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Agua Caliente REVISITED: RECENT DEVELOPMENTS AS TO ZONING OF INDIAN RESERVATIONS

Osborne M. Reynolds, Jr.*

In an earlier article on the subject of zoning Indian reservations,¹ this author began with quotes from a recent issue of *Time* magazine that indicated two possibly overlapping problems: the legally unique status of Indian reservations, sometimes largely independent of external political control, and the need for land-use planning at the state, regional, and national levels. That those problems remain is illustrated by statements in a recent *National Geographic*. In one article, an American Indian speaks of problems of his people, and in particular about the Navajos of the Four Corners area: "In recent years an extensive coal-mining operation has mutilated some of their most sacred land. A large power plant in that same region spews contamination into the sky that is visible for many miles."² Elsewhere in the same issue, another writer speaks of trends as to land-use controls and predicts, "I believe that by the year 2000 the states will have a significant voice in land-use policy—and they should. The states will take back significant parts of the power they granted to municipalities half a century ago."³

In the earlier article, I suggested that the states were also moving into the area of imposing land-use controls on Indian reservations, although I urged participation of, and consultation with, Indian tribal governments in any such state activities. Since that was written, my view has been challenged;⁴ additional writing has appeared on this subject; and several cases have been decided that relate either directly or indirectly to zoning on reservations. This article will consider these recent developments.

The basic legal and political status of Indian reservations has, of course, not changed in the past few years. It remains true that the reservations vary considerably in historical background, present form of government, and relation to other governments.⁵ Early United States legal authority treated the Indian tribes as independent sovereign entities, relying on the federal government for external protection but retaining their right of self-government.⁶ The tribes thus had the unusual distinction of being sovereigns within a sovereign.⁷

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It has recently been observed that the law on Indian status “has developed primarily in response to existing power relationships between the federal and state governments and the Indian”⁸ with little consideration of United States constitutional doctrines. Increasingly there has been a tendency “to avoid reliance on platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes. . . .”⁹ The same writer has commented that to the extent that constitutional law has affected Indian affairs, those affairs have been treated as external, rather than internal, concerns of the national government, and the power over such matters may be considered an attribute of national sovereignty.¹⁰

We must begin with the premise that only federal and tribal governments have legal control over Indian reservations and that state jurisdiction, and extension of any state law, to the reservation can occur only as specifically authorized by the federal government.¹¹ As another commentator recently observed, “[T]he combined plenary powers of the federal government and the powers of internal sovereignty of the tribes operate to preclude state jurisdiction in Indian affairs absent specific congressional grant of such jurisdiction.”¹² Such specific grants to the states have sometimes taken the form of termination of an Indian reservation and the conferring of post-termination jurisdiction on the state government.¹³ But legislation in 1953, the much-discussed Public Law 280, granted several states jurisdiction over persons and property within reservations that continued to exist within the boundaries of those states, and gave all other states the option of asserting such jurisdiction.¹⁴ Amendments to this legislation in 1968 rendered all *future* assertions of state jurisdiction under the Act subject to consent of the affected Indians, and allowed the states to return to the federal government jurisdiction they had once assumed.¹⁵ Public Law 280 contains a number of exceptions designed to protect Indian tribes against undue state interference with their internal concerns, and contains the general provision that tribal ordinances not inconsistent with state law will remain in effect even after assumption of state jurisdiction.¹⁶ Although Public Law 280 is often treated as an outgrowth of the now considerably repudiated policy of “termination” of Indian reservations, a recent case points out that this statute is only one part of a “more gradual process” than immediate termination.¹⁷ To a large extent, the law continued federal control, “awaiting the decision by Congress, on a case-by-case basis, that termination of a particular tribe, with consequent imposition of all aspects of state jurisdiction, was appropriate.”¹⁸

The result of all this was what some consider “over-regulation” of

the Indians by too many different authorities, and a too-great dependence of the Indians on the law in general and on congressional enactments in particular.¹⁹ The system has grown up between extremes of exploitation of the Indians on the one hand, and a genuine (although some now believe unnecessary) desire to protect the Indians on the other. As applied to the Indians' use of land, the system has reflected the concept of aboriginal title, under which it is considered that the Indians have rights based on early possession and amounting to a usufruct in the soil (that is, rights of occupancy and use), but title is in the conqueror.²⁰ Since the federal government now represents the conquering whites and holds a kind of reversionary interest, while the Indians have the right of use, this again leaves the state with no control unless granted it by one of the two owners. While traditionally the Indians' rights of use were considered defeasible at the whim of the federal government, compensation has in some recent situations been held necessary for governmental takings of Indian lands where congressional recognition of the Indian rights could be found.²¹ Ultimately, most authorities would agree that control over the land within Indian reservations must be traced back to Congress, and federal regulations validly issued under congressional authorization will thus prevail over state laws.²²

What is now the status of Indian tribal governments? It was noted in my earlier article that at least three different views had been taken: that the Indian government has sovereignty over the reservation; that the tribal government's powers are analogous to those of a municipality; and that the tribe merely has rights comparable to any landowner's.²³ This last view has now clearly been rejected by the United States Supreme Court in a case holding that power to regulate distribution of alcoholic beverages in Indian country could be validly delegated to a tribal council.²⁴ Stating that the tribes are not merely private organizations but have attributes of sovereignty,²⁵ the Court ruled that the lower tribunal's contrary holding took an unduly restrictive view of tribal powers. Another recent case,²⁶ in dealing with a state (Montana) that has not assumed jurisdiction under Public Law 280, ruled that state court jurisdiction would interfere with tribal powers of self-government and would thus be invalid as extended to adoption of a child where all parties were residents of the reservation. These decisions indicate a kind of quasi-sovereignty of the tribes, at least as to internal concerns. However, the analogy to municipalities also is still made, especially when typical activities of the tribal government are discussed.²⁷ There is difficulty in classifying an entity that within the common law system is a unique hybrid. It might best be considered

a special type of "community,"²⁸ often predating even the federal government and retaining residual powers.²⁹

