as state authorities.

Although these particular references to the BIA's consultation with various local authorities neither specifically states the congressional ra-

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211. S. REP. NO. 699, *supra* note 176.

212. H.R. REP. NO. 848, *supra* note 175.

213. *Id.* at 2413-14. State and local authorities in California, Minnesota, Nebraska, Oregon, and Wisconsin were reported to have "indicated their willingness to accept the proposed transfer of jurisdiction." *Id.* at 2412.

214. *Id.* at 2412-13.

215. *Id.* at 2410.

216. H.R. REP. NO. 848, *supra* note 175.

217. *Id.* at 2413.

218. *Id.*

219. *Id.*

220. *Id.* at 2414.



tionale for subjecting reservation Indians to local civil ordinances nor expressly makes clear the applicability of such ordinances, it is odd that the court should find "nothing specific in the legislative history shedding any light" on the congressional intent to subject reservation Indians to local civil ordinances.<sup>221</sup> Regardless of the clarity of that language proffered in the House and Senate reports and Department of Interior memorandum before the *Santa Rosa* court, however, it is clear that such extensive consultation would have been unnecessary under the Ninth Circuit's largely plain meaning construction of the phrase "state" civil laws. Furthermore, given the Bureau's traditional propensity to analyze jurisdictional transfers on a state-by-state basis, it is puzzling that the BIA should engage in such extensive consultation with local authorities had it not contemplated a transfer of civil regulatory control over reservation trust lands to local governments.

Indeed, P.L. 280 is part of a legislative process having a distinct history and purpose. The meaning of such a statute cannot be gained by confining inquiry to its four corners or by selectively analyzing those references in its legislative history which support a proposition which itself denies the breadth of intendment contemplated. Yet, this is the precise manner in which the Ninth Circuit construed the phrase "civil laws of such state." Although the statute and its legislative history are somewhat ambiguous in this regard, it is significant that the court failed to thoroughly examine the Act's complete legislative history in an attempt to clarify the language it found ambiguous. Apparently, the court assumed that it was relieved of this duty by strictly relying upon its principle of construction regarding ambiguous Indian statutes. In its attempt to discover congressional intent, the court disregarded those expressions within the legislative history which characterized that intent most clearly. Contrary to the court's conclusion, there was in fact something specific in the Act's legislative history shedding light on whether Congress intended to subject reservation Indians to local civil ordinances.

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221. At least one authority has construed these references to local consultation as indicating a congressional view that local officials constituted mere enforcement agents of state criminal laws. *Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371, 374 (S.D. Cal. 1971) (enforcement of county gambling ordinance). The Ninth Circuit did not posit this argument, perhaps distinguishing the latter case on the ground that it involved an interpretation of state criminal laws rather than civil laws as in *Santa Rosa*. The *Rincon* dictum is also distinguishable on the ground that reference to these authorities was made by both the congressional reports and the BIA letter in their discussion of the transfer of both civil and criminal jurisdiction.

# NINTH CIRCUIT REJECTION OF CONGRESSIONAL ASSIMILATIONIST POLICY

In support of its conclusion that Congress had discarded its previously pronounced assimilationist policy underlying P.L. 280<sup>222</sup> in favor of policies fostering Indian sovereignty and had thereby precluded local regulatory intervention, the court merely cited a text,<sup>223</sup> several law review articles,<sup>224</sup> the Indian Financing Act of 1974,<sup>225</sup> and a statement of President Nixon.<sup>226</sup> In reaching this conclusion, the court viewed the congressional objective of P.L. 280 as an attempt to describe the interim status of affected Indians rather than as an attempt to effectuate the termination of the federal-Indian relationship.<sup>227</sup> Under the interim status theory, the court concluded that local land use regulation would be highly inappropriate.

The court dismissed as outdated and irrelevant the general assimilationist statements made by Congress<sup>228</sup> prior to and at the time

222. 532 F.2d at 663. In this regard, the court also opined that "[t]he broad language in the legislative history relied on by the County announces the congressional objectives of the entire termination process, but was not meant to describe the interim status of Indians on trust lands before completion of the process." *Id.* at 662. *Contra*, Capitan Grand Band of Mission Indians v. Helix Irrigation District, 514 F.2d 465, 468 (9th Cir. 1975), *cert. denied*, 44 U.S.L.W. 3205 (Oct. 6, 1975) (Congress in passing P.L. 280 "may have intended to grant to the state the full exercise of the police power, and thus the ability to enforce, e.g., zoning ordinances or gambling ordinances"); *accord*, Omaha Tribe of Indians v. Peters, 516 F.2d 133, 137 (8th Cir. 1975).

223. *See* PRICE, LAW AND THE AMERICAN INDIAN 596 (1973) and sources cited therein.

224. Goldberg, *supra* note 75, at 549-51; Comment, *State Jurisdiction Over Indian Land Use: An Interpretation of the "Encumbrance" Savings Clause of Public Law 280*, 9 LAND & WATER L. REV. 421, 428-29 (1974).

225. 25 U.S.C. §§ 1451 *et seq.* (1974) (authorizing the financing of the development of Indian tribes). In fashioning its conclusion that Congress had so "rejected" the assimilationist policy, thereby interpreting the Public Law 280 most favorably to Indians, the Ninth Circuit stated:

While there is legally nothing to prevent Congress from disregarding its trust obligations and abrogating treaties or passing laws inimical to the Indian's welfare, the courts, by interpreting ambiguous statutes in favor of Indians, attribute to Congress an intent to exercise its plenary power in a manner most consistent with the nation's trust obligations . . . .

532 F.2d at 660.

226. President Nixon, 1970 Message to Congress, 116 CONG. REC. 23131 (1970); *see* Goldberg, *supra* note 75, at 1463-69; 532 F.2d at 662-63.

227. 532 F.2d at 663.

228. The House report accompanying P.L. 280 considered termination of federal supervision of the American Indian to be a critical purpose of the statute. H.R. REP. NO. 848, *supra* note 175. The language used in that report was incorporated by the Senate in its report. S. REP. NO. 699, *supra* note 176. Moreover, after the enactment of P.L. 280, the Secretary of the Interior consistently referred to the purpose of the statute as being the termination of federal responsibility. 1953 REPORT OF THE SECRETARY OF INTERIOR 34-37; 1954 REPORT OF THE SECRETARY OF INTERIOR 227. Furthermore, only

of P.L. 280's enactment.<sup>229</sup> The sources cited by the court as expressions of the perceived present policy of Congress significantly did not include either the amendment or repeal of P.L. 280 or similar legislation enacted thereafter.<sup>230</sup> Instead, the court offered a statement of President Nixon indicating that his administration advocated neither the termination of Indian reservations nor the collateral policy of absolute assimilation. This authority, however, surely does not evidence that unmistakable directive which must be found before the courts are permitted to construe and apply an act of Congress in a manner that is contrary to the overall general plan that Congress intended to effectuate at the time of a bill's enactment.<sup>231</sup> If Congress had desired to alter the assimilationist policy underlying the Act in those states where Indians were deemed to have reached a stage of acculturation and development that made the extension of state civil jurisdiction desirable,<sup>232</sup> it seems that Congress would have exercised its legislative remedy rather than relying on the courts to make these political decisions. Furthermore, a recent congressional enactment not addressed by the court<sup>233</sup> makes clear that Congress intended zoning, building, and sanitary regulations to eventually be made applicable to Indian reservation trust lands subject to P.L. 280 in furtherance of its express policy of termination. Yet, the Ninth Circuit again applied the traditional canon to the demise of paramount congressional intent and collateral local interest.<sup>234</sup>

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two weeks prior to the passage of P.L. 280, the Senate passed H. Con. Res. No. 108, which declared it to be the policy of the United States government to make Indians "subject to the same laws . . . 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." 67 Stat. B132 (1953).

