A GEOGRAPHICAL-LEGAL ANALYSIS OF JURISDICTIONAL CONFLICTS ON INDIAN LANDS: A CASE STUDY OF INDIAN GAMING IN OKLAHOMA

By

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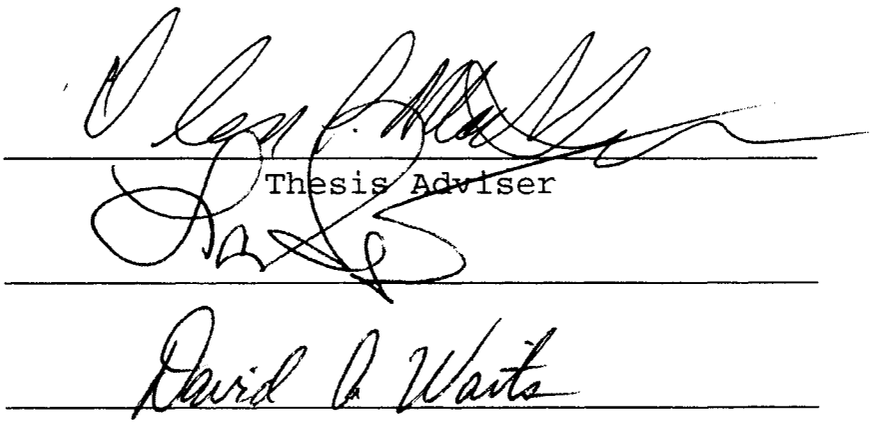

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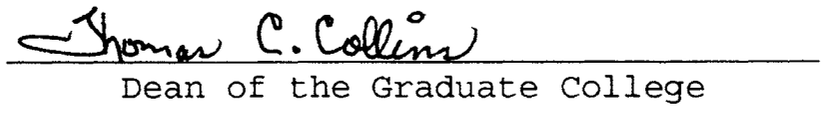

Dean of the Graduate College

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To all of the people in Oklahoma who made my life a little brighter and made me a little wiser, I thank you. I was very fortunate to have encountered such a wonderful mix of people and environment. The close-knit community of geographers at Oklahoma State University made it all worthwhile.

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CHAPTER I

INTRODUCTION

Concurrent jurisdiction between federal, state, and tribal governments is an inherent problem in Indian country. The nature of these conflicts and their resolution illustrates the overlap between law and geography. Jurisdiction is power over space and people. When more than one government entity has power over the same space, conflicts are inevitable. This thesis focuses on one of these conflicts, Indian gaming, and uses Oklahoma as a case study.

Geographers generally tend to look at problems from a spatial perspective or by examining the interface between humans and the environment. Geography reaps the knowledge of other disciplines and yet remains a separate discipline by virtue of place. The political and legal fields are distinguished by focusing on the interrelationship of government and people, but they also have a geographic aspect.

Three research approaches have been used in the overlap between law and geography: (a) legal-impact analysis, (b) legal-system analysis, and (c) legal research methodology for geographic issues (Gaile 1989, 130). In the overlap

between geography and politics, "geographic inquiry seeks to explain how polity affects the spatial arrangement of human settlements and impacts the interaction of various political places" (Sutton 1991, 4).

This geographic study examines jurisdictional conflicts on Indian land, a subject interesting to both the legal and political geographer. Territorial jurisdiction grants power to a sovereign entity over a designated area. The spatial structure of the state has long been a major theme in political geography with federalism being the most geographical of the constitutional arrangements (Dikshit 1975, 11). The political-spatial organization has important implications for inhabitants of an area (Taylor 1982, 7). In the hierarchy of authority, overlapping jurisdiction creates intergovernmental conflicts. The complex web of political/legal relations between Indian tribes and the federal and state governments is the core of this study.

Recent court decisions and the well-publicized plight of the Sioux Nation have forced the issue of jurisdictional conflicts between Indians and the federal government into the national spotlight (Hanson 1980, 459). The nature of the reservation, as a distinct political entity occupying space, is inherently geographic. The reservation is a unique feature on the landscape, differing significantly from its surroundings occupied by non-Indians (Sutton 1976, 281). The reservation is a separate governmental unit created by law. Reservations provide the land base which is

the source of spatial identity for the Indians. In addition, a reservation is easily identified by settlement and land-use patterns.

Purpose of the Study

Using a political-legal geography approach, the purpose of this research was to study and classify jurisdictional conflicts between Indians, the federal government, and the states. Indian country was the focus of these conflicts. A case study was used to present a microcosm of jurisdictional conflicts between tribal, federal, and state governments in Oklahoma. The issue of Indian gaming in Oklahoma was studied against the backdrop of Indian gaming across the country. Gaming facilities in Oklahoma were mapped and discussed in detail.

A full chapter was devoted to an analysis of Indian jurisdictional conflicts on a national scale. It discussed subject matter jurisdiction (civil, criminal, environmental, etc.) and the level of government (tribal, state, federal) responsible for jurisdiction. A conceptual model was generated to organize the various categories of conflict.

Chapter III focuses on Indian gaming. Case law, compacts, and regulations play an important role in this subtopic of jurisdictional conflicts. The short history of Indian gaming in the United States begins in 1981. An important Supreme Court decision, involving the Seminole

Tribe and the state of Florida in 1982, broke the field wide open for gambling operations on Indian land (Worsnop 1992, 391). In 1988, Congress sought to control these activities through the passage of the Indian Gaming Regulatory Act, which is currently in the process of being amended. This chapter explored the power that Indian tribes, the federal government, and the states possess over gaming enterprises on Indian land.

The emphasis in Chapter IV is on Oklahoma as a case study. This chapter examined how Oklahoma fits into the national puzzle. Does the state of Oklahoma differ from other states in the amount of control that can be exercised over its Native American population? If the answer was "yes," then specific examples were cited. Oklahoma was plugged into the conceptual model to determine what governmental entity has jurisdiction when conflicts arise.

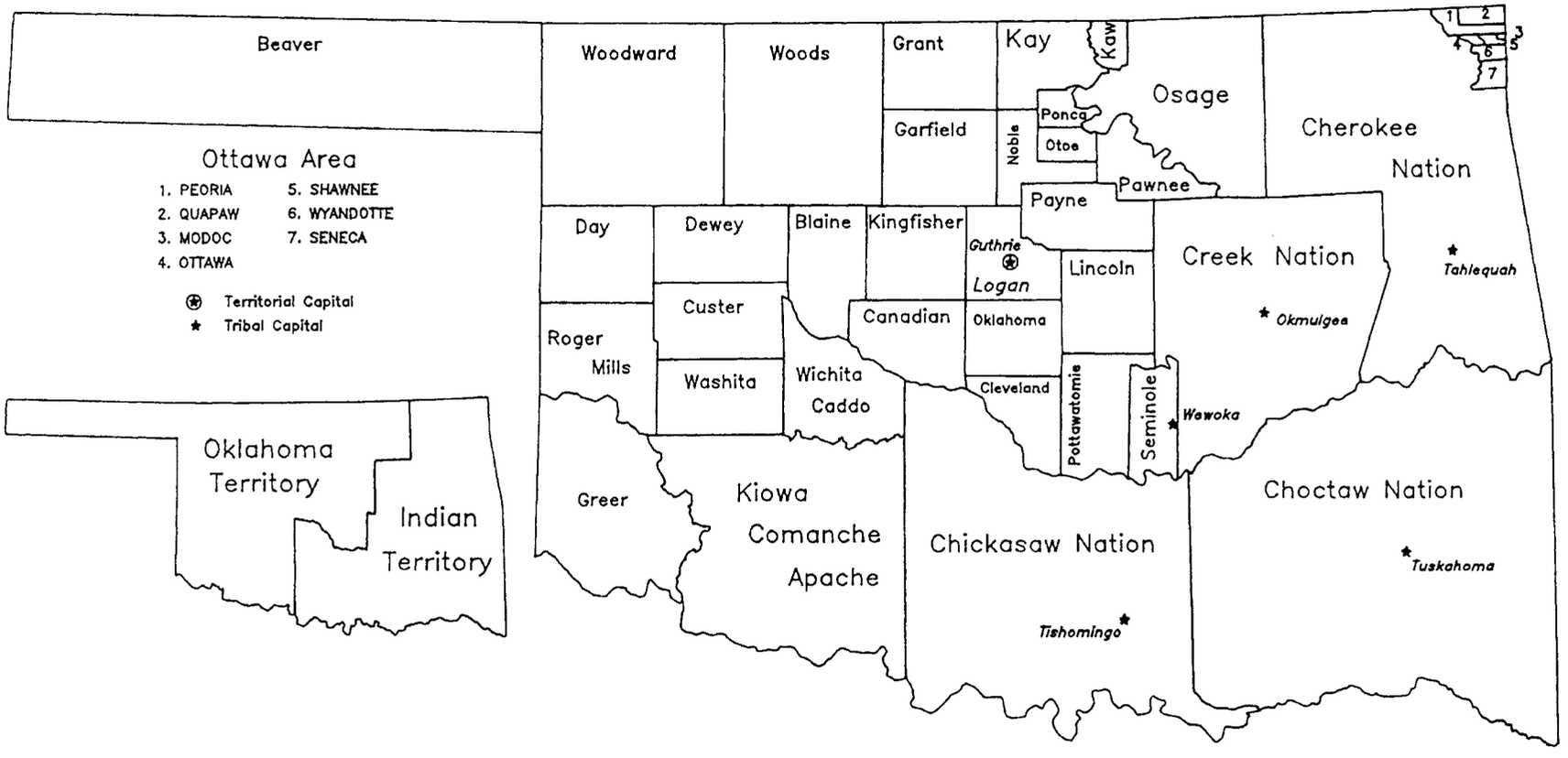
Within the same chapter, Indian gaming in Oklahoma was analyzed from several angles. The selected form of gambling was bingo. Compacts, laws, and regulations made by the state government and the various Indian tribes control the nature of Indian gaming. Location was dependent on Indian land ownership. Land records and title documents provided information on the status of the land. The status of Indian land in Oklahoma was noteworthy, because all of the reservations have been terminated.

Two federal agencies have overlapping responsibility for land titles and records in Oklahoma. The Bureau of Land

Management (BLM) has a series of maps depicting surface management status. However, the project has not been completed for the entire state on the scale of 1:100,000. The BLM office in Tulsa also holds master title plats for the state. The Bureau of Indian Affairs (BIA) is the other federal agency in charge. Within Oklahoma, there are two service areas, Anadarko and Muskogee. The office in Anadarko provides information for Indian land located under the jurisdiction of the Anadarko Area Office and under the Miami Agency of the Muskogee Area Office. The Muskogee Area Office provides records and limited title information for all Indian land of the Five Civilized Tribes, which are the Seminole, Cherokee, Choctaw, Chickasaw, and Creek Indian tribes. The significance of the two offices probably corresponds to the point in time when the state was divided into two territories, Oklahoma and Indian, before statehood, as shown in Figure 1.

There were four objectives for this study. The first objective was to develop a general classification scheme for jurisdictional conflicts between Indian tribes, the federal government, and the states. The scheme was based on subject matter and level of government. A conceptual model aided in understanding conflict resolution. The model was generic, based on a national scale to include all Indian tribes and the states they inhabit.