More important than the question of classification is the relationship of the tribal government to the government of the state in which the reservation is located. An important recent development in this area has been the ruling that even those states asserting jurisdiction under Public Law 280 may not tax reservation Indians.³⁰ This result is considered desirable as protecting Indian resources from depletion by state taxation, limiting Public Law 280 to bringing "law and order" to the reservations, and preventing further overregulation of the Indians by different governments.³¹ The holding is supported by the general rule that, absent specific congressional authorization, the state cannot infringe on the Indians' right of self-government, either by exercise of state-court jurisdiction³² or extension of state law.³³ And Public Law 280 does not specifically authorize such taxation, whatever arguments may be waged over whether the exceptions to state jurisdiction clearly cover all taxation. Furthermore, most state taxation could be found to infringe on areas either fully occupied by congressional legislation³⁴ or at least covered extensively by federal policies.³⁵ The freedom from state jurisdiction and control has not clearly been removed, and thus the general rule of immunity must apply.³⁶ It is possible to argue that because tax laws are often enforced by criminal sanctions, an assumption of state criminal jurisdiction under Public Law 280 encompasses application of state taxes.³⁷ But, particularly where taxation of on-reservation Indian property or of income earned on the reservation by an Indian is concerned, state taxation has normally been treated as too great an interference with tribal rights.³⁸

Even the exclusion of state taxes from the reservation, however, is not complete. It also has recently been held that while the state may not impose a sales tax on a reservation sale from one Indian to another, it may require an Indian retailer on the reservation to collect the tax on sales made to non-Indians.³⁹ Thus, it is seen again that there is an element of flexibility, even of compromise, in the decisions. Non-Indians should not be allowed to escape their obligations, such as paying taxes to the state or obeying its fish and game laws,⁴⁰ simply by going onto reservation land to make a purchase or transact other business. A similar attitude is seen in the ruling that reservation Indians, despite their being governed by tribal and United States authorities, are also, politically, residents of the state in which they live, and thus are entitled to vote for state officials.⁴¹ To some extent, reservations are thus recognized as part of the state in which located.

Recent governmental programs sometimes change the interrelationship of state governments to Indian lands. It has been observed that Indian lands, and others under some degree of federal control, are both benefit and burden to the state.⁴² The amount of Indian and public domain land within a state is, for instance, one factor in determining that state's allocation of federal-aid highway funds.⁴³ But state laws ordinarily have no application to Indians living on tribal land, or on lands within the reservation allotted to them but held in trust for them by the United States.⁴⁴ The chief exception is the situation where a state has acquired jurisdiction under the aforementioned Public Law 280. Even here, there may be problems of enforcement by state courts of judgments obtained against Indians, although it has been noted that such problems are perhaps no greater than others (such as enforcement in one state of a judgment obtained in a sister state) inherent in our federal system.⁴⁵ As a further limitation on the effect of Public Law 280, it is also true that due to added costs that would be involved, Indian opposition, or other factors, a number of states have so far made no attempt to utilize Public Law 280 and thus acquire jurisdiction over Indian reservations.⁴⁶

Nonetheless, the sweep of Public Law 280 is sufficiently broad where it is utilized. The Public Law and several Supreme Court cases have led one commentator to conclude, "Today states may assert authority over Indian tribes in the absence of a Congressional prohibition, provided that there is no interference with a recognized right of self-government or the exercise of federal authority."⁴⁷ Although this statement was made in broad terms, it would seem valid only where Public Law 280, or some other congressional conferring of jurisdiction on a state, applies. Thus, the Supreme Court has held that where a tribal council purported to grant concurrent jurisdiction to tribal and state courts over certain matters, the grant to the state was invalid; because there had been no vote of the tribe and no legislative action by the state, the requirements of Public Law 280 were not met.⁴⁸ While this decision was limited to jurisdiction of state courts, the rationale would seem applicable to the imposition of any state laws.⁴⁹

Where Public Law 280 has been utilized to give jurisdiction to state courts and to extend state laws, the cases indicate that a state statute may then be presumed applicable until it is shown to interfere with the Indian right of self-government.⁵⁰ What matters are still covered by this right? Some classifications seem clear. Transactions involving Indian lands and suits by Indians against Indians are usually considered such.⁵¹ Membership in a tribe, and the right to

share in a tribal land base, seem to fit into this category.⁵² In the criminal area, extradition powers may be such.⁵³ On the other hand, as specifically mentioned by statute, sanitation and quarantine laws of the state can apply to Indian land.⁵⁴ Even without Public Law 280, it has been found that Indian rights are not interfered with by state jurisdiction of non-Indians who commit crimes against each other on the reservation, or of Indians off the reservation who violate state laws.⁵⁵

The Supreme Court has said that even provision for “absolute federal jurisdiction” does not necessarily mean exclusive federal jurisdiction or preclude the exercise of some residual state authority.⁵⁶ Thus, such residual state power may exist *wherever* there is no infringement of the Indian right of self-government.⁵⁷ But this seems a considerable extension of broad Court language and in conflict with the principle of not inferring state jurisdiction unless clearly granted. The safer statement would limit the test of noninterference with tribal powers to situations where, under Public Law 280, state jurisdiction exists if no such interference is found. Thus, one recent observer has urged that Public Law 280 be clearly recognized as the exclusive method by which a state can acquire jurisdiction over Indian reservations.⁵⁸ This would reduce the amount of ad hoc determination of state jurisdiction, would increase certainty in this area, and would follow logically from Congress having provided, in Public Law 280, a specific procedure for states to follow.⁵⁹

What, then, is the current status of possible application of state land-use controls to Indian reservations? The several cases in federal district courts that allowed such controls to be applied to reservations by state and local governments have not fared well. The *Agua Caliente* opinion, discussed in my earlier article,⁶⁰ was vacated in an unpublished order.⁶¹ Where a lower court had held a county gambling ordinance applicable to a reservation,⁶² the appellate court ruled that the merits should not be reached because no “case or controversy,” in the federal constitutional and statutory sense, existed.⁶³ The same appellate court in the same opinion found that an action involving a county building code was moot,⁶⁴ and that no federal jurisdiction existed in a case concerning possible application of a county ordinance on outdoor festivals.⁶⁵ This activity all took place in the Ninth Circuit, but a case in the Tenth Circuit met a similar fate. Interestingly, the lower court had there ruled that, even though the state (New Mexico) had not assumed jurisdiction under Public Law 280, the state, in the absence of federal preemption, could apply to an Indian reservation state laws on subdivision control, construction licensing, and water quality, because these would

not interfere with tribal self-government.⁶⁶ It was reasoned that Public Law 280 did not oust the states of preexisting jurisdiction. But, since all activities of the project in question were in limbo because of an injunction enjoining further action until there was compliance with the National Environmental Protection Act, no present case or controversy justifying a court decision could be found by the higher court.⁶⁷ These decisions certainly did not, however, indicate that the lower courts had ruled incorrectly on the merits of the cases, only that they should not have reached the merits. And one Ninth Circuit opinion said that Congress "may" have intended to grant states the power under Public Law 280 to impose zoning and other land-use controls on reservation land.⁶⁸