229. *Menominee Tribe v. United States*, 391 U.S. 404 (1968) (Public Law 280 and the Menominee Termination Act construed in accordance with overall legislative plan of Congress as of the time both acts were approved by Congress and not according to the Court's notion of federal Indian policy in 1968).

230. *See* 25 U.S.C. §§ 232, 233, 1321, 1322 (1970). Efforts at repeal have failed. *See, e.g.*, S. REP. No. 1328, 94th Cong., 1st Sess. (1975) (providing for the reacquisition of jurisdiction by Indian tribes and by the United States over criminal offenses and civil matters in Indian country).

231. *Federal Trade Comm. v. Fred Meyer, Inc.*, 390 U.S. 341, 349 (1968); *see Menominee Tribe v. United States*, 391 U.S. 404 (1968).

232. H.R. REP. No. 848, *supra* note 175, at 2409, 2412.

233. 25 U.S.C. § 416h (1970).

234. Section 9 of the Act of Nov. 2, 1966, Pub. L. 89-715, 80 Stat. 1112 (25 U.S.C. § 416h) authorized certain Indian tribes in non-P.L. 280 states to enact for their respective reservations "zoning, building, and sanitary regulations . . . in the absence of state civil and criminal jurisdiction." The legislative history of this act, reprinted in 112 CONG. REC. 27000 (1966), assumed that the special authorization given the tribes to adopt land use controls would be unnecessary in the event Public Law 280 was adopted by the state and that such controls were imperative to economic development.

Even if the Ninth Circuit was warranted in applying the canon of construction due to the perceived ambiguity of the Act's language, the court was not warranted in treating it as a license to disregard clear expressions of tribal and congressional intent.<sup>235</sup> Although it seems clear that the Ninth Circuit wished Congress had spoken differently on the federal-Indian relationship as it pertained to the local land use control issue, the rationale underlying the court's policy holding is sparsely supported and merely evidences a judicial attempt to remake history.<sup>236</sup> Brushing aside those interpretative aids which require a statute to be construed consistently with its legislative history and not inconsistently with its internal parts, and using a traditional canon of construction as a substitute for rather than as a supplement to these aids, the court achieved a result Congress had not intended.<sup>237</sup> The court consistently either overlooked or misinterpreted certain pivotal information in its determination to find Public Law 280 ambiguous with regard to the local land use control issue, and thereby amenable to construction; in this sense, the Ninth Circuit acted not upon the basis of considered analysis, but upon the basis of an efficient canon of construction elevated to a position higher than that of a Latin maxim, easily invoked and as easily discarded.

STATE AND LOCAL LAWS DISTINGUISHED:  
ENACTING AUTHORITY NEXUS

Local governmental units, including cities, counties, and municipi-

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235. *DeCoteau v. District Court*, 420 U.S. 425, 449 (1975).

236. *Id.*

237. *See id.* Even if one is persuaded by the court's arguments with regard to both the ambiguity of the Act's legislative history and the dynamics of present congressional policy, one cannot avoid the conclusion that the Ninth Circuit resolved these perceived ambiguities in a manner which makes the court's opinion internally inconsistent. Holding Kings County's ordinances inapplicable to the Santa Rosa Band's lands, the Ninth Circuit vacated the District Court's order enjoining the enforcement of those ordinances. 532 F.2d at 669. The court observed that the lower court must "determine on a case-by-case basis when concrete disputes arise whether the County has jurisdiction to enforce a particular ordinance under the applicable jurisdictional principles enumerated above." *Id.* No necessity exists for such a case-by-case determination, however, if as the court held a county ordinance is not a civil law of the state of general application. In making this statement, the court may have inadvertently—but legitimately—recognized that the state law limiting phrase of P.L. 280 was intended to ensure that the civil law in question, whether enacted by the state legislature or by a county pursuant to state statutory authority, be made applicable to Indians and non-Indians on the same terms. Interpreted in this manner, P.L. 280's statutory qualification merely sought to prevent the state and its political subdivisions from enacting discriminatory laws with regard to reservation land use; the Kings County ordinances at issue were not such a discriminatory enactment.

palities, are state political subdivisions,<sup>238</sup> deriving their police power from specific state enabling legislation.<sup>239</sup> County ordinances, and zoning ordinances in particular, are enacted by local governments as a manifestation of this delegated police power.<sup>240</sup> In view of the fact that county ordinances are often adopted pursuant to the directives of the state legislature,<sup>241</sup> such laws, including those of California counties, have been held to constitute a part of the body of state law.<sup>242</sup> California counties in particular have been held to exercise "only the

238. See, e.g., *Reynolds v. Sims*, 377 U.S. 533 (1964); *County of Marin v. Superior Court*, 53 Cal. 2d 633, 638-639, 349 P.2d 526, 529-30 (1960); *County of Los Angeles v. Riley*, 6 Cal. 2d 621, 59 P.2d 139, 141 (1936); *Griffin v. Colusa County*, 44 Cal. App. 2d 915, 920, 113 P.2d 270, 273 (1941). The courts of each of the other P.L. 280 states which utilize a county system of government have recognized a similar rule. See, e.g., *Hitchcock v. Sherburne County*, 227 Minn. 132, 34 N.W.2d 342 (1948); *Franek v. Butler County*, 127 Neb. 852, 257 N.W. 235 (1934); *Powell Grove Cemetery Assoc. v. Multnomah County*, 228 Ore. 597, 365 P.2d 1058 (1961); *State ex rel. Taylor v. Superior Court*, 2 Wash. 2d 575, 98 P.2d 985 (1940); *State v. Mutter*, 23 Wis. 2d 407, 127 N.W.2d 15 (1964).

239. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Trenton v. New Jersey*, 262 U.S. 182, 185 (1923); *City of Bakersfield v. Miller*, 64 Cal. 2d 93, 410 P.2d 393 (1966); *Freeman v. Contra Costa County Water District*, 18 Cal. App. 3d 404, 95 Cal. Rptr. 852 (1971); see generally 8 McQUILLAN, MUNICIPAL CORPORATIONS 25.35 (3d ed. 1965).

240. *Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974); see 1 RATHKOFF, THE LAW OF ZONING AND PLANNING 2-1 to 2-27 (3d ed. 1972). See *Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926) (land use regulation is an exercise of state police power). See generally 8 McQUILLAN, MUNICIPAL CORPORATIONS 25.05 (3d ed. 1965).

241. CAL. GOV'T CODE §§ 651000-65700, 65800-65907 (1976) (general plans for use of land and zoning ordinances implementing such plans); CAL. GOV'T CODE §§ 67300, 66732 (1976) (solid waste management); cf. *Snomish County v. Seattle Disposal Co.*, 70 Wash. 2d 668, 425 P.2d 22 (1967), cert. denied, 389 U.S. 1016 (1971); CAL. GOV'T CODE §§ 50485-50485.14, 21661.5, 21670, 21675 (airport hazard zoning); CAL. GOV'T CODE §§ 65300-65302, 65800, 65860 (1976) (mobile home placement and installation); CAL. HEALTH & SAFETY CODE §§ 17910-17995, 18000-18080 (1976) (minimum safety and sanitation standards for certain physical structures, including mobile homes); CAL. HEALTH & SAFETY CODE 17922 (1976); 25 CAL. ADMINISTRATIVE CODE 1070 (1976) (counties required to adopt Uniform Building Code, promulgated by International Conference of Building Officials, as their County Building Ordinance); CAL. HEALTH & SAFETY CODE §§ 40100-40126, 40150-40161, 40200-40276, 40300-40392 (1976) (control of air pollution); CAL. HEALTH & SAFETY CODE §§ 65300-65302 (1976) (mobile home placement and installation); CAL. HEALTH & SAFETY CODE § 17922 (1976) (default provision); CAL. HEALTH & SAFETY CODE § 17952 (1976) (county fails to enforce building code, state assumes that responsibility and charges county for costs of such enforcement); CAL. PUB. RES. CODE §§ 4117, 4251-4257 (1976) (prevention of forest fires); CAL. PUB. RES. CODE §§ 27320, 27400 (1976) (coastal zoning); CAL. WATER CODE §§ 8410-8411 (1976) (flood plain regulation); CAL. WATER CODE §§ 13222, 13225, 13243 (1976) (water quality control); CAL. PUB. RES. CODE §§ 21000-176 (1976) (environmental land use law and requirement of impact report).