The second objective was to apply the above classification scheme to Oklahoma. Is Oklahoma on the same



Source: Atlas of Oklahoma 1991 and History of Oklahoma 1925

Figure 1. Indian and Oklahoma Territories 1907

level as other states? Are there exceptions tied into Oklahoma's early beginnings as Indian Territory? One would expect some variation, because California, for example, has distinct reservations of land while Oklahoma has none.

The third objective was to develop a typology of the title status of Indian lands in Oklahoma in lieu of reservations. This section may be reduced to a list of the types that are possible or available.

The above typology was merged with the fourth objective, which was to tie Indian gaming to land status in Oklahoma. The location of bingo halls were analyzed to determine patterns or anomalies in the status of the land. None of the objectives can be completely separated from the others. They all contain similar elements and processes.

Four hypotheses were developed to coincide with the objectives. First, when a jurisdictional issue arises, the majority of the cases fall under federal or tribal jurisdiction. The states are generally predisposed to submit to federal rules when a conflict arises between the three levels of government. Second, Oklahoma is an exception to the classification scheme, because there are no reservations in Oklahoma. The solutions to jurisdictional conflicts between Indian tribes and the state of Oklahoma differ from other states. Third, the majority of the Indian lands in Oklahoma is allotted and owned by Indians as private citizens. It is initially assumed that land status is relevant to the issue of Indian gaming. Fourth, the

Indian bingo halls are located on tribal land. In the conclusion of this study, each of these hypotheses will be addressed and validated or discarded.

Methodology

This section incorporates two primary courses of study. I used legal research and land records to facilitate the project. In this section, I applied the three research approaches that classify the overlap between law and geography. Legal-research methodology was incorporated to look at jurisdiction--a political geographic problem. Secondly, legal-system analysis showed how jurisdictional conflicts are linked. Finally, legal-impact analysis uncovered the actual effect that the legal system has had on the distribution of Indian gambling in Oklahoma. The research was conducted in the Edmon Low Library on the Oklahoma State University campus and at the University of Oklahoma Law Library in Norman, Oklahoma. Specifically, the Native Peoples Collection is housed in the Law Library. The University of Oklahoma is noted for its American Indian Law program.

The other research involves land records. The purpose was to analyze master title plats and land records corresponding to desired bingo hall locations in the state of Oklahoma. According to W. Frank Meek, "status" means the availability of the land for public distribution or sale.

The status records were located in tract books which summarize the various actions which have taken place on specific lands over the years (Meek 1971, 184). The tract books are kept by the Bureau of Land Management in Tulsa, Oklahoma. This office also contains master title plats which show survey and ownership patterns.

In Oklahoma, the Bureau of Indian Affairs is also responsible for the maintenance of land records and title documents. As previously mentioned, there are two offices that act as service areas for the state. They are located in Anadarko and Muskogee. In order to ascertain the needed documents and maps, visits to both offices were important. The research was performed on the premises, as copies were unavailable.

Before either office was visited, some preliminary work was completed. As listed in the 1993 Oklahoma Vacation Guide, each of the Indian bingo halls was recorded by the section, township, and range number. This step was necessary to determine which master title plat to consult. The Guide listed 29 bingo halls with addresses. The Oklahoma State University library contained USGS quadrangle series maps for the entire state. The quads contained the needed information, as they were based on the United States Public Land Survey. Based on the results from the legal research, it was unnecessary to complete a detailed land status evaluation.

Some form of verification was necessary to determine if

each of the bingo halls is currently in operation. Telephone and on-site visits were conducted.

Literature Review

Recent developments in Indian affairs have brought national attention to jurisdictional conflicts. As a result, the popular literature is filled with articles to keep the general public informed. For this study, it was important to delve deeper into substantial publications in the field. Two vital experts in complementary fields have written books that provide a solid foundation for the study of Indian jurisdictional conflicts. Felix Cohen was the "Blackstone of American Indian law" (Cohen 1982, viii). Imre Sutton is a professor of geography whose research interest is Indian land tenure. An understanding of the works produced by these two scholars will build the framework for this study.

Felix Cohen is widely recognized in the field of Indian law. The 1942 edition of the Handbook of Federal Indian Law is his most enduring contribution (Cohen 1982, viii). Several updated editions have been published to meet the need for accurate and current information on Indian law. Cohen defines Indian law as "the body of jurisprudence created by treaties, statutes, executive orders, court decisions, and administrative actions defining and implementing the relationship among the United States,

Indian tribes and individuals, and the states" (Cohen 1982, 1). After a brief overview of the history of governmental policy toward the Indians, Cohen breaks down the source and scope of authority in Indian affairs to federal, state, and tribal powers. At that point, the Handbook is broken down into several important topics. Cohen devoted a whole chapter to jurisdiction. The other subjects, which will play a vital role in the conceptual model of this study, are taxation, hunting and fishing rights, tribal and individual property, and water rights. The book even treats Oklahoma as a "special group".

Jurisdiction over Indian matters is a function of the location of events, the race of the parties, and the subject matter of the case (Cohen 1982, 281). In a discussion of jurisdiction, one cannot proceed without introducing the geographic area known as "Indian country." It is defined in 18 U.S.C. Sec. 1151, enacted in 1948. In summary, it contains (a) Indian reservations, (b) dependent Indian communities, and (c) Indian allotments. In the early days, Indian Country could be designated on a map with some accuracy. Today, the definition of Indian country is so dynamic that it cannot be marked out so easily on a map. The Supreme Court generally applies the statutory definition to questions of federal civil jurisdiction and to tribal jurisdiction.

Only two choices exist for the location of events concerning jurisdiction over Indian matters. They are

Indian country and non-Indian land. The race of the parties is either Indian or non-Indian. Cohen defines "Indian" as a person meeting two qualifications: (a) that some of the individual's ancestors lived in what is now the United States before its discovery by Europeans, and (b) that the individual is recognized as an Indian by his or her tribe or community (Cohen 1982, 20). Much of the subject matter of Indian affairs relates to the rights and conditions of tribes and individual Indians. A sampling includes taxation, land tenure, health, religion, and gambling. All of this information and more is carefully explained in the Handbook. Felix Cohen's Handbook of Federal Indian Law will provide the legal basis for this study of jurisdictional conflicts. Specific statements of laws and policies concerning Indian matters will follow in the chapter related to conflicts on the national scale.

In the foreword of one of Imre Sutton's books, Wilcomb E. Washburn states that "no student who wishes to examine the relationship of the Indian and the land can ignore the pathways that Professor Sutton has laid out" (Sutton 1975, vii). Indeed, this study will carefully incorporate the ground-breaking work already completed by him. Imre Sutton is a professor of geography at California State University, Fullerton. His works, two in particular, will provide the geographical basis for this study.

Indian Land Tenure by Imre Sutton will be considered first. This book is designed as a bibliographical guide to

the literature on Indian land tenure. Sutton developed a typology around the concept of change in Indian land status. Expressing man-land relationships, the typology is organized into three sets: (a) autonomy and self-determination; (b) dispossession and termination; and (c) protection and reservation (Sutton 1975, 13). The first set includes the aboriginal past, territoriality, linguistics, and ecology. The second set involves the history of the acquisition of Indian land. This set describes motivations and frauds in the cession of land and Indian-white relations. The dispossession and termination set is the most important to this study, because it encompasses the administration of Indian land law, especially in terms of jurisdiction (Sutton 1975, 14). A major concern has been expressed over federal laws that permit states to assume civil and criminal jurisdiction over Indian country. In this third set, Sutton also makes considerable reference to Cohen's Handbook.

In the chapter titled "Tenure and Jurisdiction," Sutton begins with a discussion of the Indian reservation as a political-geographical place (Sutton 1975, 149). Local citizens do not understand the reasons behind a separate collection of laws governing reservations. They cannot conceive the idea that a reservation constitutes a separate political entity from the state in which it lies. The reservation may not be subject to the state's jurisdiction, but the local citizens surrounding the Indian land, often adjacent property, must obey state law. "Separation has

been fostered by the desire to retain a traditional culture" (Sutton 1975, 151). These problems all date back to the time when reservations were opened for white settlement on surplus lands. Today, they have manifested into a complex jurisdictional problem involving federal, tribal, and state governments.

Within the same chapter, Sutton discusses tribal autonomy, taxation, treaty rights, and mining. Some of these topics will be useful in the development of the conceptual model for this study.

A more timely publication by Professor Sutton has the greatest bearing on this paper. In "Preface to Indian Country: Geography and Law," Sutton focuses on the intricate political relationships within Indian country in a geographical manner. He breaks down Indian country into three separate, yet complementary, aspects. The legal/proprietal view examines the current definition of Indian country and the course of civil case law over the past 50 years. This view is based on reservations, allotments in trust and fee, and the presence of non-Indians within the bounds of the reservation. In an allotment in trust, ownership is retained by the federal government (Pevar 1983, 16). An allotment in fee is owned by an Indian subject to a restriction on alienation in favor of the United States (Cohen 1982, 615). The public domain allotment was carved out of the former reservation to allow Indians to become homesteaders. Non-Indians could also

settle on the public domain. Sutton graphically illustrates the spatial interaction between tribes and non-Indians by showing towns, non-Indian lands, allotments, and tribal headquarters within the geographic boundary of the Indian reservation. Figure 2 depicts the reservation containing Indian and non-Indian parcels of land within its borders. Towns have also sprung up on Indian reservations (Sutton 1991, 9).

The second aspect describes an ethnohistorical view of Indian country. This view identifies the "treaty past" and the tribal retention of original territory. When the tribes entered into treaties, they reserved land and rights of inherent sovereignty. Treaties have recognized the rights of tribes to use traditional hunting and fishing lands and have access to sacred sites. These rights are vital to maintain the Indians' cultural way of life. This view includes ceded lands, which are still subject to hunting and fishing rights, sacred sites, and the current Indian reservation, which is located within the previously claimed area (Sutton 1991, 13). Figure 3 illustrates the dissection of the former tribal land base into public and private land with the diminished reservation. Private Land 1 is not subject to traditional hunting and fishing rights. However, Private Land 2 and Public Land are subject to traditional rights as stated in the treaties. The tribes also claim exclusive use and access to all sacred sites within or outside the reservation.