Then came the *Santa Rosa* case,⁶⁹ in which the Ninth Circuit ruled that Congress in passing Public Law 280 did not intend an "immediate transfer to local governments"⁷⁰ of civil regulatory power, and thus that a county zoning ordinance or building code could not apply to reservation land. This obviously leaves the door open for argument that eventually such a transfer might be found, even possibly without the passage of further legislation, and for argument that state-wide planning or land-use laws might be applied to a reservation. Further, the appellate court reversed the portion of the lower court order that would have prevented enforcement of any county ordinance that would have increased the expense or inconvenience of maintaining federally funded housing facilities.⁷¹ The higher court noted that this might be used to prevent the county from charging Indian residents of such facilities the same amount charged other county residents for water and for sanitation hook-ups; not "all incidental on-reservation consequences of County regulations" are invalid.⁷² So again a note of ad hoc determination is sounded.

Some support for the *Santa Rosa* ruling may be found in the language of Public Law 280 excepting from state power any "encumbrance" on Indian land,⁷³ in the holding that municipalities cannot annex reservation land without consent of Congress,⁷⁴ and in the cases ruling that the state cannot tax individual Indian income earned on a reservation.⁷⁵ Statutory patterns indicate that Congress has continued to respect strong Indian rights to control development of their reservation lands.⁷⁶

But recent statutes also indicate a concern that Indians, in developing their lands, take into account the relationship of those areas to neighboring lands.⁷⁷ Where tribal consent has been given (as is now necessary to new acquisition of state jurisdiction under Public Law 280), it has long been undoubted that state school attendance,

quarantine, and sanitation laws may apply.⁷⁸ It is arguable that we are arriving at the time when land-use controls are as essential to the health and well-being of a whole state or region as the sanitation and similar laws have been in the past. One commentator poses the questions: "Why should Indian lands in or near urban growth centers be free of local zoning and subdivision controls, as long as those controls are applied in a nondiscriminatory fashion? Should we assume that local public officials will generally disregard or be unaware of Indian values and interests?"⁷⁹ As to the second question, the history of treatment of the Indians by state and local governments can no doubt be used to produce many arguments on each side. But it is submitted that the first question is not satisfactorily answered by the *Santa Rosa* case, and that it cannot be satisfactorily answered by simply saying, "There is no jurisdiction."

The traditional pattern of excluding state control from the reservation has been noted as a hindrance to overall planning.⁸⁰ What legal authorities support state land-use powers under Public Law 280? In a case in which the Supreme Court denied certiorari, two dissenting justices pointed to the importance of protecting state anti-pollution plans from frustration by the exclusion of Indian lands.⁸¹ More recently, interpreting another statute,⁸² the Court ruled that federal reserved water rights held on behalf of Indians could be determined in state courts.⁸³ The federal government's consent to state jurisdiction was said not to imperil the United States' special obligation to protect Indians, since "The Government has not abdicated any responsibility fully to defend Indian rights in state court, and Indian interests may be satisfactorily protected under regimes of state law."⁸⁴ It is submitted that if the federal statutory authority were found, the same comment might be made as to state court jurisdiction, and state application of laws, in land-use controls. Otherwise, reservation land may be free of application of state policies designed to preserve the environment, and contrary rules could defeat these policies.⁸⁵ Politically and governmentally, the reservations have been said to be part of the state;⁸⁶ and politically and governmentally, one of the most important tasks now facing the states is planning land use for metropolitan areas and other regions.⁸⁷ Planning, of any sort, to be effective must be comprehensive and must not mirror solely the needs and interests of *some* elements in society.⁸⁸

Reflecting recognition of the need for state control, Arizona in 1967 accepted jurisdiction of Indian reservations under Public Law 280 with respect to air and water pollution laws.⁸⁹ Whether such a limited acceptance is valid under the statutes can certainly be ques-

tioned,⁹⁰ but the need for uniform state policies and enforcement is real. The Supreme Court, in a case involving off-reservation treaty rights, recognized the state's need to apply uniform measures to conserve fish resources.⁹¹ The reservations of today are often not the relatively isolated communities of the past, but are linked with neighboring communities by roads, utility networks, etc.⁹² Environmental problems travel those roads and networks and do not stop at boundaries of reservations, just as they do not stop at municipal borders.⁹³

Environmental problems are not the only ones, of course, that cross boundaries. Concern has also been expressed recently over reservation activities that might amount to violations of state liquor or gambling laws—if those laws were applicable.⁹⁴ Some of the concern may be unnecessary as federal laws often prohibit such activities on reservations.⁹⁵ But jurisdictional problems also are posed for local law enforcement officials where off-reservation criminal suspects seek refuge on the reservation.⁹⁶ Cooperative efforts of the various governments, on and off the reservation, and clarification of the jurisdiction of tribal courts may alleviate these difficulties;⁹⁷ and, as has been noted, Public Law 280, where its requirements are met, clearly gives criminal jurisdiction to the states.

What, then, could be solutions for the question of state power under this law as to land-use control? One proposal is that we might try to balance the Indians' interest in free use of their lands with the states' interests in protecting vital interests of citizens living off the reservation.⁹⁸ Thus, it is suggested, state laws designed to prevent brush fires could be applied to the reservation, while a state building code could not, except as extended to buildings advertised for sale to non-Indians.⁹⁹ This is in line with the policy of not allowing undue infringement on tribal self-government. It obviously involves considerable indefiniteness of result, but the courts seem to favor a case-by-case approach to these problems, with only the broadest of guidelines. It would not bring an easy solution to the questions involving zoning laws. Water resources might well be considered vital to off-reservation citizens, and the fight against pollution could be considered a vital concern; is use of land yet considered that vital a matter, of sufficient concern to off-reservation persons? It at least may be becoming such.