242. See, e.g., *County of Plumas v. Wheeler*, 149 Cal. 758, 87 P. 909 (1906); *City of San Luis Obispo v. Fitzgerald*, 126 Cal. 279, 281, 58 P. 699 (1899). RESTATEMENT (SECOND) OF CONFLICT OF LAWS 3, Comment b (1971) provides that "[a]s used in the Restatement of this Subject, the word 'state' denotes a territorial unit with a distinct general body of law." Comment b provides that:

The law of a state is not necessarily applicable in all of its aspects to every

powers of the state . . . for the purpose of advancing 'the policy of the state at large',"<sup>243</sup> including the purposes of political organization and civil administration. The Kings County ordinances at issue in the *Santa Rosa* case lucidly characterize this paradigm as they were adopted to advance the express policies of the state of California.<sup>244</sup> Furthermore, these ordinances were enacted pursuant to state legislative mandate rather than as an exercise of any inherent sovereign power of Kings County.<sup>245</sup> Presented with these facts, it becomes clear that the challenged ordinances constitute part and parcel of California state law, designed to localize a policy of statewide concern.<sup>246</sup>

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person or place within the state. Thus, different classes of persons or different localities may be governed by different laws, or local subdivisions of a state may be allowed by the state to make certain laws applicable within their own boundaries. All such laws are part of the law of the state.

243. *County of Marin v. Superior Court*, 53 Cal. 2d 633, 538-39, 349 P.2d 526, 529-30 (1960). As stated by the Supreme Court in *Reynolds*, "these governmental units are 'created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them' . . .," 377 U.S. at 575. The Court in *Reynolds* also noted that "[p]olitical subdivisions of the states—counties, cities, or whatever—never were and never have been considered as sovereign entities. Rather, they have been traditionally regarded as subordinate governmental instrumentalities created by the state to assist in the carrying out of state governmental functions." *Id.* at 575. See also *County of Los Angeles v. Riley*, 6 Cal. 2d 621, 59 P.2d 139 (1936), where the court stated:

Counties are not municipal corporations, but are political subdivisions of the state for purposes of government. With certain exceptions, the powers and functions of the counties have a direct and exclusive reference to the general policy of the state and are, in fact, but a branch of the general administration of that policy. Counties are vested by the states with a variety of powers, which the state itself may assume or resume and directly exercise.

*Id.* at 627, 59 P.2d at 141.

244. See notes 249-53, 269-71 *infra* and accompanying text.

245. See notes 249-66 *infra* and accompanying text.

246. CAL. GOV'T CODE § 65302 (1976). The California Supreme Court has described the California legislature's enactments relating to planning and zoning in the following terms:

Under the Government Code, the legislative body of each city and county must establish a planning agency (§65100) which shall adopt a comprehensive, long-term general plan for the physical development of the city or county (§65300). As noted above, the plan must include a circulation element showing the general location of existing and proposed streets (§65302, subd. (b)). The plan may be changed after notice and hearing of the legislative body deems a change to be in the public interest (§65356.1). Cooperation between city and county is encouraged (§65305, §65306, §65650, §65651), and a city and county may adopt the same general plan (§65360). \* \* \* Recent legislation requires city and county zoning orders to be consistent with the general plan by January 1, 1974 (§65860, subd. (a)); Stats. 1973, ch. 120).

*Selby Realty Co. v. City of Buenaventura*, 10 Cal. 3d 110, 116 (1970). CAL. GOV'T CODE (1976) contains further specific provision: regarding the implementation of other types of plans see, e.g., *id.* §§ 65450 *et seq.* (planning agencies authorized to adopt a specific plan); *id.* § 65451 (authorization to limit the location of buildings and other improvements in planned rights of way); *id.* § 65560 (to adopt an open space plan); *id.* § 65567 (to issue building permits only if the proposed construction is consistent with the local open space plan).

The Ninth Circuit, however, rejected the County's contention that local land use ordinances constitute "state" law on the ground that such local regulations are not "civil laws passed by the state legislature which are of statewide application."<sup>247</sup> This judicial distinction appears to turn upon the jurisdiction of a particular civil law's enacting authority; such an analytical approach has, however, been rejected by the Supreme Court.<sup>248</sup> In proffering the notion that a clear boundary exists between these closely interrelated state and local laws, the Ninth Circuit obviously ignored the contemporary relationship between state and local authorities in California. Such a distinction effectively renders inapplicable to Indian country those state laws which, although they embody a policy of state concern, rely in whole or in part upon legislative implementation by either political subdivisions or, possibly, regional agencies established pursuant to state authority. Since the Kings County land use regulations at issue before the *Santa Rosa* court exemplify this state-county enacting authority interrelationship, the distinction drawn by the court is not realistic in light of the established legislative process of California. In fact, this form of governmental interaction should operate to elevate technically "local" land use regulations to the status of "state" civil laws within the contemplation of P.L. 280. As a result, the Ninth Circuit has effectively hindered this legislative scheme, prohibiting the California legislature from utilizing decentralized counties to efficiently administer and enforce its mandates as they collaterally relate to reservation trust lands. Although the *Santa Rosa* court disclaimed an intention to prohibit the application of state law to

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247. 532 F.2d at 660. In espousing this ruling, the court considered the authorities cited by the parties to establish the relationship between county ordinances and state legislative enactments but found these citations "unhelpful except insofar as they demonstrate the obvious—the phrase 'state statute' (and even more so, 'civil laws of [the] State or Territory that are of general application . . . elsewhere within the State . . .') is ambiguous." *Id.* Judge Koelsch, writing for the court, apparently found this language so patently ambiguous that he disregarded the specific contentions urged by the parties, instead summarily dismissing the issues raised by invoking the court's principle of construction favorable to plaintiffs once again. *Id.*

248. Contrary to the proposition of the court, in construing the phrase "state statute" as used in 28 U.S.C. § 2281 (1970), defining the jurisdiction of a three-judge court, the Supreme Court rejected a definition that was dependent upon the method of the statute's adoption. *American Fed. of Labor v. Watson*, 327 U.S. 582, 592-93 (1946). This distinction of the Ninth Circuit similarly fails to recognize the role that court decisions play in making state law. *Sessions, Inc. v. Morton*, 348 F. Supp. 694, 700-01 (C.D. Cal. 1972), *aff'd*, 491 F.2d 854 (9th Cir. 1974). *See also* *Moe v. Confederated Salish and Kootenai Tribes*, 44 U.S.L.W. 4535 (April 27, 1976) wherein the Supreme Court held that no such arbitrary distinction exists between state and local authority under the inherent jurisdiction of the state to apply certain of its land use regulations within Indian country.

such lands,<sup>249</sup> it has indirectly achieved that very result. As states have customarily designated counties to exercise land use control,<sup>250</sup> it is inconceivable that Congress, in adopting P.L. 280, intended that states *qua* states must directly exercise such regulatory functions rather than permitting the maintenance of the existing distribution of governmental functions among local units of government.