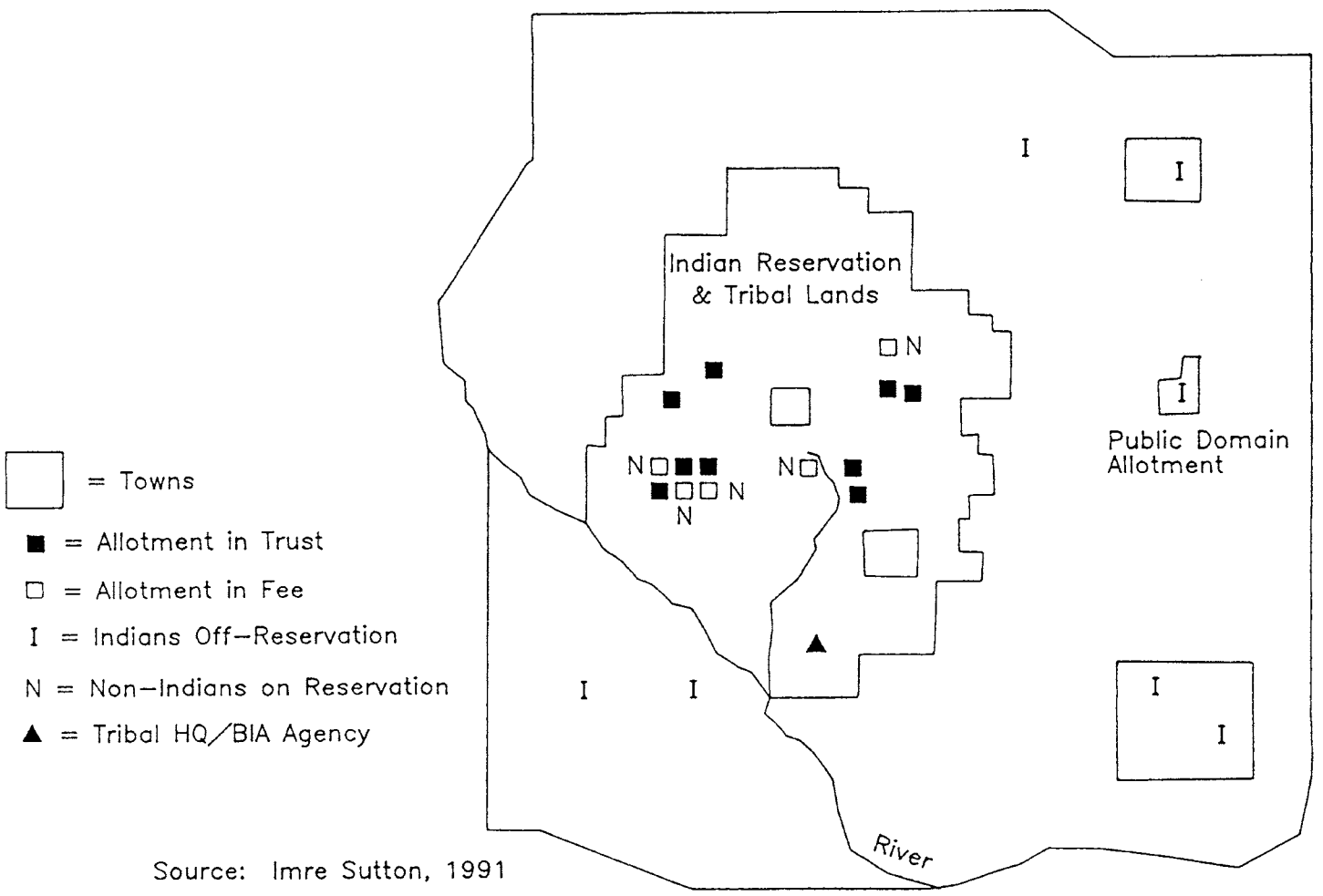


Figure 2. Legal/Proprietal View of Indian Country

The third aspect of Indian country had a direct impact on this study. The political-geographical view discusses jurisdictional conflicts resulting from the policy of land allotment. The process of allotment opened up Indian lands for settlement by non-Indians, stirring up questions of which government had jurisdiction. Although case law has helped to sort out this issue, it has not clarified the geographic extent of Indian country in all situations. In a political-geographical context, it is important to differentiate between legal and social space. According to Sutton, "the reservation represents a haven in a political/legal sense where the locus of Indian culture is identified with the legal space, but it also makes possible the utilization of social space that corresponds with Indian country" (Sutton 1991, 22). Figure 4 shows the possible sources of conflict related to Indian country. Police powers, exercised by the state, include law and order, taxation, and zoning. Jurisidiction becomes clouded when non-Indians reside on the reservation or Indians settle in an area diminished by the allotment acts.

In the literature, the geography-law connection can best be illustrated by Olen Paul Matthews, a geographer and lawyer. Geographers must be concerned with the impact that laws have through changes in the landscape (Matthews 1984, 11). Matthews has looked at jurisdictional conflicts in creating a spatial classification of transboundary resource issues (Matthews 1988, 7). The classification scheme can be

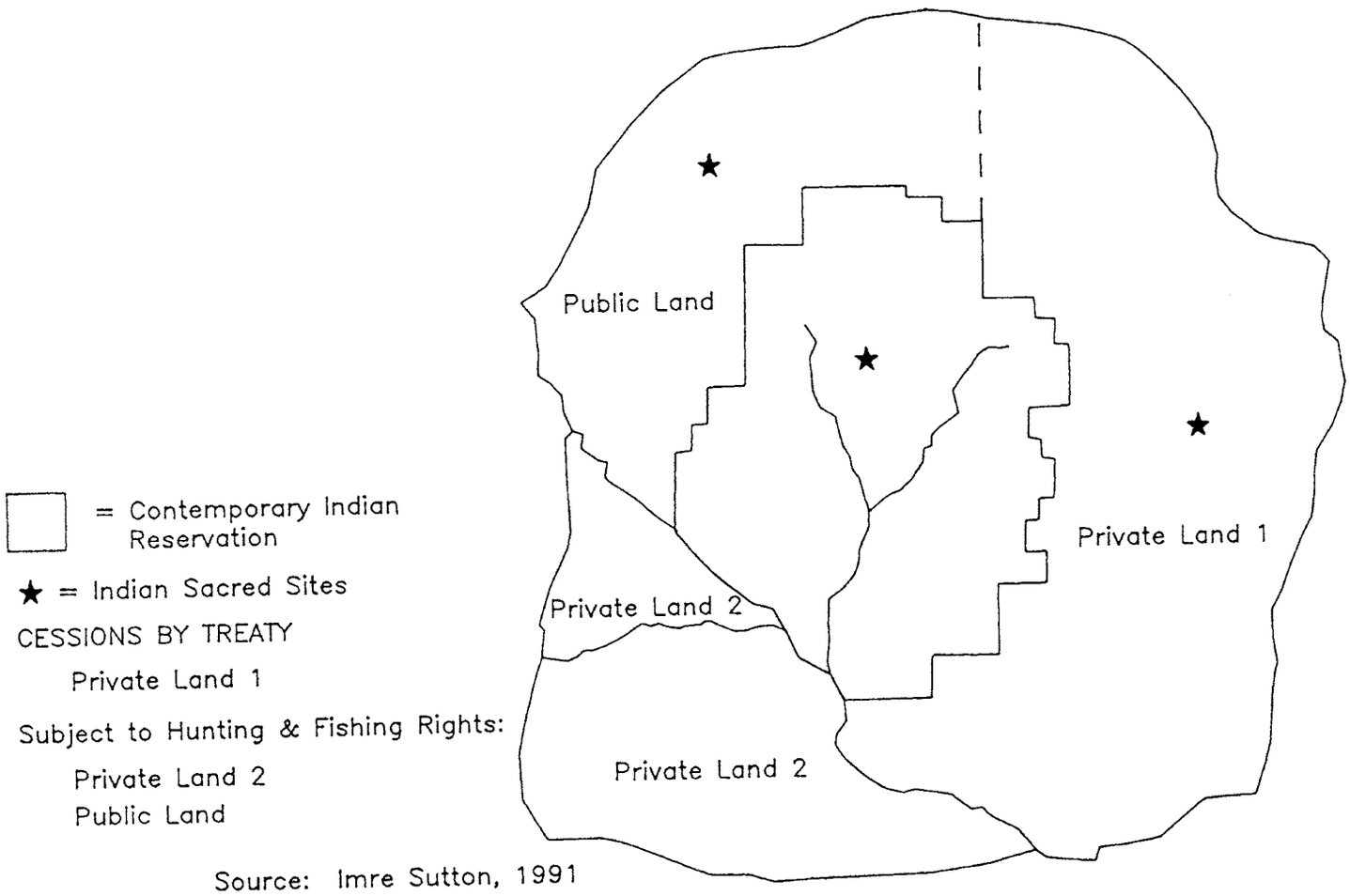
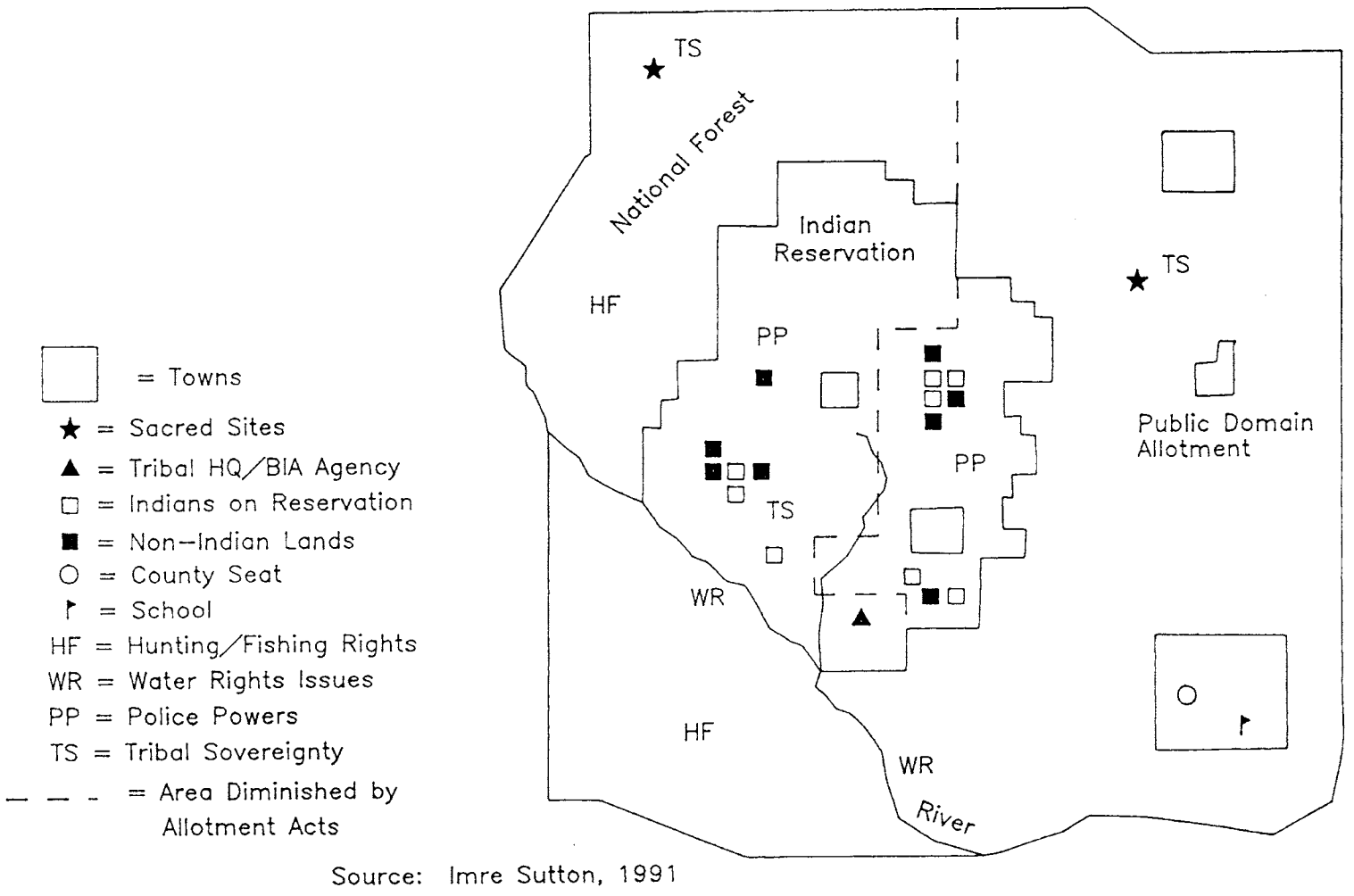


Figure 3. Ethnohistorical View of Indian Country



Source: Imre Sutton, 1991

Figure 4. Political/Geographical View of Indian Country

found in a detailed format in Matthews' book, Water Resources, Geography & Law.