A simpler test, although one perhaps requiring federal legislation, would allow state laws to apply as to land use only if tribal governments did not create regulations and methods of enforcement meeting certain standards. It has been predicted that, "If the states assume more and more jurisdiction over Indian affairs, as seems likely,

the Indian courts seem destined to lose jurisdiction correspondingly except over purely tribal affairs.”¹⁰⁰ And it has been said that “few tribes have planning capability.”¹⁰¹ But this is not necessarily so. The erosion of tribal power need not occur if the tribes act in the land-use area.¹⁰² Although the structures of tribal governments vary greatly, many do have the basic organization and machinery for such regulation.¹⁰³ The approach to regulation of use may sometimes be different from that in white society,¹⁰⁴ but some tribes are recognizing the need for restrictions and are preparing codes accordingly.¹⁰⁵

Federal legislation to assure the states of zoning power over the reservations is, of course, another possible answer.¹⁰⁶ This would undoubtedly encounter opposition as infringing on tribal governments and changing the existing relationship among the powers that govern reservations. Less extreme, as far as changing these relationships is concerned, would be the passage of national land-use planning legislation, such as has been proposed in recent years.¹⁰⁷ Since no one denies that the reservations are subject to federal law, any restrictions in such legislation could apply to the reservations. But these proposals have met with strong opposition as interfering with the rights of the *states*, and the legislation, if ever passed, may be limited to vague guidelines that still call on the states for definite formulation and implementation. Nonetheless, there is increasing recognition of the need for some national land-use planning policies,¹⁰⁸ which could help in the solution of reservation problems. It has even been observed that our *cities* might now be more efficiently treated as directly affiliated with the federal government, rather than under the control of the state.¹⁰⁹ While such a policy would be a radical change as to cities, as applied to reservations it would be the traditional rule.

At another extreme, it is possible to argue for abolition of the special federal relationship toward the Indians and the reservations. It has been said that the traditional structure of governance by tribe and the United States is based on the Indian's nonparticipation in state affairs and in our constitutional system in general.¹¹⁰ From this it can be reasoned that now the Indian, being a full-fledged citizen, should be treated the same as other persons, under state law and otherwise.¹¹¹ But this is basically the “termination” policy that would end the reservations and ignore and endanger the Indian ways of life.¹¹²

A final, and perhaps better, answer lies in cooperation between tribal and other governments. Inter-local cooperation has been called an unused resource at our command,¹¹³ and such cooperation is

available to tribes as well as cities, counties, and other units. It has, for instance, been suggested that where a non-Indian community grows on or near Indian land, there is an opportunity for both parts of the community to work toward solving mutual problems—to create planned communities, and to let each society learn from the other, while still allowing the Indians to retain their traditional stronghold.¹¹⁴ Metropolitan governments are much proposed and sometimes created for today's urban areas,¹¹⁵ and it has been suggested that even these may soon be outdated by increased need for regional planning.¹¹⁶ The old concept of home-rule as an ideal for the city or for any relatively small area is increasingly challenged as unsuited to efficiency and the present need for regional services.¹¹⁷ Even in the disposition of United States public lands, it is being recognized that the needs for comprehensive planning and zoning regulations must be satisfied before the land can be transferred.¹¹⁸

As with any proposals for a changed relationship between the reservation and the federal government, creation of a true metropolitan or regional government with control over Indian land would have to comply with appropriate federal legislation. Suggestions for cooperation on a more informal basis between existing tribal and local governments, and the establishment of planning activities within the tribes, can, however, clearly be accomplished under existing law.

This article has reviewed some current developments relating to state power as to Indian lands, and application of land-use controls to such land. It is submitted that the basic laws and underlying problems remain much the same as stated previously. The question of whether Public Law 280 will be found to give states and localities eventual powers to zone reservation land has not been finally answered. Even if state power exists under such legislation, there remains the need for cooperation with tribal authorities. If no such power exists, the need for tribal exercise of land controls is all the greater. It is suggested that the answer to zoning of reservations does not lie in mere assertion of lack of state power, although neither does it lie exclusively in the recognition of such power. It may lie in some of the proposals mentioned herein.

NOTES

1. Reynolds, *Zoning the Reservation—Village of Euclid Meets Agua Caliente*, 2 AM. INDIAN L. REV. 1 (No. 2, 1974) [hereinafter cited as Reynolds].
2. Momaday, *A First American Views His Land*, 150 NAT'L GEOGRAPHIC 13, 14 (1976). The land on which the power plant is built was leased from the Navajo Tribe.

3. Babcock, *Five Noted Thinkers Explore the Future*, 150 NAT'L GEOGRAPHIC 68, 70 (1976).
4. Note, *Zoning: A Rebuttal to "Village of Euclid Meets Agua Caliente"*, 4 AM. INDIAN L. REV. 141 (1976) [hereinafter cited as Note]. A somewhat similar pair of contrasting views is found in Comment, *Indian Law: The Pre-Emption Doctrine and Colonias de Santa Fe*, 13 NAT. RES. J. 535 (1973); Comment, *A Rebuttal to "The Pre-Emption Doctrine and Colonias de Santa Fe,"* 14 NAT. RES. J. 283 (1974).
5. See Sekaquaptewa, *The Legal Basis of Tribal Government*, in INDIANS OF ARIZONA 98-99 (T. Weaver ed. 1974) [hereinafter cited as Sekaquaptewa].
6. Worcester v. Georgia, 31 U.S. (6 Pet.) 515, 561 (1832). Cf. United States v. Kagama, 118 U.S. 375 (1886). See generally K. Johnson, *Sovereignty, Citizenship and the Indian*, 15 ARIZ. L. REV. 973 (1973) [hereinafter cited as K. Johnson].
7. See K. Johnson, *supra* note 6, at 973-74, which notes that this may be thought to involve an impossible contradiction, citing B. BAILYN, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* 223-29 (1967). But the United States theory of absolute home rule for municipalities has also been termed *imperium in imperio*. City of St. Louis v. Western Union Tel. Co., 149 U.S. 465, 468 (1833). See generally Vanlandingham, *Municipal Home Rule in the United States*, 10 WM. & MARY L. REV. 269 (1968).
8. K. Johnson, *supra* note 6, at 975.
9. *Id.*, quoting *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164, 172 (1973).
10. *Id.* at 987, which quotes as analogous the language of *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 318 (1936). Cf. O'Toole & Tureen, *State Power and the Passamaquoddy Tribe: "A Gross National Hypocrisy?"*, 23 MAINE L. REV. 1, 18-23 (1971).
11. See Crosse, *Criminal and Civil Jurisdiction in Indian Country*, 4 ARIZ. L. REV. 57, 58-62 (1962).
12. Comment, *A Rebuttal to "The Pre-Emption Doctrine and Colonias de Santa Fe,"* 14 NAT. RES. J. 283, 292 (1974).
13. See 25 U.S.C. § 564q (1963), part of the Klamath Termination Act. See generally *Crain v. First Nat'l Bank*, 324 F.2d 532 (9th Cir. 1963).
14. 18 U.S.C. § 1162 (1966) (basic provision on criminal jurisdiction); 28 U.S.C. § 1360 (1962) (basic provision on civil jurisdiction). The history of this legislation is well described in Note, *The Indian Bill of Rights and the Constitutional Status of Tribal Governments*, 82 HARV. L. REV. 1343 (1969), although the focus of this article is entirely on tribes that continue to exercise self-government. *Id.* at n.2. The original "mandatory" states, to which jurisdiction was granted without the need for exercise of state option, were California, Minnesota (with some territory excepted), Nebraska, Oregon (with some territory excepted), Wisconsin (with exceptions). Alaska was added by Act of Aug. 8, 1958, Pub. L. No. 86-615, § 2, 72 Stat. 545.
15. 25 U.S.C. §§ 1321-26 (1976 Supp.). See Reynolds, *supra* note 1, at 3.
16. 28 U.S.C. § 1360(c) (1962).
17. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 662 (9th Cir. 1975).
18. *Id.*
19. See Price, *Lawyers on the Reservation: Some Implications for the Legal Profession*, 1969 LAW & SOC. ORDER 161, 163 (1969).
20. D. Johnson, *State Taxation of Indians: Impact of the 1973 Supreme Court Decisions*, 2 AM. INDIAN L. REV. 1, 4 (No. 1, 1974) [hereinafter cited as D. Johnson].
21. See Note, *Indian Title: The Rights of American Natives in Lands They Have Occupied Since Time Immemorial*, 75 COLUM. L. REV. 655 (1975).