Further indicia make clear that P.L. 280 was not intended to exclude the application of the Kings County ordinances to Indian reservation trust lands and structures located thereon. The California Constitution specifically authorizes cities and counties to enact local police, sanitary, and other ordinances and regulations not in conflict with general state law.<sup>251</sup> Also, the California Government Code delegates to counties the authority "to exercise the maximum degree of control over local matters."<sup>252</sup> Since 1965, the California legislature has required each county to "adopt a comprehensive, long-term general plan for the physical development of the county. . . ."<sup>253</sup> More important, in 1972 the state of California amended its Government Code to require that, by July 1, 1974, all city and county zoning ordinances were to be made consistent with those "general plans" formulated by each county.<sup>254</sup> As part of this plan, each county has been required to designate a general scheme proposing the distribution, locations, and use of county land with respect to housing, business, industry, open space, agriculture, and natural resource concerns.

An additional enactment has sought to encourage the maximum preservation of California agricultural land in order to assure the maintenance of the state's agricultural economy and an adequate food supply for future Californians.<sup>255</sup> By these and similar enactments, the California legislature has guided the counties in a systematic consideration of the possible uses of their land resources and has provided strong policy guidelines concerning the maintenance of agricultural lands.

Kings County, by zoning the Santa Rosa Indian Band's land as agricultural and authorizing the placement of mobile homes thereon sub-

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249. 532 F.2d at 661.

250. See generally 8 McQUILLAN, MUNICIPAL CORPORATIONS 25.02-25.03 (3d 1965); BOSSELMAN & COLLIES, THE QUIET REVOLUTION IN LAND USE CONTROL 2 (C.E.Q. 1971); HAAR, LAND USE PLANNING 156-58 (2d 1971).

251. CAL. CONST. art. 11, § 7.

252. CAL. GOV'T CODE § 5860 (1976).

253. *Id.* at § 65300.

254. *Id.* at 65800.

255. CAL. GOV'T CODE § 51220 (1976).



ject to administrative approval, merely attempted to implement a policy mandate of the California state legislature. The County in no way exercised a power not prescribed by state enactment. Rather, it merely exercised the express authority delegated it pursuant to the state's attempt to conform local land usage to state policy, thus advancing the policy of the state at large.<sup>256</sup> The Ninth Circuit, however, placed improper emphasis on an improperly drawn sharp distinction between state and local enacting authority with respect to local land use regulation through zoning, the two in fact having been effectively wed by the California legislature to form an effective and efficient state-wide program. Surely Congress did not intend to restrict the implementation of state land use control programs through such a distinction; likewise, Congress did not intend to restrict the form of state government through the creation of such a simplistic distinction.

Similarly, following the example of the National Environmental Policy Act,<sup>257</sup> California has enacted an environmental land use law, the California Environmental Quality Act.<sup>258</sup> Pursuant to this Act, the California legislature has mandated all public agencies, such as Kings County, to prepare and consider environmental impact reports prior to the approval of any land use.<sup>259</sup> Such reports must consider, *inter alia*, the environmental impact of the proposed action, adverse environmental effects which cannot be avoided if the proposal is implemented, alternatives to the proposed project, and the growth-inducing aspects of the proposal.<sup>260</sup> This requirement of the California legislature has been described as part of California's policy that "highest priority shall be given to environmental considerations."<sup>261</sup>

The impact statements challenged in *Santa Rosa* and developed by Kings County with regard to plaintiffs' proposed land use were therefore imposed and compiled pursuant to a mandate of the state legislature; they were not imposed by the county pursuant to any inherent sovereign authority. Kings County was attempting to localize one of the generally applicable civil laws within that state. In ruling that plaintiffs need not pay those minimal fees necessary to defray part of

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256. *County of Marin v. Superior Court*, 53 Cal. 2d 633, 638-39 (1960).

257. 42 U.S.C. §§ 4321-27 (1970).

258. CAL. PUB. RES. CODE §§ 21000-21176 (1976).

259. CAL. PUB. RES. CODE § 21151 (1976); *see, e.g.*, *Friends of Mammoth v. Board of Supervisors*, 8 Cal. 3d 247, 502 P.2d 1049 (1972); *Burger v. County of Mendocino*, 45 Cal. App. 3d 212 (1975).

260. CAL. PUB. RES. CODE §§ 21100, 21151 (1976).

261. *County of Inyo v. Yorty*, 32 Cal. App. 3d 795, 804 (1973).

the County's expenses in preparing and considering such reports, the Ninth Circuit apparently ruled that the California Environmental Quality Act, even though passed by the state legislature, is not applicable to plaintiffs as a civil law of the state.

With regard to Kings County's attempted imposition and enforcement of its building code on plaintiffs' homes, the California Health and Safety Code requires counties to administer and enforce particular state regulations which impose minimum safety and sanitation standards on defined physical structures, including mobile homes.<sup>262</sup> In 1970, the California legislature determined that uniformity of building codes throughout the state was a matter of statewide interest and concern.<sup>263</sup> This state policy has been implemented by the enactment of § 17922 of the California Health and Safety Code, which specifies that certain uniform codes, such as the Uniform Building Code promulgated by the International Conference of Building Officials, must be adopted by political subdivisions of the state.<sup>264</sup> This provision further provides that in the event a city or county does not adopt the required building code, that code will nonetheless become effective in the recalcitrant county by default.<sup>265</sup> Extending this directive to its extreme is the California legislative pronouncement that, should a county fail to enforce an applicable state-wide code, the state of California will undertake that responsibility and assess the county a fee for the costs of such enforcement.<sup>266</sup>

It was pursuant to this explicit mandate of the California legislature that Kings County enacted the building code which the Ninth Circuit held inapplicable to plaintiffs Barrios and Baga. Although county approval of plaintiffs' proposed use of mobile homes was set forth in a county ordinance, and although the electrical and plumbing permits and accompanying fees required of plaintiffs were also codified in the

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262. CAL. HEALTH & SAFETY CODE §§ 17910-17995, 18000-18080 (1976). At the very least, access to decent, safe, sanitary and fair housing is an avowed national goal. See Housing Act of 1949, 42 U.S.C. §§ 1441 *et seq.* (1969); *Reitman v. Mulkey*, 387 U.S. 369 (1967); *Shelley v. Kraemer*, 334 U.S. 1 (1948). In this regard, the Supreme Court has stated that "[h]ousing is a necessary of life." *Block v. Hirsch*, 256 U.S. 135, 156 (1921). It has also been held that the provision of adequate and safe housing is peculiarly within the ambit of the interests of local government. See *Montgomery Citizens League v. Greenhalgh*, 252 A.2d 242 (Md. 1969) and cases cited therein.

263. Cal. Stats. 1970, ch. 1436, § 7.

264. CAL. HEALTH & SAFETY CODE §§ 17922, 17958 (1976); see *Green v. Superior Court*, 10 Cal. 3d 616, 627, 111 Cal. Rptr. 704, 517 P.2d 1168 (1974). See also 55 OP. ATT'Y GEN. 157 (1972).

265. CAL. HEALTH & SAFETY CODE § 17922 (1976).

266. *Id.* at § 17952.

form of county ordinances, those very ordinances were expressly required under California legislative authority and were in conformance with the state's uniform building code. Clearly, Kings County was enforcing an obligation expressly imposed upon it by a civil law of general application throughout the state of California. From the above discussion, it is obvious that the relationship between California counties and their parent state establishes the following proposition: county land use regulations—including zoning schemes, environmental land use laws, and building codes—which are enacted pursuant to state legislative directives, yet administered and enforced by local authorities, are "state civil laws" applicable statewide to both Indian and non-Indian lands.<sup>267</sup> Otherwise, the distinction made by the Ninth Circuit between state and county laws would portend the creation of a serious hiatus in needed governmental services and regulations on reservation trust lands.<sup>268</sup> In this regard, the court failed to note whether the Bureau of Indian Affairs or the Santa Rosa Band had comparable legislative programs to fill the void created by the denial of such county jurisdiction.