The remainder of the literature reviewed is discussed in greater detail in the appropriate chapters of this study. To elaborate on them now would create a duplication of material. The bulk of the articles pertain to jurisdictional conflicts between Indians, the federal government, and the states on a national scale, including Indian gaming. Felix Cohen's Handbook will be referred to in the special section on Oklahoma.

CHAPTER II

JURISDICTIONAL CONFLICTS ON INDIAN LAND

Jurisdictional conflicts in Indian country are tied to inaccurate perceptions held by non-Indians. Non-Indian neighbors often find it difficult to understand why Indians on reservations are immune from the same state laws that bind them. Issues include license plates, smoke shops, gaming, and taxes. The reservation is a unique geographical entity lying within the boundaries of a state, yet bound by a different set of rules. A specific body of federal law was created to regulate Indians living in Indian country. According to Felix Cohen, foremost authority in the field, Indian law refers to "the body of jurisprudence created by treaties, statutes, executive orders, court decisions, and administrative action defining and implementing the relationship among the United States, Indian tribes and individuals, and the states" (Cohen 1982, 1). Jurisdictional conflicts involve a very real and intense struggle for power that is political at its base. Indians see control over tribal matters as an essential force necessary to preserve a geographic core and cultural way of life.

Before beginning a discourse of jurisdictional conflicts, it is important to determine the exact meaning of "jurisdiction." The word implies some abstract idea of power to enforce laws. According to Barron's Law Dictionary, "territorial jurisdiction" means "the territory over which a government or subdivision thereof has jurisdiction; relating to a tribunal's power with regard to the territory within which it is to be exercised, and connotes power over property and persons within such territory" (Gifis 1991, 489). Jurisdiction over people without regard to territory can occur as when a country asserts jurisdiction over its citizens abroad. Courts also use the term in deciding whether they have power over specified subject matter or persons. Jurisdiction over Indian matters has all three of these elements: geographic area (territory), subject matter, and persons (Sutton 1991, 317). The geographic area is called Indian country. The subject matter will focus on criminal and civil jurisdiction. The persons over whom jurisdiction extends will be divided into Indians and non-Indians. The central issue in Indian law revolves around who governs the land, the resources, and the people.

The term "Indian country" stems from the popular designations of the lands beyond the frontier as the unknown, populated by tribes and bands of Indians who rejected contact with "civilized" people (Sutton 1991, 10). However, the concept has transcended mere geographical

designations and now represents that locus in which Indian traditions and federal laws have supremacy. A definition of Indian country was adopted in 1948, 18 U.S.C. Sec. 1151. The definition is as follows:

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

Some terms used in this definition may need clarification. Under Section 1151a, all lands within the boundaries of a reservation are Indian country. These lands may be owned by a non-Indian, illustrated by the checkerboard appearance of many reservations. In addition, the rights-of-way may include federal or state highways and utility lines. Section 1151b incorporates "dependent Indian communities." A dependent Indian community is any area of land set aside for the use, occupancy, or benefit of Indians, and it does not have to be located within a reservation (Pevar 1983, 15). Tribal housing projects on federal land are a prime example of dependent communities.

Section 1151c extends the definition to Indian allotments. These allotments may be "trust" and

"restricted" allotments of former reservation land, currently located within or outside reservation boundaries. A "trust" allotment is federal land which has been set aside for the exclusive use of an Indian. A "restricted" allotment is comprised of land for which federal approval must be granted before it can be sold, leased, or mortgaged (Pevar 1983, 16).

While the Indian Country Statute was an attempt to provide a clear and concise definition, it is not representative of all Indian lands nor is it to be applied universally. The Oklahoma Indian Welfare Act of 1936 created another category to be included in Indian country. Under the Act, the Secretary of the Interior is authorized to acquire "any interest in lands, water rights, or surface rights to lands, within or without existing Indian reservations, including trust or otherwise restricted lands now in Indian ownership" (25 U.S.C. Sec. 501). The Indian Country Statute does not provide for "acquired" Indian lands.

The Indian Gaming Regulatory Act, to be discussed later, does not refer to the 1948 definition. This Act implements a condensed definition of Indian country. IGRA employs the term "Indian lands", and it only covers reservations and trust land. Provisions exist to expand the definition to include "acquired" Indian lands as explained previously. For a detailed discussion, refer to Chapter III.

Although Section 1151 is included in a criminal statute, the Supreme Court found that it applies as well to questions of civil jurisdiction (Getches 1979, 348). If the land has been set apart for the use and occupancy of Indians, then it will remain so until terminated by Congress. In summary, the geographical area for this study includes Indian reservations, dependent Indian communities, and Indian allotments, which can collectively be termed Indian country.

The subject matter over which federal, state, and tribal jurisdiction extends can be subdivided many ways. For the purposes of this study, this chapter will limit the subjects to criminal and civil jurisdiction.

Law enforcement in Indian country is complicated and inefficient. Federal, tribal, and state governments all have a certain amount of authority to prohibit criminal conduct. Each of these governments exercise criminal jurisdiction within its boundaries by enacting laws that prohibit such actions and by punishing those who violate them. In order to determine who has jurisdiction, one must consider the magnitude of the crime, the perpetrator and the victim, and whether there are any statutes ceding jurisdiction from one sovereign to another. It is important to remember that Indian tribes were once independent sovereign nations that still retain the authority to govern their own affairs (Getches 1979, 359). This authority can be limited by Congress which can abolish all tribal powers,

including criminal jurisdiction. Congress has the ultimate power to determine which government can exercise criminal jurisdiction in Indian country. In the absence of specifically designated power granted by Congress, a state government may not exercise criminal jurisdiction over reservation Indians (Pevar 1983, 118).

Figure 5 is modified from an article written by Imre Sutton (Sutton 1976, 290). In seven states, federal jurisdiction is exclusive over all Indian reservations. The category "Part Federal(1)" refers to concurrently or partially federal jurisdiction that is pursuant to Public Law 280 or to the Civil Rights Act of 1968. "All" or "some" corresponds to the number of reservations that satisfy the category. "Part Federal(2)" refers to concurrently or partially federal jurisdiction that is pursuant to other laws. Oklahoma is an important member of this group. The other laws that apply to jurisdiction in this state will be studied in Chapter IV. The last category covers states that have jurisdiction over all reservations within their borders. Texas, South Carolina, Virginia, Pennsylvania, Connecticut, and Massachusetts fall into this group. The states without any pattern (white) did not have any Indian reservations at the time of map design. That situation has changed only marginally since the 1970's (Sutton 1994).

In matters of internal self-government within tribal territory, tribal governments have exclusive, residual powers. Unless these tribal powers have been limited by

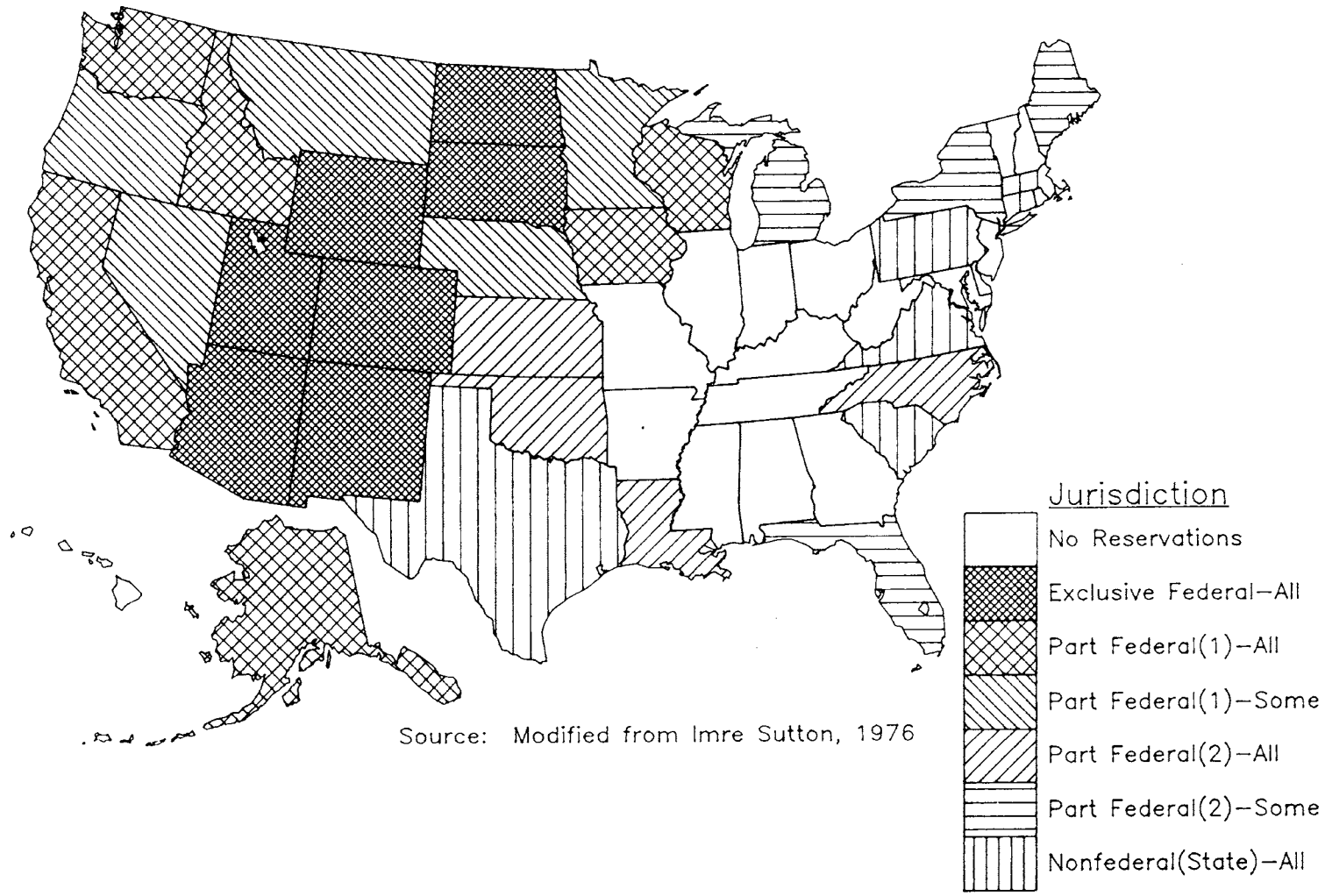


Figure 5. Jurisdiction of Indian Country by State

federal treaties, agreements, or statutes, federal and state powers are inapplicable. One of the inherent powers of self-government is in the administration of justice.

Criminal Jurisdiction

The presumption of tribal jurisdiction in criminal matters has its roots in the case of Ex Parte Crow Dog (1883). In this case, the Supreme Court recognized the exclusive criminal jurisdiction over tribal members as an inherent trait of tribal sovereignty (Cohen 1982, 236). Crow Dog, a Sioux warrior, killed a fellow Sioux, Spotted Tail, in Indian country. Sioux tribal law required Crow Dog to support Spotted Tail's dependent relatives. A federal prosecution of the murder was then undertaken by the First District Court of Dakota. He was found guilty of murder and sentenced to death, to be executed on January 14, 1884. Crow Dog's attorney claimed that his client was not punishable by the laws of the United States or Dakota Territory. The attorney argued that Crow Dog was governed in his relations with other reservation Indians solely by tribal law and was only responsible to tribal authorities. The federal government claimed jurisdiction through the wording of the treaty of 1868 with the Sioux Indians.