22. See *Metlakatla Indian Community v. Egan*, 369 U.S. 45, 56 (1962). But cf. Kane, *Jurisdiction over Indians and Indian Reservations*, 6 ARIZ. L. REV. 237, 239-40 (1965).
23. Reynolds, *supra* note 1, at 4-6.
24. *United States v. Mazurie*, 95 S.Ct. 710 (1975), noted 3 AM. INDIAN L. REV. 200 (1975).
25. *United States v. Mazurie*, 95 S. Ct. 710, 717-18 (1975).
26. *Fisher v. District Ct.*, 96 S. Ct. 943 (1976).
27. See *Sekaquaptewa*, *supra* note 5, at 99-100.
28. The Economic Opportunity Act of 1964, 42 U.S.C. §§ 2701-981 (1970), creating various federally financed social service programs, uses the term "community" to include Indian reservations as well as cities, towns, and other political subdivisions. 42 U.S.C. § 2790(c) (Supp. V 1970). See Comment, *Indian Legal Services Programs: The Key to Red Power*, 12 ARIZ. L. REV. 594 (1970). See also Note, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor*, 80 HARV. L. REV. 805 (1967).
- In Note, *The Indian: The Forgotten American*, 81 HARV. L. REV. 1818 (1968), the reservations are called "the purest examples of underdeveloped enclaves within American society." *Id.* at 1838.
29. *Sekaquaptewa*, *supra* note 5, at 99-100.
30. *Bryan v. Itasca County*, 96 S.Ct. 2102 (1976) (state and county without authority to levy personal property tax on property of reservation Indian).
31. See *D. Johnson*, *supra* note 20, at 18.
32. *Williams v. Lee*, 358 U.S. 217 (1959).
33. *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962).
34. See *Warren Trading Post Co. v. Arizona Tax Comm'n*, 380 U.S. 685 (1965), holding that Congress had broadly occupied the field of trading with Indians on reservations and that the states may not impose additional burdens on the traders or Indians.
35. *Id.* at 687 n.3, where it is said: "Certain state laws have been permitted to apply to activities on Indian reservations, where those laws are specifically authorized by acts of Congress, or where they clearly do not interfere with federal policies concerning the reservations."
36. See *Rice v. Olson*, 324 U.S. 786, 789 (1945).
37. Note, *Taxation: Limits of State Authority over Reservation Indians—The New Mexico Cases*, 3 AM. INDIAN L. REV. 479, 481 (1975).
38. See *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164 (1973); *Fox v. Bureau of Revenue*, 87 N.M. 261, 531 P.2d 1234 (1975). But cf. *Commission of Taxation v. Brun*, 286 Minn. 43, 174 N.W.2d 120 (1970). See generally Comment, *State Taxation of Indian Income*, 1971 L. & Soc. ORDER 355; Comment, *The Power of a State to Impose an Income Tax on Reservation Indians*, 6 WILLAMETTE L.J. 515 (1970). See also Comment, *Indian Taxation: Underlying Policies and Present Problems*, 59 CAL. L. REV. 1261 (1971).
39. *Moe v. Confederated Salish & Kootenai Tribes*, 96 S.Ct. 1634 (1976).
40. *Donahue v. California Justice Ct.*, 15 Cal. App. 3d 557, 93 Cal. Rptr. 310 (1st Dist. 1971), holding that the state of California has jurisdiction to prosecute persons not members of the Hoopa Tribe for violation of the state Fish and Game Code occurring on the Hoopa Reservation, but that permission to fish on the reservation from tribal authorities is a defense to any such charge. This would seem to allow the Indian tribe to transfer ownership of the exception to the law which they enjoy. See LEFCOE, AN INTRODUCTION TO AMERICAN LAND LAW 72-73 (1974).

41. *Montoya v. Bolack*, 70 N.M. 196, 372 P.2d 387 (1962). Cf. *Tenorio v. Tenorio*, 44 N.M. 89, 98 P.2d 838 (1940) (state jurisdiction in divorce cases can extend to reservation).

42. *Udall, Arizona's Public Lands—Mixed Blessing, Mixed Burden*, 8 ARIZ. L. REV. 11, 17-18 (1966).