The court's decision additionally raises serious questions as to the applicability of regional agency regulations to Indian trust lands. This is so in view of the fact that many of these regulations are neither enforced nor administered by the state or its political subdivisions.<sup>269</sup>

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267. Cf. *Palm Springs Spa v. County of Riverside*, 18 Cal. App. 3d 372, 376, 95 Cal. Rptr. 879 (1971) (California Indian reservations are "geographically, politically, and governmentally within the boundaries of the State").

268. Indeed, by holding that political subdivisions of Public Law 280 states require congressional approval to acquire civil and criminal jurisdiction, the Ninth Circuit may have deprived all California reservation residents of access to that state's municipal courts in that the territorial jurisdiction of those bodies is defined by county ordinance. CAL. GOV'T CODE § 71040 (1976); see *Kennerly v. District Court*, 440 U.S. 423 (1971).

269. For example, the Clean Air Act of 1970, 42 U.S.C. 1857 *et seq.*, and CAL. HEALTH & SAFETY CODE §§ 24198 *et seq.* (1976), require the development of air pollution control plans solely applicable to specific geographical areas in view of the specific air pollution problems peculiar to those areas. See CAL. HEALTH & SAFETY CODE §§ 42300-42313 (1976) (administer and enforce state air quality laws which require air polluters to obtain permits from air pollution control districts; single county jurisdiction). See also CAL. HEALTH & SAFETY CODE §§ 40300-40392, 40200-40276 (1976) (certain county-specific air agencies are consolidated, resulting in the creation of agencies with jurisdiction over many counties).

Similarly, California water quality laws are enforced by the California State Water Resources Control Board and nine regional water quality control boards, each of which has primary jurisdiction over a specific multi-county geographical area. CAL. WATER CODE §§ 13000-13422 (1976) (requiring permits for waste discharge).

Additionally, the people of California have established by initiative an administrative agency structure designed to formulate a plan for the future preservation of the California coastline. CAL. PUB. RES. CODE §§ 27000-27650 (1976). During the period allowed by the initiative for preparation of such a plan, regional coastal commissions are charged with the responsibility of enforcing a permit system for proposed develop-

As part of their enforcement functions, distinct regional entities are often required to adopt regulatory programs effective solely within their governing jurisdiction pursuant to California legislative mandate. Despite their direct interrelationship with state authority, however, the court's decision would seemingly preclude such agencies from exercising the regulatory powers granted them by the state, since they often assert this grant from the localized seat of a number of counties.<sup>270</sup> Moreover, it is unclear from the *Santa Rosa* court's opinion whether these entities are classified as state or county agencies, given that their jurisdiction often treads the fine line between state and county authority. As a result, it would appear from the court's decision that, in addition to its local governmental bodies, the state of California may not utilize its regional mechanisms, chosen as perhaps the most efficient means of effectuating California's environmental policies, to regulate the use of California reservation lands. Such a result would be patently inconsistent with both the court's intention to subject Indian lands to state jurisdiction and with the congressional intent to terminate federal responsibility for Indian tribes and to assimilate the American Indian into state society.<sup>271</sup>

The Ninth Circuit has thus effectively denied California's legislature the opportunity to utilize counties to implement paramount state land use policies insofar as they relate to Indian lands. In an effort to fill this regulatory void created by the Ninth Circuit's holding, the California legislature may be forced to alter the authority given county governments in Article XI of the California Constitution and other legislative enactments. The state could likewise cure this defect by creating statewide rather than regional departments or agencies to handle programs that have been historically legislated, funded, and effectuated by local authorities. Such a transfer of local regulatory authority to newly established statewide departments or agencies could not be limited, however, to the singular assumption of regulatory jurisdiction over

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ment along the California coast. *Id.* The jurisdiction of each of the regional commissions does not, however, extend throughout the state.

270. See note 269 *supra*.

271. See H.R. REP. NO. 848, *supra* note 175, at 3. See also 67 Stat. B132 (1953) wherein it is stated:

[I]t is the policy of Congress, as rapidly as possible to make the Indians . . . subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States.

[I]t is declared to be the sense of Congress that, at the earliest possible time, all the Indian tribes and the individual members thereof located within the State of California . . . shall be free from Federal supervision and control.

Indian country alone, leaving the remainder of the state's lands under traditional local control. Such a novel state regulatory scheme, although fitted to the Ninth Circuit's ruling, would presumably approach special or discriminatory legislation similarly inapplicable to reservation trust lands, as it would not affect lands located elsewhere within the state as expressly required by P.L. 280. In any event, each of these three proposals would be unduly cumbersome and awkward as well as patently adverse to the notion of civil jurisdiction as promulgated by the Act.

California is thus confronted with the dilemma of either stripping its political subdivisions of those constitutionally granted police powers appropriately left to local governing bodies (leaving embraced reservation trust lands unregulated absent a restructuring of the state legislative process), or requesting that the federal government assume the costly, burdensome task of enacting and administering programs comparable to those now provided by counties. Both undertakings would certainly be inimical to the congressional policies of assimilation and termination. Accordingly, the distinction developed by the Ninth Circuit between "state" and "county" laws fails to adequately reflect actual legislative practice and congressional intent, prevents the proper application of state policy to local conditions through the vehicle of political subdivisions, and negates the most practical and efficient means of securing those local land use policies mandated by the state legislature. In rendering its decision, the court failed to address and consider the ramifications of these crucial and practical issues.

PUBLIC LAW 322, PUBLIC LAW 280, AND A PREVIOUSLY  
IGNORED PIECE OF LEGISLATIVE HISTORY

Perhaps the clearest expression of congressional intent to subject California reservation trust lands to local land use regulations as the embodiment of "state" civil law is to be found in the legislative history of Public Law 322.<sup>272</sup> It was after this act, solely applicable to the

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272. 63 Stat. 705 (1949) [hereinafter cited as P.L. 322]. This act is set forth below:  
To confer jurisdiction on the State of California over the lands and residents of the Agua Caliente Indian Reservation in said State, and for other purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That on and after January 1, 1950, all lands located in the Agua Caliente Indian Reservation in the State of California, and the Indian residents thereof, shall be subject to the laws, civil and criminal, of the State of California, but nothing contained in this section shall*

Agua Caliente Indian Reservation located in Riverside County, California, that P.L. 280 was modeled.<sup>273</sup> Although P.L. 322 was not

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be construed to authorize the alienation, encumbrance, or taxation of the lands of the reservation, or rights of inheritance thereof whether tribally or individually owned, so long as the title to such lands is held in trust by the United States, unless such alienation, encumbrance, or taxation is specifically authorized by the Congress.

SEC. 2. Notwithstanding any other provision of law or the allotment in severalty to Indians of the Agua Caliente Indian Reservation, and subject to the provisions of section 3 of this Act, no valid and existing permit covering lands located on the reservation, the terms of which have been fully met by the permittee, shall be terminated without the consent of the permittee prior to December 31, 1950.