The Supreme Court held that "the pledge to secure to these people...that among the arts of civilized life...was the highest and best of all that of self-government, the

regulation by themselves of their own domestic affairs, the maintenance of order and peace among their own members by the administration of their own laws and customs" (Cohen 1982, 236). The Court relied upon the fact that Congress had not implied any intent to limit Indian self-government. Therefore, neither federal nor territorial courts had jurisdiction to try an Indian for the murder of another Indian in Indian country.

However, the Supreme Court in Oliphant v. Suquamish Indian Tribe (1978), held that by submitting to the "overriding sovereignty of the United States," the Indian tribes do not have criminal jurisdiction over non-Indians inside their borders (Sutton 1991, 17). Congress must expressly grant this power to an Indian tribe before it can be exercised.

Federal jurisdiction in criminal matters can be traced back to the submission of Indian tribes to the power of the United States. The legal source of power is derived from the Constitution through the Commerce Clause and the Treaty Clause. By virtue of treaties and congressional acts, the United States entered into a guardian-ward relationship with the Indian tribes. The federal government had an obligation to aid the Indian in coping with a civilization which has altered the Indian's traditional way of life (Getches 1979, 184). The federal courts have a long history of special jurisdiction over crimes in Indian country. The three most important statutes regarding federal jurisdiction are the

General Crimes Act, the Major Crimes Act, and Public Law 280.

The General Crimes Act of 1834, also known as the Indian Country Crimes Act, applies federal criminal laws to Indian country. The statute covers crimes committed by non-Indians against Indians and crimes by Indians against non-Indians. This statute is a culmination of laws enacted between 1778 and 1871. The "general laws" of the Act refer to the offenses of arson, assaults, maiming, larceny, receiving stolen property, false pretenses/fraud on the high seas, murder, manslaughter, attempted homicide, kidnapping, rape, and robbery (Cohen 1982, 288). There are two exceptions to the Act. First, it omits offenses committed by one Indian against the person or property of another Indian. Second, it exempts from prosecution any Indian committing any offense in Indian country who has been punished by the local law of the tribe (Getches 1979, 366). The second exception allows concurrent jurisdiction by tribal and federal courts.

The Major Crimes Act of 1885 was passed by Congress within two years of the Crow Dog decision. Congress was displeased that the Supreme Court had denied the federal government jurisdiction over the crime. Also known as the Indian Major Crimes Act, it originally provided for federal jurisdiction over seven enumerated crimes, which has now been amended to cover 14 crimes. The Act does not grant state jurisdiction. The Statute reads:

> Any Indian who commits against the person or property of another Indian or other person any of the following offenses, namely, murder, manslaughter, kidnapping, rape, carnal knowledge of any female, not his wife, who has not attained the age of 16 years, assault with intent to commit rape, incest, assault with intent to commit murder, assault with a dangerous weapon, assault resulting in serious bodily injury, arson, burglary, robbery, and larceny within the Indian country, shall be subject to the same laws and penalties as all other persons committing any of the above offenses, within the exclusive jurisdiction of the United States (18 U.S.C. Sec. 1153).

As a function of the guardianship role, Congress extended federal criminal laws over Indian country through this piece of legislation. This Act only applies when the offender is an Indian. The victim can be an Indian or "other person." Legislative history indicates that this phrase was added to appease a member of the House of Representatives (Congressional Record 1885, 934). The offenses listed above are defined in the federal criminal code, except for burglary and incest. These two offenses are defined by reference to the laws of the state in which they are committed. This Act is applied mostly to serious crimes over which the tribes cannot adequately punish. It was enacted to ease the burden and confusion of law enforcement in Indian country.

The passage of Public Law 83-280 in 1953 had an enormous impact on the jurisdiction debate. It is important to remember the intent of Congress in this period. Congress

was entering the "termination era," seeking to assimilate Indians into white culture and to terminate the trust relationship. P.L. 280 "primarily" extended state criminal jurisdiction to specified areas of Indian lands where tribes were not adequately organized to provide the needed protection (Kading 1992, 320). The Act gives five states complete criminal and some civil jurisdiction over Indian reservations located within the state. The five "mandatory" states are California, Minnesota, Nebraska, Oregon, and Wisconsin. Congress added Alaska to the list in 1958. In addition, all other states were given the option of assuming the same jurisdiction as the mandatory states. There are two sets option states, divided into those with disclaimer clauses in their constitutions and those without clauses (Pevar 1983, 102). Disclaimer states had to amend their constitutions to assume jurisdiction. The others were authorized to assume jurisdiction by an affirmative legislative action which would obligate and bind the state. Only 10 of the option states took steps to assume partial jurisdiction under P.L. 280. These 10 states were Arizona, Utah, Washington, Florida, Idaho, Iowa, Montana, Nevada, and North and South Dakota. See Figure 6. The catch was that the Indians had no say in the matter. The state jurisdictions were thrust upon them against their will.

In the Civil Rights Act of 1968, Congress amended Public Law 83-280 in three respects. First, a state can no longer obtain any jurisdiction over a tribe unless a

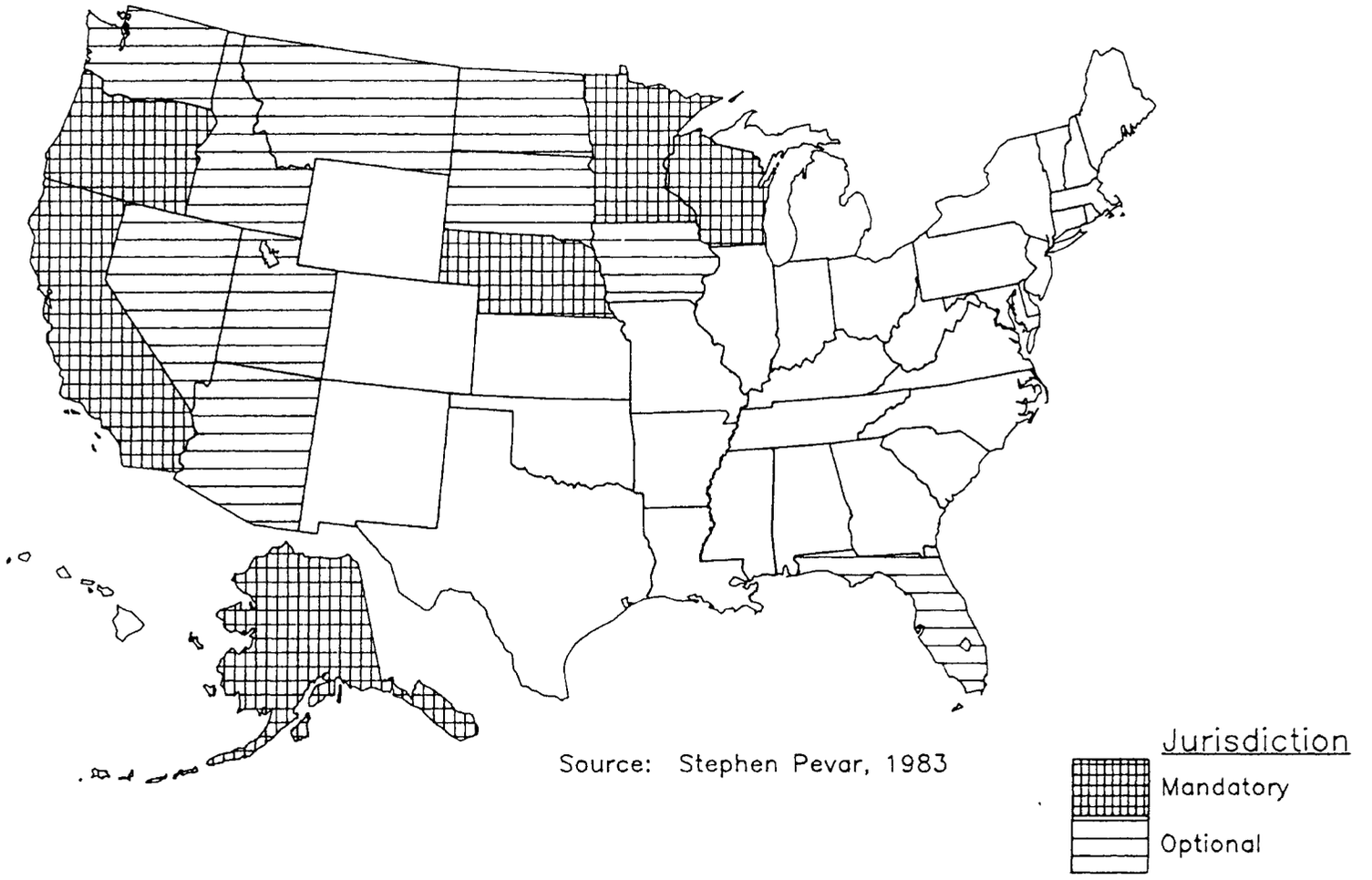


Figure 6. States Affected by Public Law 280

majority of the tribe's members, voting in a special election, gives its consent. Second, the amendment only allows partial assumptions of jurisdiction limited to some geographic or subject areas. Finally, it authorizes the federal government to accept any return, or retrocession, of state jurisdiction previously acquired under Public Law 280 (Pevar 1983, 106). Several states have retroceded jurisdiction over certain tribes.

STATE (Year)	TRIBE
Washington (1969)	Quinault Tribe
Washington (1972)	Suquamish Port Madison Tribe
Nebraska (1970)	Omaha Tribe
Minnesota (1975)	Nelt Lake Reservation
Wisconsin (1976)	Menominee Reservation
Nevada (1975)	All tribes except the Ely Indian Colony

The retrocession of jurisdiction by Nebraska presents an interesting case. With respect to the Omaha tribe, the state still retains criminal jurisdiction over any traffic violations on public roads. Nebraska also offered to return jurisdiction over the Winnebago tribe to the federal government, but the Winnebagos opposed the retrocession. As a result, the Secretary of the Interior chose not to accept the retrocession (Pevar 1983, 107).

Several other federal criminal statutes exist to regulate offenses in Indian country, including liquor laws and proscriptions of hunting on trust lands without permission. However, the General Crimes Act, the Major

Crimes Act, and Public Law 280 are the most important base for federal criminal jurisdiction in Indian country. None of these Acts appear to cover victimless crimes. Victimless and consensual crimes are generally prohibited because they violate society's standards of morality. Adultery, prostitution, and gambling are examples of activities deemed undesirable by society. Most traffic offenses are also considered victimless. Yet, the aforementioned three statutes do not expressly give the federal government jurisdiction over these "offenses" when committed by an Indian. Tribal courts should have exclusive jurisdiction, unless non-Indians are involved. Victimless and consensual crimes will play an important role as Indian gaming is investigated.