43. *Id.*

44. Kane, *Jurisdiction over Indians and Indian Reservations*, 6 ARIZ. L. REV. 237, 244 (1965), stating, "In matters affecting Indians living within the reservation, when the state has not assumed civil jurisdiction pursuant to federal statute, state laws apply only to those Indians holding allotted lands under patents in fee unless the allotments were received through inheritance or devise or any part of the original allotment is retained. State laws do not apply to Indians living on tribal land or on lands within the reservation allotted to them but held in trust for them by the United States."

45. *Id.* at 253.

46. Kane, *The Negro and the Indian: A Comparison of Their Constitutional Rights*, 7 ARIZ. L. REV. 244, 250-51 (1966). Nebraska's legislature initially assumed criminal jurisdiction for the state, then returned jurisdiction (with limited exceptions) to the United States as authorized by the 1968 amendments to the federal legislation, 25 U.S.C. § 1323 (1976 Supp.). This retrocession was upheld in *United States v. Brown*, 334 F. Supp. 536 (D. Neb. 1971), as was the action of the Secretary of Interior in assuming criminal jurisdiction for the United States over one Nebraska reservation but not over another, although the legislature's action had pertained to both. Later, the legislature attempted to rescind the entire return of jurisdiction on the ground that the Secretary could not accept less than was offered. But the Secretary's action was again upheld. *Omaha Tribe v. Village of Walthill*, 334 F. Supp. 823 (D. Neb. 1971), *aff'd*, 460 F.2d 1327 (8th Cir. 1972). Utah has bound itself to retrocede its jurisdiction as to any tribe whenever a majority of such tribe so requests the governor. UTAH CODE ANN. § 63-36-15 (1973 Supp.).

47. K. Johnson, *supra* note 6, at 973. Cf. Davis, *Criminal Jurisdiction Over Indian Country in Arizona*, 1 ARIZ. L. REV. 62 (1959).

48. *Kennerly v. District Ct.*, 400 U.S. 423 (1971). Speaking of the now-required tribal vote, the Court suggests that the tribe might place time, geographic, or other conditions on their consent. *Id.* at 429.

49. See Sullivan, *State Civil Power Over Reservation Indians*, 33 MONT. L. REV. 291, 305 (1972), stating that under *Kennerly*, "courts should hold that states have no power to impose their civil laws on reservation Indians without an express Congressional grant of such power together with compliance with the terms, if any, of the grant." It is suggested that in those states having a disclaimer of jurisdiction over the Indians in the state constitution or enabling act, the same result could be achieved by strict construction of such disclaimer. *Id.* As to problems posed by such disclaimers, see Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A.L. REV. 535, 567-75 (1975). These disclaimers have sometimes been treated as referring only to proprietary, not governmental, matters. See Canby, *Civil Jurisdiction and the Indian Reservation*, 1973 UTAH L. REV. 206 (1973). The 1968 amendments to the federal legislation specifically authorize the states having disclaimers in their enabling acts (for admission to the Union) to amend their state constitutions or statutes, where necessary, to remove any legal impediment to jurisdiction over Indians. 25 U.S.C. § 1324 (1976 Supp.).

50. See Note, *Jurisdiction: Extension of State Authority over Indian Lands—The New Mexico Cases*, 3 AM. INDIAN L. REV. 137 (1975), noting *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962). Cf. *State Securities, Inc. v. Anderson*, 84 N.M.

629, 506 P.2d 786 (1973) (state has jurisdiction over Indians who reside on reservation as to contract entered into outside reservation).

51. See Note, *Jurisdiction*, *supra* note 50, at 145 n.42. Cf. Ransom & Gilstrap, *Indians—Civil Jurisdiction in New Mexico—State, Federal, and Tribal Courts*, 1 N.M.L. REV. 196 (1971).

52. See Francisco, *Land Is Still the Issue*, 10 TULSA L.J. 340, 360-61 (1975). This article proposes, as a national goal, a tribal land base for those tribes which now lack this but have maintained their tribal identity.

53. See *Arizona ex rel. Merrill v. Turtle*, 413 F.2d 683 (9th Cir. 1969), *cert. denied*, 396 U.S. 1003 (1970). Of course, Arizona has not assumed general jurisdiction under Public Law 280.

54. 25 U.S.C. § 231 (1963).

55. See Note, *Jurisdiction*, *supra* note 50, at 145 n.43.

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

57. Note, *Taxation: Limits of State Authority over Reservation Indians—The New Mexico Cases*, 3 AM. INDIAN L. REV. 479, 482 (1975).

58. Comment, *State Jurisdiction Over Indian Land Use: An Interpretation of the "Encumbrance" Savings Clause of Public Law 280*, 9 LAND & WATER L. REV. 421, 449-55 (1974). The author favors a broad interpretation of the word "encumbrance" in Public Law 280 so that states would be unable to zone reservation land, such action being considered to amount to state encumbrance of the land, as forbidden by the law.

59. See *Kennerly v. District Ct.*, 400 U.S. 423 (1971); *Crow Tribe v. Deenose*, 158 Mont. 25, 487 P.2d 1133 (1971).

60. Reynolds, *supra* note 1, at 8-9.

61. See *Caritan Grande Band of Mission Indians v. Helix Ind. Dist.*, 514 F.2d 465, 468 n.3 (1975).

62. *Rincon Band of Mission Indians v. County of San Diego*, 324 F. Supp. 371 (S.D. Cal. 1971).

63. *Rincon Band of Mission Indians v. County of San Diego*, 495 F.2d 1 (9th Cir. 1974), *cert. denied*, 419 U.S. 1008 (1974).

64. *Ricci v. County of Riverside*, 495 F.2d 1, at 6-8.

65. *Madrigal v. County of Riverside*, 495 F.2d 1, at 8-12.

66. *Norvell v. Sangre de Cristo Dev. Co.*, 372 F. Supp. 348 (D.N.M. 1974).

67. *Norvell v. Sangre de Cristo Dev. Co.*, 519 F.2d 370 (10th Cir. 1975).

68. *Caritan Grande Band of Mission Indians v. Helix Ind. Dist.*, 514 F.2d 465, 468 (9th Cir. 1975), holding that Public Law 280 did not require application of the California statute of limitations so as to bar the Indians' action for trespass to their reservation.

69. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655 (9th Cir. 1975). See Note, *supra* note 4, at 154-55.

70. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 662 (9th Cir. 1975).