SEC. 3. The city of Palm Springs in Riverside County, California, with the approval of the Secretary of the Interior, and subsequent to an appropriate resolution adopted by the business committee of the Agua Caliente Band of Mission Indians, giving approval, is hereby granted an easement not to exceed sixty feet in width for public use, and the widening and improvement of Indian Avenue along and upon section 14, township 4 south, range 4 east, San Bernardino base and meridian, in said city, said easement generally following and adjoining the west section line, but within the confines of its middle portion, for the isolation and preservation of the Indian Hot Springs and the palm trees in said area, the center line of said easement shall follow an arc having a radius of one thousand two hundred seventy feet, the center and most easterly portion of the arc being one hundred forty feet east of the quarter section corner of said section 14. Said city also is granted an easement for similar purposes along and upon the westerly ten feet of said section 14, lying within the arc. Said improvements shall be made at the expense of said city: *Provided*, That any holder of a valid permit covering land affected by the said widening of Indian Avenue shall be entitled to just compensation from said city of Palm Springs for the detriment suffered, taking into consideration benefits deriving from such improvement.

273. See notes 170-93 *supra* and accompanying text (discussion of the evolution of Public Law 280). Further support for this statement is found in a comparison of a 1948 New York statute with P.L. 322 as both relate to the enactment of Public Law 280. An analysis of the interrelationship of these enactments is set forth below:

In 1948, Congress enacted a law applicable solely to New York state. 25 U.S.C. § 233 (1948). This statute authorized the courts of that state to adjudicate controversies to which Indians were parties; such a grant solely authorized New York to apply its civil laws only to the extent necessary to resolve legal disputes involving Indians. Further, this grant apparently excluded the application of New York's regulatory laws to such reservations.

One year later, Congress enacted another law solely applicable to the Agua Caliente reservation situated in California. This act, P.L. 322, provided in pertinent part that: "All lands located on the Agua Caliente Indian Reservation . . . and the Indian residents thereof, shall be subject to the laws, civil and criminal, of the state of California." In comparison with the statute applicable to New York Indians, the Agua Caliente enactment authorized the state of California to apply all of its civil laws to the Agua Caliente reservation Indians; a grant embracing California's land use regulations as well.

In its original form, H.R. 1063 followed the New York model and not the Agua Caliente model in pertinent part. The Department's report noted that H.R. 1063 in this form "would permit the courts of the state of California to adjudicate civil controversies of any nature affecting Indians within the state, except where trust or restricted property is involved." However, the Department's report suggested that the bill be amended to provide:

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

mentioned in the legislative memorandums analyzed by the court in *Santa Rosa*<sup>274</sup> and was nowhere considered in fashioning the court's ruling, this Act was expressly referred to in a recently discovered letter from the Assistant Secretary of the Department of the Interior to the House Committee which considered the enactment of P.L. 280.<sup>275</sup> This letter enunciated the Interior Department's position on the goals and breadth of Public Law 280 and made clear that P.L. 280 was meant to effectuate the policy underlying P.L. 322, at least insofar as

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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 . . . .

*Id.* at 3-4 (emphasis added). This recommendation was approved by the House committee and eventually by Congress. The language of the suggested amendment clearly indicates that it was intended to bring the bill into conformity with the Agua Caliente model rather than the earlier adopted New York model. This conclusion emerges even more clearly from the statement of the Department's report that:

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the state courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the state insofar as those laws are of general application to private persons or private property.

*Id.* at 2-3. This statement indicates that the amendment was intended to grant to California the authority to apply the breadth of its civil laws, including regulatory laws, to Indian reservations and not merely to permit state courts to utilize state law in the adjudication of controversies involving affected Indians. If the bill was intended to accomplish the latter purpose only, it need not have been amended along those lines suggested by the Department of the Interior. In view of the overlapping nature of H.R. 1063 and P.L. 322, the report further recommended the repeal of the relevant parts of the latter act "in order to make the same civil and criminal jurisdictional statute applicable to all Indian country in the United States." *Id.* at 4.

Accordingly, the relevant parts of P.L. 322 were repealed by the enactment of Public Law 280. 67 Stat. 590 (1953). As stated in H.R. REP. NO. 848: "Section 5 repealed the civil and criminal jurisdiction given California over the Agua Caliente Reservation in 1949 (63 Stat. 705), in order to assure uniformity in the jurisdiction granted California by the bill."

274. See note 206 *supra* and accompanying text.

275. This act was expressly referred to in a report of the Department of the Interior to the House Committee on Interior and Insular Affairs, dated June 29, 1953. The date of the report is the same date that Mr. Sellery, the Department's representative, testified before the House committee. Transcript at 2-5, cited in Petitioner's Supplemental Brief (in Support of Writ for certiorari, No. 1764, U.S. August 2, 1976). Mr. Sellery referred to this report in his testimony before the committee and the Department was thereafter requested by the committee to prepare a follow-up memorandum describing the reaction of the various Indian tribes to H.R. 1063. *Id.* at 6. The follow-up letter, dated July 7, 1953 and signed by Assistant Secretary of Interior Orme Lewis, was published in the official House report and referred to therein as the Department's "favorable report." *Id.* at 7; see H.R. Rep. No. 848, note 175, *supra*, at 2413.

The Department of Interior's original report of June 29, 1953 was inadvertently omitted from the House report on which the *Santa Rosa* court and all prior court's considering P.L. 280's legislative history had relied. Telephone conversation with Edward Weinberg, Attorney for Amicus Curiae City of Palm Springs (in Support of Petition for

it related to California reservation trust lands.<sup>276</sup> The Interior Depart-

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Writ of Certiorari No. 75-1674, U.S., June 4, 1976), Washington, D.C., February 4, 1977; Supplemental Brief for Petitioner (in Support of Writ for Certiorari No. 1674, U.S. August 2, 1976). See Brief of the County of Riverside, State of California, as Amicus Curiae (in Support of Petition for Writ of Certiorari No. 75-1674, U.S. June 1, 1976). Thus, the most relevant piece of legislative history respecting the meaning of the "civil laws of [such] State" limitation was not before the Ninth Circuit.

276. Letter from Orme Lewis, Assistant Secretary of the Interior, to A. L. Miller, Chairmen of the House Committee on Interior and Insular Affairs (June 29, 1973). This letter is set forth below as it appears in Petitioner's Supplemental Brief in Support Writ for Certiorari [hereinafter cited as June 29 Letter of Orme Lewis]:

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF INDIAN AFFAIRS  
Washington 25, D. C.

June 23, 1953

My dear Mr. Miller:

This will refer to your request for a report on H.R. 1063, a bill "To amend title 18, United States Code, entitled 'Crimes and Criminal Procedure', with respect to State jurisdiction over offenses committed by or against Indians in the Indian country, and to confer on the State of California civil jurisdiction over Indians in the State".

I recommend that this bill be enacted if its title and text are amended to conform to the enclosed draft.

The bill would extend the criminal laws of the State of California to all the Indian country within that State. Concurrently, it would withdraw the entire State from the operation of the Federal Indian liquor laws. Finally, it would permit the courts of the State of California to adjudicate civil controversies of any nature affecting Indians within the State, except where trust or restricted property is involved.

Approximately 30,000 Indians live in the State of California. They are divided into many different groups, widely dispersed throughout the State. Their lands include a large number of small rancherias and allotments, which are also widely scattered. The State lacks jurisdiction to prosecute Indians for most offenses committed on Indian reservations or other Indian country as defined in title 18, United States Code, section 1151, except in the case of the Agua Caliente Indian Reservation. State criminal jurisdiction over this one reservation was conferred by the Act of October 5, 1949 (63 LStat. 705).

The applicability of Federal criminal laws is also limited. The United States district courts have a measure of jurisdiction over offenses committed on Indian reservations or other Indian country by or against Indians, but in cases of offenses committed by Indians against Indians that jurisdiction is limited to the so-called ten major crimes listed in section 1153 of title 18, United States Code. As a practical matter, the enforcement of law and order among Indians in the Indian country has been left largely to the Indian groups themselves, and in California they are not adequately organized to perform that function. The Indians of the Hoopa Valley Reservation and the Yuma Reservation have a form of tribal law enforcement, but none of the other reservations in the State has any means of preserving law and order. Consequently, there is a serious hiatus in law enforcement authority that can best be remedied by conferring criminal jurisdiction on the State. The Indians of California have also reached a stage that makes desirable the extension of State civil jurisdiction to the Indian country in that State. This has already been accomplished on the Agua Caliente Indian Reservation by the Act of October 5, 1949 (63 Stat. 705). A like policy should be applied to the rest of the State. In doing so due regard should be given, of course, to the safeguarding of the rights guaranteed the Indians by Federal treaties, agreements, and statutes.