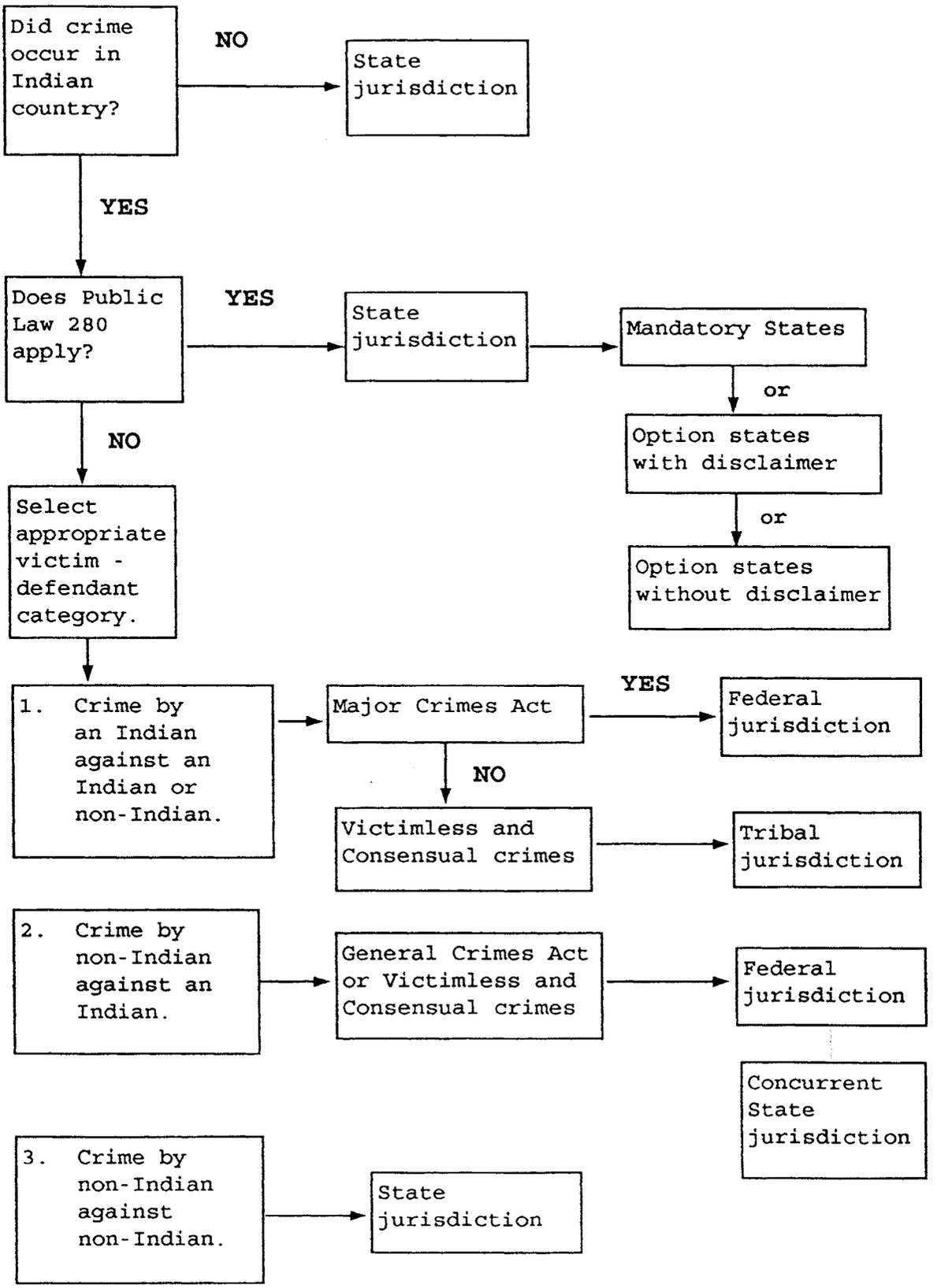
Getches, et al., have developed a step-by-step approach to analyze criminal jurisdiction in Indian country. A visual representation of the steps has been created for the purposes of this research. (See Figure 7 to follow the procedure.) The first question must ask where the crime occurred. If the crime did not occur in Indian country, then the analysis is finished. The state courts have jurisdiction over the crime. If the crime did occur in Indian country, then the analysis is continued. The second step must determine if Public Law 280 or a specific jurisdictional statute affects the case. If Public Law 280 applies, the state government has limited authority over criminal and civil matters in Indian country located within

its borders. Specific jurisdictional statutes dealing with Oklahoma, New York, Kansas, and specific Indian reservations have been enacted by Congress to grant state courts jurisdiction. If Public Law 280 does not apply, then the analysis is resumed.

In the final step, an appropriate victim-defendant category for the crime must be selected. Three categories of possible situations are listed. Each category is based on the racial identity of the victim and the defendant. In matters of criminal jurisdiction, different definitions of "Indian" may exist. The courts generally consider genealogy, group identification, and lifestyle as factors to judge. Typical of Indian law, controversies abound in the simple task of defining the word "Indian."

First, if the crime was committed by an Indian against an Indian or non-Indian, then the state courts cannot have jurisdiction. Tribal courts, through the principle of inherent sovereignty, have jurisdiction over crimes committed by an Indian against an Indian, unless the crime falls under the Major Crimes Act. If the crime is one of the fourteen listed under the Act, then the federal courts have jurisdiction. The General Crimes Act does not pertain, because it expressly exempts crimes by an Indian against an Indian (Getches 1979, 387). If the crime is victimless or consensual, then the tribal courts should exercise jurisdiction over these actions.

Figure 7. Criminal Jurisdiction - Modified from Getches



Second, if the crime is committed by a non-Indian against an Indian, the state courts still cannot claim jurisdiction. The Major Crimes Act does not apply in this case, as it only covers crimes committed by Indians. State substantive criminal law may be consulted by reference, through the Assimilative Crimes Act. The Act permits federal jurisdiction by "assimilating" state law. In any case, tribal courts may not prosecute a non-Indian, according to the decision in Oliphant. Victimless and consensual crimes by a non-Indian fall under federal authority. If no tribal property or members were involved, then the state courts may have concurrent jurisdiction with the federal government.

Third, this category covers crimes committed by a non-Indian against a non-Indian in Indian country. Crimes in this category are under the sole jurisdiction of the state courts. According to the rule devised in United States v. McBratney (1881), the Supreme Court stated that "the McBratney line of decisions stands for the proposition that States, by virtue of their statehood have jurisdiction notwithstanding the General Crimes Act" (Getches 1979, 369).

Civil Jurisdiction

Civil jurisdiction maintains a society's culture and values. Civil actions are authorized by state legislatures or common law, and disputes are resolved in state courts.

Automobile accidents, domestic relations, child custody, and taxation are examples of civil matters. A government which does not have the power to regulate civil matters will soon disappear.

In the case of Indians, quite different jurisdictional rules pertain. The conflicts arise mainly between state and tribal courts. The federal government is ultimately in control of Indian property and other aspects of reservation life by nature of the guardian-ward relationship. For the most part, federal laws do not directly restrict tribal court jurisdiction. Examples of federal civil laws that apply, deal with the sale of Indian trust land and reservation resources. In the absence of contrary federal law, tribal law should be applied (Cohen 1982, 343).

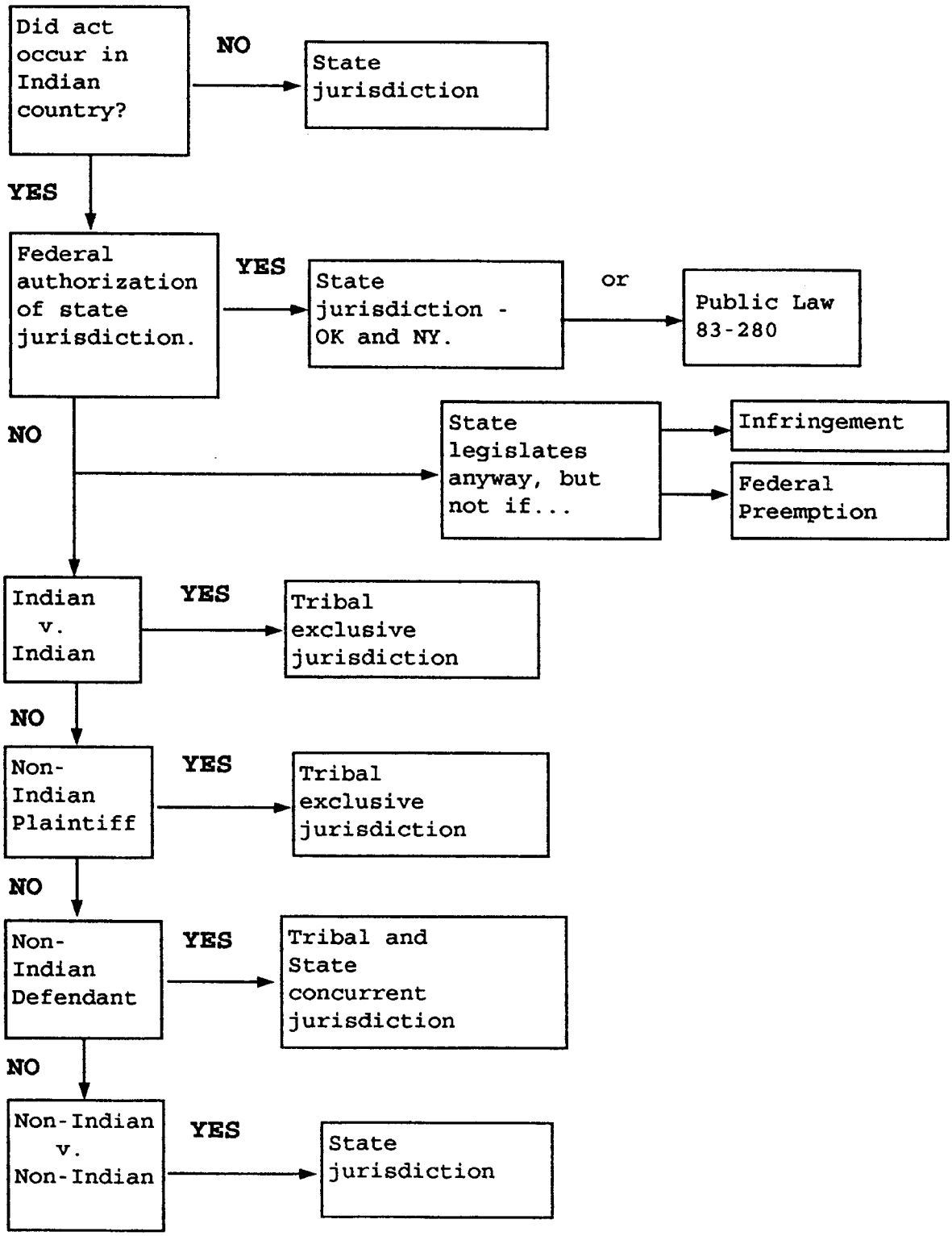
The principle of tribal sovereignty carries with it a broad base of jurisdiction over internal civil matters. Two reasons currently support this view. First, Congress has not authorized many extensions of state civil laws into Indian country. Second, the Supreme Court has consistently defended the rights of tribes to remain free from state jurisdiction without express grants from Congress (Pevar 1983, 142). The only two states with authorization from Congress are New York and Oklahoma. They have been given certain powers over Indian civil affairs. In Oklahoma, the laws deal with probate and gross production taxes.

When the parties are Indians, the tribal courts have exclusive jurisdiction. If a non-Indian brings a suit

against an Indian from an action in Indian country, the tribal court will also normally have exclusive jurisdiction. State courts may have concurrent jurisdiction if the cases involve non-Indian defendants. The main concern is to show that the action had a direct impact on Indians or their property. When the parties are non-Indians, the state has jurisdiction. Figure 8 illustrates the general course of civil actions involving Indians in Indian country. The actual civil jurisdiction of most tribal courts includes torts, commercial transactions, property, police powers, probate, and domestic relations.