71. *Id.* at 668. The suggestion that the civil portion of Public Law 280 may apply only to state-wide laws is also made by Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 582 (1975): "[T]he design of PL-280 in the criminal area and a larger sphere of action for tribal governments can be reconciled by interpreting the criminal jurisdiction conferred by PL-280 to extend to local ordinances while interpreting the civil provision to apply only to state laws. While this construction creates an unfortunate discrepancy between the scope of civil and criminal jurisdiction possessed by local governments, it

derives support from the language of PL-280; only the civil section contains the reference to state laws of general application.”

72. *Santa Rosa Band of Indians v. Kings County*, 532 F.2d 655, 669 (9th Cir. 1975).

73. 28 U.S.C. § 1360(b) (1970). See *Snohomish County v. Seattle Disposal Co.*, 70 Wash. 2d 668, 425 P.2d 22 (1967), *cert. denied*, 389 U.S. 1016 (1967).

74. *Your Food Stores v. Village of Espanola*, 68 N.M. 327, 361 P.2d 950 (1961).

75. *McClanahan v. Arizona Tax Comm'n*, 411 U.S. 164 (1973); *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973). Cf. *Bryan v. Itasca County*, 96 S.Ct. 2102 (1976) (state could not levy personal property tax on Indian's mobile home located on trust land). But cf. *Omaha Tribe of Indians v. Peters*, 382 F. Supp. 421 (D. Neb. 1974), *aff'd*, 516 F.2d 133 (8th Cir. 1975); *Agua Caliente Band of Mission Indians v. County of Riverside*, 442 F.2d 1184 (9th Cir. 1971).

Cases invalidating state action in nontax situations include *State ex rel. Merrill v. Turtle*, 413 F.2d 683 (9th Cir. 1969), *cert. den.*, 396 U.S. 1003 (1970) (state extradition on an Indian reservation); *Whyte v. District Ct.*, 140 Colo. 334, 346 P.2d 1012 (1959) (divorce action on reservation); *State ex rel. Adams v. Superior Ct.*, 57 Wash. 2d 181, 356 P.2d 985 (1960) (state declaration that Indian children on reservation were deprived).

76. See Note, *Prospecting Permits on Indian Lands: Who Benefits?*, 2 AM. INDIAN L. REV. 117 (No. 2 1974), describing the system under which Indian tribes may, but need not, lease tribal lands for mining purposes. The complaint has also been made that state enforcement of zoning and housing laws could hinder the economic development of the tribes. *Public Law 280 Status Report*, 5 CAL. INDIAN LEG. SERV. NEWSLETTER 11-16 (Sept., 1973). See generally Note, *supra* note 4, at 156-58.

77. See 25 U.S.C. § 415(a) (1963), as amended (1970), authorizing long-term leasing of Indian lands subject to the approval of the Secretary of Interior, and providing, by the 1970 amendment, that the Secretary, before approving any lease or extension thereof, should satisfy himself that adequate consideration has been given the relationship between the land to be leased and neighboring lands.

78. See *Sekaquaptewa*, *supra* note 5, at 108-109.

79. LEFCOE, AN INTRODUCTION TO AMERICAN LAND LAW 73 (1974).

80. Comment, *The Indian Stronghold and the Spread of Urban America*, 10 ARIZ. L. REV. 706, 715-16 (1968), noting that Indian communities have not been subject to state zoning and may have conflicting rules.

81. *Snohomish County v. Seattle Disposal Co.*, 389 U.S. 1016, 1019-20 (1967).

82. 43 U.S.C. § 666 (1970), passed in 1952 and often called “the McCarran Amendment.” This gave the United States’ consent to its being joined as a defendant in certain types of suits, including those for administration of water rights where the United States appears to be the owner of such rights, or in the process of acquiring them, and the United States is a necessary party to the suit.

83. *Colorado River Water Conservation Dist. v. United States*, 96 S.Ct. 1236 (1976) (sometimes called “the Akin case”).

84. *Id.* at 1244, citing 25 U.S.C. §§ 1321-22 (Supp. VI, 1976) and 28 U.S.C. § 1360 (1970).

85. See Comment, *Indian Law: The Pre-Emption Doctrine and Colonias de Santa Fe*, 13 NAT. RES. J. 535 (1973).

86. *Montoya v. Bolack*, 70 N.M. 196, 372 P.2d 387 (1962) (reservation Indian can vote in state election). Cf. *Harrison v. Laveen*, 67 Ariz. 337, 196 P.2d 456 (1948).

87. See UNITED STATES COMM’N ON INTERGOVERNMENTAL RELATIONS, A REPORT

TO THE PRESIDENT 226-32 (1955), saying that responsibility for initiation and administration of housing and urban renewal programs should rest with state and local governments.

88. See TUGWELL, *THE FOURTH POWER* 1-9 (1939).

89. ARIZ. REV. STAT. ANN. §§ 36-1801-865 (Supp. 1973). Cf. 1965 N.M. ATT'Y GEN. REP. 44, *reaffirmed*, 1970 N.M. ATT'Y GEN. REP. 8, stating that New Mexico could enforce its air pollution regulations against a non-Indian facility on reservation lands.

90. See Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 585-86 (1975), questioning the validity of such acceptance of jurisdiction both because of its limited nature and because Arizona has not repealed its disclaimer of jurisdiction over Indians.

91. *Department of Game v. Puyallup Tribe*, 414 U.S. 44, 49 (1973). Cf. *Puyallup Tribe v. Department of Game*, 391 U.S. 392 (1968); *Tulsa v. Washington*, 315 U.S. 681 (1942).

92. See Gilbert and Taylor, *Indian Land Questions*, 8 ARIZ. L. REV. 102, 130 (1966).

93. See Babcock, in *Five Noted Thinkers Explore the Future*, 150 NAT'L GEOGRAPHIC 68, 70 (1976): "People realize that we can no longer deal with environment solely at the municipal boundary: Land use determines the environment; it has to be dealt with on a more comprehensive level." The author suggests that states make the final decisions on large-scale developments and those having regional impact. *Id.* at 71.

94. See Lichtenstein, *Apache-Owned Inn Is Center of Legal Test Case in New Mexico*, Arizona Daily Star (Tucson), June 13, 1976, § C, at 11, reporting on an inn owned by the Mescalero Apache Indian Tribe on a reservation in New Mexico. The inn has been serving alcoholic beverages although it has no state license to do so, and this has provoked a suit by the state in federal court. The article reports that if the Indians win the case, they may try to set up gambling at the inn despite state laws against such activity.