At the direction of the Commissioner of Indian Affairs, the Area Director of the Bureau of Indian Affairs at Sacramento, California, consulted with the various Indian groups on a legislative proposal similar to H.R. 1063. No oppo-



ment letter containing this pivotal reference was inadvertently omitted,

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sition to the enactment of the proposed legislation was voiced by any of the Indian groups. The Hoopa Valley Indians, comprising the largest single group within the State, have adopted resolutions favoring the proposal to confer civil and criminal jurisdiction on the State. Representatives of other groups have also indicated their approval.

Proposed legislation similar to H.R. 1063 has been discussed with the governor of California and he has indicated his approval of the objective of the proposal. The Legislature of California, by Senate Joint Resolution No. 29, has recently memorialized the Congress to enact H.R. 1063.

The revisions incorporated in the enclosed draft would clarify the intent of the civil jurisdiction provisions in several particulars. They would make it clear that the effect of the bill would be, not merely to permit the State courts to adjudicate civil controversies arising on Indian reservations in California, but also to extend to those reservations the substantive civil laws of the State insofar as these laws are of general application to private persons or private property. The revision would also make it clear that Indian tribal customs and ordinances would continue to be applicable to civil transactions among the Indians insofar as these customs or ordinances are not inconsistent with the applicable State laws. By so doing the predominance of State authority would be assured, but with a minimum of interference with Indian control of Indian affairs.

The enclosed draft is designed to perfect H.R. 1063 in a manner consistent with its basic intent. The only major substantive difference is the omission of the provisions that would have excluded the entire State from the operation of the Federal Indian liquor laws. There is no doubt that the Indians of California are as prepared to be subjected to the State laws regarding intoxicants as they are to be subjected to the other laws of the State. However, general legislation to repeal, in whole or in part, the Indian liquor laws is now before the Congress, and it seems preferable to deal with the subject in that manner rather than in a bill, such as H.R. 1063, having a different primary objective.

In large measure the criminal jurisdiction provisions of the enclosed draft are identical with those of H.R. 1063. The subsection that would have reserved to the Federal courts concurrent jurisdiction over offenses by or against Indians has been omitted as its effect would be to make persons in the Indian country subject to two different, and possibly conflicting, systems of law. For like reasons, a subsection has been added that would render inapplicable in California the Federal criminal laws which apply to offenses committed by or against Indians within the Indian country. Finally, the subsection relating to the protection of trust or restricted Indian property and of Indian fishing and hunting rights has been revised in an effort to make its provisions as precise and certain as possible.

The provisions of the enclosed draft relating to civil jurisdiction are based on those of H.R. 1063, but have been recast in a form that would permit them to be incorporated in the general body of the judicial laws as now codified in title 28 of the United States Code. These provisions are designed to give the State of California jurisdiction over civil controversies and transactions involving Indians to the fullest extent consistent with the discharge of Federal responsibility for the protection of trust or restricted property. The State and its courts could not take any action that would affect the status of this property in any way or that would improperly deprive the Indians of any of the benefits therefrom. However, once the trust or restriction was terminated by the United States, the jurisdiction of the State and its courts would automatically attach.

Both H.R. 1063 and the enclosed draft would repeal section 1 of the Act of October 5, 1949 (63 Stat. 705), which conferred on the State of California civil and criminal jurisdiction over the land and residents of the Agua Caliente Indian Reservation. The enactment of H.R. 1063, applicable to the entire State, should be accompanied by the repeal of section 1 of this Act in order to make the same civil and criminal jurisdictional statute applicable to all Indian country within the State.

Since I am informed that there is a particular urgency for the submission

however, from the House and Senate Reports upon which the *Santa*

of the views of the Department, this report has not been cleared through the Bureau of the Budget and, therefore, no commitment can be made concerning the relationship of the views expressed herein to the program of the President.

Sincerely yours,

Sincerely yours,  
Secretary of the Interior

Hon. A. L. Miller, Chairman  
Committee on Interior and Insular Affairs  
House of Representatives  
Washington 25, D. C.  
Enclosure

#### A BILL

To confer jurisdiction on the State of California with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such State, 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:

"1161. 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 1160 a new section, to be designated as section 1161, as follows:

"§ 1161. 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

"(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 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 juris-

*Rosa* court relied in interpreting the phrase "civil laws of [such] State."<sup>277</sup> Considered in its place was a follow-up memorandum to the excluded original correspondence which, rather than setting forth the Interior Department's posture on the breadth of P.L. 280's "state" law limitation, detailed the reaction of state, local, and tribal authorities to the proposed cession of civil and criminal jurisdiction to the states.<sup>278</sup>

Although this article has urged that the memorandum actually before the *Santa Rosa* court indicates a congressional intent to subject reservation trust lands in general to county land use ordinances,<sup>279</sup> the ignored Interior Department letter makes perfectly clear that the statutory language at issue in *Santa Rosa* was intended to embrace local land use regulations, particularly those promulgated by California political subdivisions such as Kings County.<sup>280</sup> An analysis of P.L. 322 and its legislative history establishes this conclusion, resolving those ambiguities the Ninth Circuit found in P.L. 280's language.

Contrary to the common conception of reservation lands as concentrated areas subject to a single jurisdictional authority, such parcels are often haphazardly scattered across various political subdivisions,

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diction 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	<u>Indian Country Affected</u>
California	All Indian country within the 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."

SEC. 5. Section 1 of the Act of October 5, 1949 (68 Stat. 705, ch. 604) is hereby repealed, but such repeal shall not effect any proceedings heretofore instituted under that section.

277. See notes 196-237 *supra* and accompanying text.

278. See notes 207-220 *supra* and accompanying text.

279. See notes 196-237 *supra* and accompanying text.

280. P.L. 322, note 275 *supra*.

with each parcel's jurisdictional authority similarly dispersed. For example, portions of Alaska and California reservation lands, including the Aqua Caliente Reservation, are owned and occupied by non-Indian communities and individuals.<sup>281</sup> Although state legislative enactments and local land use regulations are clearly applicable to those parcels owned by non-Indians,<sup>282</sup> prior to the institution of P.L. 322, Agua Caliente Reservation Indian allottees were permitted to develop their reservation lands in a random, haphazard manner without having to comply with those local or state land use regulations to which adjoining lands owned by non-Indians were subject. It was in response to this resulting "impracticable pattern of checkerboard jurisdiction,"<sup>283</sup> which subverted local land use and development policies,<sup>284</sup> that in 1950 Congress enacted P.L. 322, conferring state and local jurisdiction over the reservation's lands. This bill was passed into law with the support of both Indian and non-Indian segments of the community in which the Agua Caliente Indian Reservation was located; no concern was voiced as to the assumption of jurisdiction by local governing bodies over the use or development of the reservation's lands.<sup>285</sup>

P.L. 322 provided that the lands comprising the Augua Caliente Indian Reservation would be subject to the civil and criminal laws of the state of California as well as its political subdivisions, subject to the limitation that the authority conferred upon the state did not permit the alienation, encumbrance or taxation of those lands.<sup>286</sup> Explaining this enactment, the House Public Lands Committee stated that the Agua Caliente Reservation lands presented a unique problem of administration to the federal government,<sup>287</sup> since these lands were intermingled in a checkerboard pattern with the highly developed and valuable urban realty of Palm Springs and Riverside County, each parcel admitting of

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281. This result obtains from the effect of the General Allotment Act of 1887, *supra* at note 125, which allowed non-Indian allottees or settlers to acquire "surplus" lands on certain reservations, including those located in the state of California. See, e.g., H.R. REP. NO. 956, 81st Cong., 1st Sess. (1949); see *Mattz v. Arnett*, 412 U.S. 481 (1973).