Recently, the Supreme Court has modified the exception of state jurisdiction in Indian country. State governments now have the power to extend certain laws into Indian country without the consent of Congress. The state laws, however, must pass two tests: the infringement test and the federal preemption test (Pevar 1983, 142). Any state law which is in direct conflict with federal law fails the federal preemption test. According to a Supreme Court decision in Williams v. Lee (1959), a state law may not infringe "on the right of reservation Indians to make their own laws and be ruled by them" (Pevar 1983, 112). This test reverts back to the principle of inherent tribal sovereignty. If either of these tests is violated, then the state law is invalid. States have had little success in regulating reservation Indians.

Figure 8. Civil Jurisdiction



Public Law 83-280 also confers some civil controls upon the states. As previously mentioned, this law grants jurisdiction to select states in certain civil actions which arise in Indian country. This law is not a grant of general civil regulatory powers to the states over Indian lands. The state may not alienate, encumber, or tax any property, including water rights, belonging to any Indian or tribe in Indian country. In addition to state civil laws, federal civil laws cannot be applied in Indian country without the approval of Congress. Federal civil laws have been allowed to regulate trade, trust land, and resources of tribes. Despite these limitations, civil jurisdiction in Indian country is almost entirely tribal.

Control over Resources

Other jurisdictional issues complicate the boundaries among federal, tribal, and state entities. Water and wildlife are a sampling of further conflicts in Indian law. The battle over water rights is mostly fought in the arid west, which happens to be where a majority of the tribes are located. The appropriation doctrine has controlled the use of the water in the West since the days of the California miner. Indian water rights throw a wrench into the entire system by having priority established when a reservation is created. The Winters Doctrine, as conceived in Winters v. United States (1908), assures Indians the right to use

sufficient water to fulfill the purposes of the reservation (Getches 1979, 586). Also known as the "implied reservation of water" doctrine, it declared that Congress has the power to reserve water for federal lands which include Indian reservations. Thus, when Congress sets aside lands for a specific purpose, it implies a reservation of sufficient water to fulfill that purpose (Pevar 1983, 193). The water is reserved for the tribe's use, and this right cannot be forfeited. The only stipulation is that the tribe use no more water than is necessary. The standard used today grants Indians enough water to irrigate all the irrigable acres on the reservation, Arizona v. California (1963). Every drop counts in the West. Most of the reservation lands are of little value without water for subsistence. The right is granted and governed primarily by the federal government. A state may intervene only after Congress has granted it the authority, which the McCarran Amendment of 1952 has done. It gives state courts the right to adjudicate Indian rights, and that is exactly what they are doing.

In relation, water quality is an important extension of tribal control over environmental matters. Under the Clean Water Act, the Environmental Protection Agency (EPA) allows Indian tribes to obtain State status for permit programs. Eligibility rules require the tribe to be federally recognized, possess governmental powers and duties, and have jurisdiction over tribal property. The tribal authority is

limited to water resources within the reservation borders. The Clean Water Act, as revised, assumes a partnership between the tribal, federal, and state governments in cleaning up the nation's waterways.

A court battle is currently being fought over the water quality issue in New Mexico. At the heart of the case, the State of New Mexico and Isleta Pueblo have imposed different standards on a common body of water, the Rio Grande. Both entities have devised standards to regulate Albuquerque's waste treatment facility, which discharges into the Rio Grande. In City of Albuquerque v. Browner (1994), the City is challenging the EPA's approval of Isleta Pueblo's water quality standards, which are more stringent than the State's. The Court upheld EPA's approval of the Isleta standards. This case exemplifies a new brand of conflicts involving tribal, federal, and state governments.

In many of the early treaties with the federal government, the Indian tribes bargained to retain traditional hunting and fishing rights. Some of the rights are exercised off the reservation on traditionally used lands. The tribe retains its ancestral right to hunt and fish unless Congress has invalidated this right. Although this right is protected by federal law, state governments also regulate wildlife and enforce game laws within state boundaries. The Supremacy Clause is a guarantee for Indians to continue hunting and fishing without state license or regulation. Hunting and fishing provide food for the

Indians where agriculture is inefficient. Conflicts of this nature are prevalent in the Northwest and Great Lakes regions. Jurisdiction becomes confusing as Indians claim rights to fish and hunt on traditional "grounds and stations" that are located outside of the reservation (Pevar 1983, 185). In any event, where Indians were careful to retain their hunting and fishing rights, these are protected by the federal government and inherent tribal self-government.

Revenue-Generating Activities

To provide essential governmental services, the Indian tribes must generate revenue in addition to that allocated by the federal government. Job training, health services, housing development, and education are valuable services provided to members of the tribe. As a tribe becomes more self-sufficient, it will depend less on federal funds and maintain more control over internal business. Self-sufficiency can be achieved through economic development, growth, and expansion. These business ventures will also offer employment opportunities for the reservation Indians, where unemployment rates can reach 50% or higher. Among the activities, retail tobacco, trading posts, leases, and gaming operations generate the most revenue for the tribes.

Also known as "smoke shops," retail tobacco outlets create a substantial source of income for Indian tribes.

The tribes retain some immunity from state taxes and can sell tobacco products at a lower price than private vendors. As a result, a significant portion of the sales are made to non-Indians. The tribes are required to enact ordinances to regulate the sale, distribution, and taxation of tobacco products on tribal land. Tribal taxation ordinances fall within the tribe's general authority to control economic activity within its jurisdiction (Wilkinson 1987, 73). As long as an ordinance is active and the outlet is tribally owned and operated, the states cannot impose their cigarette tax. State tax would interfere with tribal self-government and be preempted by federal law. The tribal cigarette tax is generally less than the state tax, creating an advantage for the tribes.

Trading posts generate considerable business for the tribe. The posts provide convenience items with a touch of Native America. The tribes often use the posts to sell arts and crafts made by the members. Mandelas, tomahawks, and drums are examples of crafts. The trading posts provide a convenient service to travellers and employment for the area.

Leases also contribute to the tribal general fund. In the aftermath of the allotment era, Indians acquired ownership to parcels of land. The lands were of little value to the Indians who could not afford cattle or farming equipment. Thus, leases become a way to supplement individual and tribal income. Mineral leases and grazing

leases are common. Tribes have the authority to regulate (tax) these leases. Non-Indians who lease tribal lands can be taxed by the tribe for the value of the lease. Non-Indian companies can be taxed for the extraction of minerals on reservation lands, but they are exempt from state severance taxes (Pevar 1983, 167). Presently, Indian tribes are acquiring more tribal land with the revenues generated from these leases.

Gaming operations are one wave of the future for tribal economic development. The gaming business is lucrative. The operations provide a range of games from bingo to high-stakes poker. Non-Indians flock to the Indian gaming establishments to try their luck and spend their money. These local operations are more tangible to the general public than Las Vegas or Atlantic City. The Massantucket Pequot Indian tribe has built a casino in Ledyard, Connecticut, that rivals the two traditional gaming capitals. Career opportunities abound for the Indians. As the revenue pours into the tribal coffers, the tribes gain the means to be self-sufficient. The veritable goldmine of Indian gaming is not without its problems. Older factions within the tribes tend to disapprove of gaming as a source of revenue. Tribes often experience internal turmoil over the issue. In addition, non-Indians view it as an invitation to organized crime. Congress passed a law, at the suggestion of a senator from Nevada, to regulate Indian gaming in the hopes of deterring organized crime. The issue

has become extremely political and a source of conflict between Indian tribes and the states. A more indepth analysis will follow in Chapter III.

Resolution of jurisdictional issues involving the Indian tribes, states, and the federal government is dynamic in nature. Nothing is set in stone in the field of Indian law. Exceptions to the rules abound, preventing anything from being a black and white issue. The best summary statement would emphasize the control exercised by tribal governments over offenses and events that occur in Indian country. In accordance with the guardian-ward relationship, the federal government is expected to protect the best interests of the tribes. Religious, economic, and cultural practices must be reinforced through tribal control of internal matters. Otherwise, the Indian way of life will vanish into the melting pot of American society.

CHAPTER III

INDIAN GAMING

Gaming has proven to be "a positive economic development tool for Indian tribes," stated President Bill Clinton in an interview last August for the Indian Country Today newspaper (Anquoe 1993, 1). Gaming may be the key to financial independence for the tribes, as funding from the federal government decreases. Tribal governments must improve their economic condition in order to finance their basic governmental functions. The tribes, comparable to other governmental bodies, use the gaming revenues to benefit the employment, education, and health of their members. Indian gaming enterprises are the fastest growing sector of the gaming industry, according to Christiansen/Cummings Associates, an acknowledged authority on the subject (The Center for Applied Research 1993, 8).

Indian gaming can be beneficial to the local and state economies as well. The gaming establishments typically provide employment for Indians and non-Indians. These wages enter the local economy through off-reservation expenditures. State and local sales tax revenue receipts on off-reservation spending are evidence of the economic boost provided by reservation-based gaming (The Center for Applied

provided by reservation-based gaming (The Center for Applied Research 1993, 9). The gaming business also attracts tourists, who in turn increase spending in the area for food, gas, and lodging. Tourism always lifts the local economy, and Indian gaming is a stimulating attraction.

The President's statement in favor of Indian gaming echoes the sentiment of the general public. The Harris Poll conducted a nation-wide survey of 1,205 adults living in states other than Nevada and New Jersey. Released in October, 1992, the results revealed that the American people (68%) strongly believe reservations should be allowed to have casino gambling on their land if they so desire. The survey data show the reasons for such support. Indian tribes should be allowed to decide for themselves what types of gaming occur on their reservations, and the revenues from gaming are being used to make the tribes economically self-sufficient (Feldman 1993, 2).

At the same time, non-Indian gaming is not widely supported. Only 46% of the respondents were in favor of expanding non-Indian casino gambling within their own state. Supporting that statement, Indian gaming grew 105% in 1991. The growth in the total industry was less than 1% (The Center for Applied Research 1993, 8). In contrast to some claims made by public officials, the American people do support Indian gaming and disapprove of state officials who unfairly seek to limit such opportunities (Feldman 1993, 10). However, it is such political leaders, state and

federal, that stir feelings of resentment and conflict with the tribes.

It is necessary to point out that gaming is not the cure-all answer for economic woes. Some tribes have split into factions over the issue. For example, the Akwesasne reservation, which straddles New York and Canada, was torn apart by violence in 1990 over several of the tribe's gaming casinos. Traditional Mohawks opposed to the casinos exchanged fire with a radical group of Mohawk Warriors who are pro-gambling (Kopvillem 1990, 14). Outbreaks of that nature can only be detrimental to the well-being of the tribe.

The federal government has regulated gambling in Indian country since 1924 (Sokolow 1990, 151). Under 18 U.S.C. Sec. 1511, gambling includes but is not limited to pool-selling, bookmaking, maintaining slot machines, roulette wheels, or dice tables, and conducting lotteries, bolita or numbers games, or selling chances therein (Reeser 1992, C-101). What is currently fueling the debates over this subject? According to statistics in 1989, Indian gaming is a multi-million dollar business. While most tribes operate primarily bingo games, a few tribes have constructed enormous facilities comparable to the casinos in Las Vegas. The Mashantucket Pequot tribe has prospered tremendously from such a business in Ledyard, Connecticut. The Pequots are a success story that disturbs many state officials and the gambling elite in Nevada and New Jersey. Do the states

have any control over such activities in Indian country? Does the federal government maintain a handle on the Indian gaming industry? These inquiries will lead to the complex development of jurisdictional controls over Indian gaming which are exercised by federal, state, and tribal governments.