95. Thus, a federal statute prohibiting the possession of gambling devices on reservations was applied in *United States v. Blackfeet Tribe*, 364 F. Supp. 192 (D. Mont. 1973), *aff'd on reh.*, 369 F. Supp. 562 (D. Mont. 1973) (tribal council exceeded authority in attempting to legalize possession of gambling equipment).

96. See Felshaw, *Law Is Difficult to Enforce on San Carlos Reservation*, Arizona Daily Star (Tucson), June 7, 1976, § B, at 1, reporting, "[O]ff-reservation criminals sometimes flee to safety to the reservation where they can't be touched by off-reservation policemen, unless they are non-Indians living on the reservation."

97. See Comment, *Indian Legal Services Programs: The Key to Red Power*, 12 ARIZ. L. REV. 594, 598 (1970).

98. Goldberg, *Public Law 280: The Limits of State Jurisdiction Over Reservation Indians*, 22 U.C.L.A. L. REV. 535, 588 (1975). The author notes, "The courts have not generally adopted the Indians' interpretation of the extent to which P.L. 280 authorizes states to regulate the use of reservation land. As Indian tribes have attempted to make their land more profitable by engaging in enterprises of their own or by leasing reservation lands to others, the impact of on-reservation activities has been felt increasingly off the reservation." *Id.* at 584-85. The author also suggests a possible distinction between laws regulating what may be done with land, and laws regulating what may be done inside structures on the land. *Id.* at 585.

99. *Id.* at 588.

100. Kane, *Jurisdiction over Indians and Indian Reservations*, 6 ARIZ. L. REV. 237, 255 (1965). Cf. Reynolds, *supra* note 1, at 10-11.

101. LEFCOE, AN INTRODUCTION TO AMERICAN LAND LAW 73 (1974).

102. M. PRICE, LAW AND THE AMERICAN INDIAN 673-74 (1973), recommending tribal exercise of the zoning power and predicting that otherwise, erosion of any such power will occur, especially in areas where the non-Indian community is affected by what occurs on tribal land.

103. See Sekaquaptewa, *supra* note 5, describing constitutions adopted by various tribes following the Indian Reorganization Act of 1934. On the powers and advantages of tribal courts over matters of special concern to the reservation, see Canby, *Civil Jurisdiction and the Indian Reservation*, 1973 UTAH L. REV. 206, 218 (1973).

It has been suggested that the main object of Public Law 280 was simply to extend state jurisdiction to those reservations not having adequate legal institutions of their own creation. See *Bryan v. Itasca County*, 96 S.Ct. 2102, 2111 n.13 (1976).

104. The differences between the way in which the Indian regards the importance of land and the way in which the non-Indian regards it are well stated in Momaday, *A First American Views His Land*, 150 NAT'L GEOGRAPHIC 13, 18 (1976).

105. See White, *This Land of Ours—How Are We Using It?*, 150 NAT'L GEOGRAPHIC 20, 53 (1976), noting efforts of a Crow Tribe in Montana to establish a land-use zoning code.

106. Comment, *The Indian Stronghold and the Spread of Urban America*, 10 ARIZ. L. REV. 706, 718 (1968), states, "The type of act available is limited only by Congressional imagination." An illustration is then given: Congressional action in 1966 giving long-term leasing authority to certain Arizona tribes, coupled with a requirement that any lessee covenant not to commit or permit on the land any act amounting to waste, nuisance, or a hazard to health or to other property. The state and certain of its political subdivisions are then allowed to sue in federal court to abate or enjoin violations of such covenants. *Id.*

107. See Udall, *Toward a National Land Use Policy for Urban America*, 12 ARIZ. L. REV. 733 (1970). The Udall proposal, which has not been passed, would still require heavy state involvement in the planning process. "Development and implementation of a statewide land use plan will require the creation of new governmental agencies in some states and the restructuring of existing institutions in others. The legislation sets forth certain minimal standards on environmental, recreational and industrial land use planning which the statewide plan will have to meet to qualify for continued grant-in-aid eligibility." *Id.* at 746.

108. *A National Land Use Policy*, S. 3345, 91st Cong., 2d Sess. § 401 (1970).

109. See Hodes, *The Illinois Constitution and Home Rule for Chicago*, 15 U. CHI. L. REV. 78 (1947) (urging city autonomy in relation to state). Cf. Fordham, *Decision-Making in Expanding American Urban Life*, 21 OHIO ST. L.J. 274, 279 (1960), noting the relative weakness of state government. See also McGoldrick, *The Cities Cannot Act Alone*, 37 NAT'L MUN. REV. 7 (1948), forecasting financial problems of cities and urging financial planning at state and federal level.

110. K. Johnson, *supra* note 6, at 988.

111. *Id.* at 1002.

112. See Strickland, *Friends and Enemies of the American Indian: An Essay Review on Native American Law and Public Policy*, 3 AM. INDIAN L. REV. 313 (1975). The author notes, "We, too, will be doomed to fail in formulating native law and policy if we ignore the strength and reality of Indian culture." *Id.* at 330.

113. Merrill, *Our Unrealized Resource—Intermunicipal Cooperation*, 23 OKLA. L. REV. 349 (1970). Cf. Comment, *Interlocal Cooperation: The Missouri Approach*, 33 MO. L. REV. 442 (1968).

114. Comment, *The Indian Stronghold and the Spread of Urban America*, 10 ARIZ. L. REV. 706, 723-24 (1968).

115. See Note, *The Urban County: A Study of New Approaches to Local Government in Metropolitan Areas*, 73 HARV. L. REV. 526, 582 (1960).

116. MEIER, *PLANNING FOR TOMORROW'S WORLD* 17, 23 (1956).

to be an "immediate need for a fair and just settlement of all claims by Natives and

117. UNITED STATES ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *METROPOLITAN AMERICA—CHALLENGE TO FEDERALISM* 123-24 (1966). See VALENTE, *LOCAL GOVERNMENT LAW* 117 (1975). Cf. Grad, *The State's Capacity to Respond to Urban Problems*, in *THE STATES AND THE URBAN CRISIS* 45-48 (American Assembly 1970), saying we may have reached the point where local home rule, rather than state interference, is becoming the greatest obstacle to efficient local government.

118. Stoddard & O'Callaghan, *Creative Federalism and the Retention or Disposition of Public Lands*, 8 ARIZ. L. REV. 37, 43 (1966).