

California Tribal Courts Under PL-280 Jurisdiction

Hon. Christine Williams
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1

Pop Quiz

- 574 Tribes in America
- How many are PL-280?
- Majority are under total or partial PL-280 jurisdiction
- Just Alaska and California alone total over 330 Tribes

2

Perceptions of PL-280

- Dismissed as non-dominate or alternative system
- Supports the inequities in federal support and funding

3

Federal Intervention on Tribal Jurisdiction

The erosion of inherent sovereignty

4

Inherent Sovereignty

- Pre-Contact - Time immemorial – inherently sovereignty
- Not given by anyone
- Slowly eroded over time by federal and state intervention

5

Limits on Tribal Jurisdiction

- Congress has passed laws limiting tribal jurisdiction
- Three Main Acts of Congress
 - Indian Country Crimes Act (aka General Crimes Act)
 - Major Crimes Act
 - Public Law 280 (aka PL-280)
- First two address criminal jurisdiction, the third addresses criminal and civil jurisdiction
- All of these limitations are paternalistic at best and racist, more likely

6

Indian Country Crimes Act

- 1790 federal jurisdiction extended **as a buffer** between Indians and non-Indians
- After several revisions it is now the Indian Country Crimes Act or General Crimes Act
- Extends Federal Jurisdiction over crimes in Indian Country involving a non-Indian and an Indian
- Concurrent with Tribes
- Non-Indian v. non-Indian crime = state jurisdiction exclusive
- Indian v. Indian = Tribal jurisdiction exclusive

7

7

CA History Note

- California became a state in...
- 1850
- After ICCA
- 1851-1852: 18 Treaties = Landless Indians
- Feds were not acting as a "buffer" in CA
- CA was legislating to exterminate the Indian Population without any Federal intervention

8

8

Major Crimes Act

- In 1885 Congress divested all tribes of jurisdiction over major criminal offenses and granted jurisdiction to the Federal Government
- Identity (Indian or non-Indian) of parties does not matter only type of crime
- Originally 7 major crimes now basically all felonies
- Non-major crimes, not involving a non-Indian (Indian v. Indian) still exclusively under tribal jurisdiction

9

9

PL-280

- In 1953 Congress transferred the jurisdiction that had been granted to the Federal Government by the ICCA and the MCA to certain "mandatory" states
- Tribes were not consulted
- It also granted some civil jurisdiction to these states

10

10

The Mandatory States

- California
- Alaska
- Minnesota
- Nebraska
- Oregon
- Wisconsin

11

11

1968 Amendments

- State and Tribes critical of PL-280 from the beginning
- In 1986 the Act was amended requiring any states voluntarily opting into PL-280 Jurisdiction to obtain tribal consent
- Almost no expansion of PL-280 Jurisdiction since then
- Also provided for retrocession

12

12

Current Division of Jurisdiction

Examining Jurisdiction under PL-280

13

13

Currently

- Currently, now in 2021
- TRIBES STILL DO NOT HAVE COMPLETE JURISDICTION WITHIN THEIR OWN BOUNDARIES
- There is still a belief that tribal courts are not fit to exercise complete jurisdiction over non-Indians
- There is still a belief that tribal courts are not fit to exercise complete jurisdiction over all types of crimes even when their own members are involved

14

14

Jurisdiction

- Jurisdiction is authority over people and things
- We will discuss who has what authority over which people and what matters as it relates to Tribal Courts in California
- AND how is that determined from case to case

15

15

State Jurisdiction Under PL-280

- State has criminal jurisdiction over crimes in "Indian country" to the same extent the state has jurisdiction anywhere else in the state
- Essentially removed the reservation boundaries for purposes of state criminal jurisdiction in California
- Revoked the MCA & ICCA in the mandatory states
- Also extended state civil jurisdiction and laws of general application into Indian country

16

16

Limits on State Jurisdiction

- When can the state exercise jurisdiction?
- General Test of Criminal Prohibitory (Yes) versus Civil Regulatory (No)
- States cannot exercise jurisdiction over:
 - Regulation
 - The ownership, possession or disposition of trust lands
 - Hunting and fishing guaranteed by treaty, statute, or other Federal mandate
 - Taxation
 - Wholly internal tribal matters
 - Enrollment
 - Elections

17

17

Tribal Jurisdiction - Concurrent

- Generally, Tribes in PL-280 states do not have exclusive criminal or juvenile jurisdiction
- Generally, Tribes have concurrent jurisdiction over Indians in criminal and civil matters arising in Indian country
 - Recent Federal law expanded criminal jurisdiction over non-Indians in specific circumstances [see Tribal Law and Order Act]
- Tribes can exercise civil jurisdiction over non-Indians when there is a relationship to the jurisdiction
- Tribes have concurrent jurisdiction in all juvenile matters involving their "Indian children" both on and off the reservation
 - May require transfer to Tribal Court

18

18

Resumptions of Tribal Jurisdiction

Violence Against Women Act

19

19

Violence Against Women Act (VAWA)