282. *Draper v. United States*, 164 U.S. 240 (1896). Cf. *United States v. McBratney*, 104 U.S. 621 (1881).

283. Six reservations are composed of alternative sections of land arranged in an "impracticable pattern of checkerboard jurisdiction" condemned by the Supreme Court. *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 358 n.16 (1962) cited in *Moe v. Confederated Salish and Kootenai Tribes*, 44 U.S.L.W. 4535 (April 27, 1976, U.S.).

284. H.R. REP. NO. 956, 81st Cong., 1st Sess., 2 (1949).

285. *Id.*

286. 63 Stat. 705 § 1 (1949).

287. H.R. REP. 956, 81st Cong., 1st Sess. 1 (1949).

a different jurisdictional authority.<sup>288</sup> P.L. 322 was regarded as a non-controversial attempt to remedy and clarify the problems of land use administration presented by this heterogeneous pattern of reservation and county land.<sup>289</sup> With specific reference to zoning, the Assistant Commissioner of the Department of the Interior noted that both the City of Palm Springs and the County of Riverside lacked the authority to zone Agua Caliente lands, resulting in the absence of an "over-all pattern . . . needed for protecting property values and increasing the maximum utilization of the city as a whole."<sup>290</sup> The Commissioner's proposed solution to this dilemma was to confer zoning jurisdiction upon the Secretary of Interior.<sup>291</sup> This recommendation was rejected.<sup>292</sup> Instead, jurisdiction over the use and development of Agua Caliente Reservation lands was ceded to the County of Riverside.<sup>293</sup> As stated by the congressman who represented the County: "This section of the bill is for the purpose of conferring jurisdiction over the police, fire and sanitary regulations, and so on, upon the State of California."<sup>294</sup> Accordingly, P.L. 322 was reported out of committee and adopted by Congress to prevent the disorderly and chaotic development of Indian reservation trust lands scattered throughout a specific political sub-

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288. *Id.*

289. *Id.* at 2. The Report continued, "as the Indian lands are intermingled with the non-Indian lands, law and order could be more effectively and efficiently administered by the state than by the Indian Service." *Id.* The Assistant to the Commissioner on Indian Affairs testified in this regard that Indian and non-Indian lands in Palm Springs were so completely mixed that it was not feasible to have two sets of law enforcement authorities in operation in this area. *Hearings on H. R. 4616, Before the Subcommittee on Indian Affairs of the Committee on Public Lands*, 81st Cong., 1st Sess. 3 (1949) [hereinafter cited as *Hearings on H. R. 4616*].

290. *Id.* at 3.

291. *Id.*

292. *Id.*

293. In *Agua Caliente Board of Mission Indians' Tribal Council v. City of Palm Springs*, Civil No. 65-564-MC (C.D. Cal. 1965) (settlement and dismissal April 12, 1967) (stipulated judgment approved July 27, 1966) the court held that the Palm Springs zoning code and other enumerated land use regulations were applicable to leased Indian trust lands. Under the settlement, the Tribal Council established an Advisory Indian Land Planning Commission to serve in an advisory and consultive capacity to both the city's planning commission and the city council on zoning and land use matters involving reservation trust lands; see *Agua Caliente Band v. City of Palm Springs*, Civil No. 71-767-JWC (C.D. Cal. 1971) 347 Supp. 42 (C.D. Cal. 1972) *vacated and remanded on other grounds* No. 72-2504 (9th Cir. Jan. 24, 1975, unreported) (portions of Agua Caliente reservation within the city's exterior boundaries constitute a part of the city over which Palm Springs has zoning jurisdiction; vacated and remanded on the ground that the record is inadequate to determine whether the cause of action is justiciable); see also *United States v. Humboldt County*, Civil No. C-74-2526 RFP (N.D. Cal. 1974) (pending to determine applicability of county building and zoning ordinances and California Environmental Quality Act to Hoopa Valley Reservation).

294. *Hearings on H.R. 4616*, *supra* note 289, at 132.

division's domain by subjecting the otherwise jurisdictionally isolated lands to local land use and zoning ordinances sanctioned by the state legislature.<sup>295</sup>

In view of the overlapping nature of P.L. 280 and P.L. 322, the Assistant Commissioner of Interior's letter, not addressed by the court, recommended the repeal of relevant parts of the latter act "in order to make the same civil . . . jurisdictional statute applicable to all Indian country in the United States."<sup>296</sup> P.L. 280 was based upon a "like policy" to that underlying P.L. 322.<sup>297</sup> This conviction was reaffirmed by the House and Senate Committees considering the enactment of P.L. 280;<sup>298</sup> accordingly, P.L. 322 was repealed by the enactment of P.L. 280.<sup>299</sup>

This precedent, gleaned from the legislative history of P.L. 322 which later evolved into P.L. 280, is further support for the proposition that California counties in particular maintain the authority to administer and enforce local land use regulations on reservation trust lands situated therein. A contrary interpretation of the phrase "civil laws of [such] State" would presumably resurrect land use administration problems similar to those faced by Riverside County prior to the adoption of P.L. 322. By the enactment of P.L. 280, Congress merely intended to reaffirm the policy it had promulgated in 1950 with sole regard to the Agua Caliente Reservation, expanding that policy to embrace all California reservation trust lands. The Ninth Circuit's decision, on the other hand, would approve the perpetuation of "impracticable pattern[s], of checkerboard jurisdiction"<sup>300</sup> by denying to California counties the right to apply their mandated land use regulations to adjoining reservation trust lands. Had the *Santa Rosa* court reviewed the previously ignored letter of the Department of the Interior rather than that Department's follow-up memorandum in determining the proper interpretation of the "state" limiting clause in P.L. 280, it might have reached a result favorable to Kings County. Such speculation, however, must await the confirmation of a future court presented with this significant piece of legislative history.

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295. *Id.*

296. June 29 Letter of Orme Lewis, *supra* note 276, at 2.

297. *Id.*

298. H.R. REP. NO. 848, *supra* note 175; S. REP. NO. 699, *supra* note 176.

299. *Id.*

300. *Seymour v. Superintendent of Washington State Penitentiary*, 368 U.S. 351, 358 n.16 (1962), *cited in* *Moe v. Confederated Salish and Kootenai Tribes*, 44 U.S.L.W. 4535 (April 27, 1976, U.S.).

## CONCLUSION

It is clear that local land use regulations, enacted pursuant to state legislative directive and applicable to reservation trust lands on the same terms that they are applicable to non-Indian lands, constitute "state" civil laws within the contemplation of Public Law 280. The Ninth Circuit, however, reached a contrary result. The *Santa Rosa* court fashioned this holding on the basis of: (1) a selective analysis of P.L. 280's legislative history, which the court found ambiguous and therefore amenable to a canon of construction most favorable to the Indians; (2) a ruling that Congress had discarded and rejected the assimilationist policy underlying P.L. 280 despite the absence of any showing of congressional intent to this effect; and (3) a distinction between local and state laws which was erroneously defined in terms of a particular law's enacting authority. It is patent that each of these premises of the *Santa Rosa* decision are realistically unworkable and legally untenable in light of the relevant legislative history of P.L. 280 and the interrelationship of state and county governments in California with respect to land use legislation and regulation.