- VAWA reauthorization of 2013
- Special Domestic Violence Criminal Jurisdiction
- Tribes can prosecute non-Indians who have a connection to the tribe and who commit domestic or dating violence, or who violate a protection order against an Indian
- Exception if victim and defendant are both non-Indians

20

20

Conditions for Exercising Special Criminal Jurisdiction

- Tribe must:
- Provide defendant with all rights guaranteed in ICRA
- Provide defense counsel (if sentenced to jail)
- Provide trial by jury drawn from fair cross section
- Provide any other required Constitutional right

21

21

Retained Jurisdiction

General overview for PL-280 Tribes

22

22

The jurisdiction you exercise is powerful



23

23

Send a message

- Laws are a social construct that proclaim the values of a community.
- Enacting and enforcing laws sends a message about what you expect from people and how you will respond to those who violate those expectations...
- punitively ...
- or restoratively
- In these times of civil unrest, we could benefit from positive messages and models

24

24

What Tribal Jurisdiction is Left?

- Criminal violations – Peace and Protection, Law and Order
- Family Law
- Civil Disputes
- Housing and Land Use
- Juvenile – Indian Child Welfare
- Domestic Violence
- Natural and Cultural Resources
- Internal Governance
- Whatever law tribes can create and enforce!

25

25

Peace & Protection/Law & Order

Keeping the Peace and Quality of Life on the Reservation

26

26

Civil or Criminal

- Criminal over Indians
- Civil over non-Indians
- Does the test to determine if states can exercise jurisdiction apply to Tribal laws and enforcement?

27

27

Tribal Family Law

Marriages, Divorces, Custody disputes & Adoption

28

28

Indian Child Welfare Act (ICWA)

- Federal Law passed to establish minimum standards to apply to STATE COURT proceedings involving Indian Children
- Intended to counteract institutional bias against Indian families in state court proceedings
- Does not apply in Tribal Court

29

29

Domestic Relations

- Marriage: People can wed under tribal law
- Divorce: People can un-wed under tribal law
- Child Custody and Support: tribes can issue orders regarding visitation, custody and support

30

30

Marriage & Domestic Partnerships

- Concurrent jurisdiction between Tribes and States
- If you are married under state law, then the Tribe will recognize you as married, unless the marriage violates tribal laws
- If you are married by Tribal law, the state will recognize that marriage as well, unless the marriage violates state law
- Tribes can use written marriage law, code or ordinance OR tribal custom
- What about non-Indians?

31

31

Divorce

- Tribes can dissolve marriages (and DP's)
- Concurrent Jurisdiction with States
- Doesn't have to be a marriage under tribal law
- What about non-Indians?

32

32

Child Custody and Support

- Concurrent jurisdiction between Tribes and States
- Custody disputes between parents are NOT covered by ICWA
- Tribes and tribal businesses can not be compelled to garnish wages pursuant to State Child Support Orders
- Income from Tribes and tribal businesses is allowed to be considered for purposes of calculating support amount
- Tribal Court can recognize and enforce orders from other courts
- Recommend seeking Tribal Court recognition of state court order or MOU with Tribe for enforcement of support orders

33

33

Adoption

- Tribes have concurrent jurisdiction with the State over adoption of Indian children
- Tribes can issue adoption orders
- Tribes can use written law, code or ordinance OR tribal custom
- Tribal Customary Adoption in CA

34

34

Domestic Violence

Using Tribal Courts to Protect our Communities

35

35

Protection


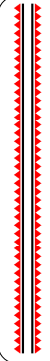
- Tribal Court Protection Orders
- Project Passport
- State Court Recognition
- Special Domestic Violence Criminal Jurisdiction

36

36

Prevention

- Batterer's Intervention Programs
- Victim Impact Circles
- Cultural Sentencing



37

Housing & Lands


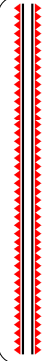
Our Homes, Our Community



38

Housing


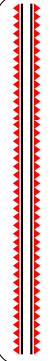
- Leases
- Land Assignments
- Evictions



39

Land Use

- Tribes can decide:
- What is allowed in the community and where?
- What are the consequences for violating the laws or policies around land use?



40

Internal Tribal Governance


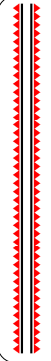
Resolutions from within Our Own Community



41

The Big E's

- Enrollment
- Elections
- No one else has jurisdiction over these areas unless the Tribe grants it



42

Natural & Cultural Resources



Our Community Foundation



43

Hunting and Fishing



- Hunting and fishing guaranteed by treaty, statute, or other Federal mandate



44

Environmental Protection



- Tribal EPA Department
- Protection of Natural Resources; Land, Water, Air



45

Cultural Resources



- Tribal Historic Preservation Officers
- Protection of Cultural Resources on Tribal Lands



46

Closing Message

- “We are all working to repatriate our customs and traditions.”
- Support your clients or your communities to use tribal courts to repatriate culture...awaken what sleeps, dormant
- Pass legislation that means something to the community you serve and enforce it.
- It is not that we should give up the fight for justice in the U.S. courts
- But we must also focus inward and develop tribally informed responses to justice needs
- Wok Hlaw - thank you



47