State Regulations

States legislate to protect the health, safety, welfare and morals of its citizens. Certain activities have been slated as crimes even though they do not cause harm to anyone or anything. These types of crimes are called victimless or consensual, because their only fault is a violation of society's standards of morality. Examples include adultery, prostitution, gambling, and possession of marijuana. When such crimes are committed in Indian country, regulations become confusing. The model for criminal jurisdiction, Figure 7, illustrates possible solutions. Victimless crimes which involve Indians and non-Indians can be prosecuted by the states if Congress has authorized the state to apply its criminal laws in Indian country. Many states assumed jurisdiction through Public Law 280 or other state laws which regulate gambling. The Indian tribes chose not to obey state law, because they believe that they are sovereign entities, immune from state laws in Indian country.

The entire debate has its roots in a 1981 court case (Kickingbird 1985, 4). The Seminole tribe of Florida is considered the pioneer of big-stakes reservation gambling, because it tested the limits of tribal sovereignty and won against the state of Florida. Until recently, the 397 Seminoles on the 480-acre reservation made a living by raising cattle, making dolls, and wrestling alligators to entertain the tourists. Then in 1980, the tribe opened the Hollywood, Florida, bingo palace (Time 1980, 18). The bingo hall is located in the middle of a large metropolitan area, populated by non-Indians. The state had a great interest in controlling the hall for taxation and law enforcement reasons (Sokolow 1990, 169). The Seminole tribe sought injunctive action concerning the application of Florida bingo laws to the operation of the bingo hall on the Indian reservation. Florida claimed jurisdiction over the games under Public Law 280. The question, determining who controls, turns on whether the Florida bingo statute is civil/regulatory or criminal/prohibitory. An indepth analysis by the Court of Appeals decided that:

> Bingo appears to fall in a category of gambling that the state has chosen to regulate by imposing certain limitations. Where the state regulates the operation of bingo halls to prevent the game bingo from becoming a money-making business, the Seminole Indian tribe is not subject to that regulation and cannot be prosecuted for violating the limitations imposed....Legislative intent determines whether the statute is regulatory or

> prohibitory, and although the state of Florida prohibits lotteries in general, exceptions are made for certain forms of gambling including bingo (Seminole Tribe of Florida v. Butterworth, 1981).

Because the Florida statute is civil/regulatory, it cannot be enforced against the tribe. The word "regulate" implies some form of permission, as opposed to the outright ban of the activity. Gambling is generally not thought to be so harmful that a total ban is required (Sokolow 1990, 152).

In a second question, the state wanted to require the Seminoles to distinguish between Indian and non-Indian players. With no basis for such a requirement, the Court declared that Indians as well as non-Indians may play bingo at the tribal facility.

The United States Supreme Court refused to grant certiorari. This decision implied that other states could not regulate bingo on Indian reservations if the game was legal elsewhere in the state. Even under the full impact of Public Law 280, state regulatory provisions were unenforceable on Indian land. Tribes across the nation quickly caught on, and within five years, 113 Indian bingo operations were grossing $225 million annually (Segal 1992, 28).

The criminal/prohibitory and civil/regulatory analysis was also utilized in California v. Cabazon Band of Mission Indians (1987). The facts of the case are similar to those

of Seminole. The Tribe operated bingo games and a card club for poker and other card games. These games are open to the public and played mostly by non-Indians. The state of California and Riverside County sought to apply their ordinances regulating bingo and card games. Gaming was permitted under California law, but the operations were limited to charitable organizations and small prizes. The Supreme Court affirmed the lower court's decision which held that neither the state nor the county had any authority to enforce its gambling laws within the reservation.

In reaching this decision, the U.S. Supreme Court developed a two-fold test to determine if the state law in question is criminal/prohibitory or civil/regulatory. A state law is prohibitory if (a) the gaming activities are contrary to state public policy and (b) state interests in regulating gaming outweigh the tribal benefits received through gaming (Kading 1992, 324). In response to the first condition, gambling is big business in California and is even encouraged. A lottery is operated, more than 400 card clubs exist, and bingo is widely played throughout the state. California's level of gaming activities is sufficient to fail the first requirement for enforcement. Second, in balancing tribal benefits with state control, the Court noted the overriding goal of Congress to encourage tribal self-sufficiency and promote economic development by raising revenues and providing employment for members. California claimed an interest in protecting against

organized crime, yet failed to present sufficient evidence of such activity. In summary, California could not enforce its gaming laws against the games offered on the lands of the Cabazon Indians (California v. Cabazon Band of Mission Indians, 1987). The Supreme Court reiterated that states may not enforce general civil or regulatory state laws on Indian lands.

These two landmark cases form the backbone of the Indian gaming issue. The courts narrowly defined the powers of state governments in relation to Indian gaming, even under the authority of Public Law 280. Absent state regulations, many Indian tribes found that substantial profits could be obtained from gambling. As the size of the Indian operations across the country increased, fears also increased that organized crime might be attracted. These fears were addressed in several important federal acts to follow.

Federal Regulations

Until recently, the federal government was not directly concerned with Indian gambling activities, but the threat of organized crime has been a recurring issue. Although no documented cases of such infiltration exist, states continue to rely on the threat as a basis for tighter controls. Indians may be vulnerable to mafia involvement because few banks make loans to the tribes. Their land is sovereign and

cannot be foreclosed (Segal 1992, 28). Many feel that the tribes are not able to effectively police these activities, and thus call for federal involvement. Directly affecting Indian gaming, the Gambling Devices Act, the Organized Crime Control Act, and the Indian Gaming Regulatory Act provide the backbone for federal control over these activities.

The Gambling Devices Act of 1962 generally bans the use of certain gambling devices. The list of devices covers slot machines and roulette wheels which when operated may deliver money or property. Section 1175 of the Act makes it "unlawful to manufacture, recondition, repair, sell, transport, possess, or use any gambling device within Indian country." Any state can enact a law providing for exemption from these provisions. If state law prohibits these devices, then the federal government can seize them under the Assimilative Crimes Act. The seizure is premised on the criminal/prohibitory test. The Gambling Devices Act only regulates the gambling equipment, not the conduct of the games.

The Organized Crime Control Act (1970) makes it a federal crime to operate a gambling business that "is a violation of the law of a state in which it is conducted." It was passed to curb organized crime. The legislative history does not indicate that the authors had Indian gaming activities in mind. There was some question about the application of the law in Indian country. In United States v. Farris (1980), the court held that unless Congress says

to the contrary, federal laws apply with equal force in Indian country (Sokolow 1990, 154). The case involved Indians in partnership with non-Indians in a gambling business on a reservation. This decision severely limits tribal sovereignty, bordering on infringement. The United States Department of Justice has not actively enforced the Organized Crime Control Act because current federal policy encourages tribal self-sufficiency.

Probably the most influential piece of legislation to be drafted by Congress on Indian gaming, the Indian Gaming Regulatory Act (IGRA) of 1988, was created in response to the Cabazon decision. In the statement of policy, the Select Committee on Indian Affairs expressed the need to balance state gaming regulations with the sovereign rights of tribal governments to control internal matters. The Committee viewed the bill as a preventive measure, a barrier to organized crime in Indian gaming. Fears of illegal activity were expressed by Representatives from Nevada and California, who have substantial interests in gaming regulation. This Act is not a grant from Congress to states to extend jurisdiction to tribal lands, unless a tribe voluntarily enters into a compact with the state. As contained in Section 2702 of IGRA, the purpose is:

(a) to provide a statutory basis for the operation of gaming by Indian tribes as a means of promoting tribal economic development, self-sufficiency, and strong tribal governments;

(b) to provide an adequate shield from organized crime,

to ensure that the tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted honestly by the operator and players; and

(c) to declare that the establishment of independent Federal regulatory authority and Federal standards for gaming on Indian lands, and the establishment of a National Indian Gaming Commission are necessary to meet congressional concerns regarding gaming and as a means of generating tribal revenue.

It is the responsibility of Congress, through its plenary power over Indian affairs, to maintain a congenial balance between federal, state, and tribal interests.

The provisions of IGRA outline three gaming classes, contain a grandfather clause, allow tribal-state compacts, and define Indian lands. The three classes of gaming resolve the question of jurisdiction. Indian tribes have exclusive jurisdiction over Class I games. In Class II games, the tribes have sole jurisdiction but must follow federal monitoring and enforcement requirements. States are allowed some control over Class III games through negotiations with the tribes.

Under the tribal gaming ordinances of the Act, Class I incorporates social games or traditional forms of Indian gaming with prizes of minimal value that are tied to tribal ceremonies or celebrations. Rodeos, horse races, stickball, and Indian dice games are often played at tribal pow wows. Written journals and records of traditional gaming activities have existed since the 16th century. One account describes entire Creek tribal towns that wagered property on

the outcome of the stickball games (Crofut 1991, 6). The Act does not explicitly list all traditional Indian games, because that is a matter for the individual tribes to define. These games fall completely under tribal jurisdiction and are not subject to the provisions of IGRA.

Class II gaming consists of bingo, pull-tabs, lotto, punch boards, tip jars, and "other games similar to bingo" (25 U.S.C. Sec. 2703(7)(A)). While these games are subject to tribal jurisdiction, they must conform to the rules of the Act. Bingo-related games may be conducted on Indian lands, as long as the state within which the tribe is located permits such gaming. Only five states criminally prohibit bingo--Arkansas, Hawaii, Indiana, Mississippi, and Utah (Kading 1992, 330). Class II games also include card games, referred to as non-banking games, where players play against each other rather than the house. These card games are allowed if they are explicitly authorized or not explicitly prohibited by the laws of the state.

Before the tribes can engage in Class II operations, their governments must adopt ordinances to govern the games, detailing every aspect of the activity. The ordinance must be approved by the Chairman of the National Indian Gaming Commission. IGRA states that the revenues may only be used for the general welfare of tribal members, the tribal government, economic development, or donations to local charities or agencies.

Class III gaming simply includes all games that are neither Class I nor Class II. This class holds pari-mutuel betting, banking card games like baccarat and blackjack, and slot machines or electronic devices. As with Class II games, the state must permit similar gaming for any purpose, by any person, or organization. Class III gaming ordinances require a tribal-state compact. Any tribe wishing to operate this class of gaming must request a negotiation with the state within which the Indian lands are located. The state shall negotiate in good faith and the Secretary of the Interior shall publish approval in the Federal Register (Prucha 1990, 317).

The Indian Gaming Regulatory Act included a "grandfather clause" to catch all Class III card games that were in existence prior to the legislation. Class III card games managed by Indian tribes in Michigan, North Dakota, South Dakota, and Washington on or before May 1, 1988, will be treated as Class II gaming. These card games are controlled by tribal jurisdiction, and they do not require a state-tribal compact (Kading 1992, 331).

Compacts can be an impetus to bring the tribes and states together on an issue that can benefit both. Minus the exceptions, tribes must enter into a compact prior to opening Class III games. First, the tribe must ratify an ordinance, which sets up licensing and regulating standards for the conduct of such games. This ordinance could include procedures for background checks, resolution of disputes,

designation of law enforcement, and agents for service. After adoption by the tribe, the ordinance must be submitted to the Chairman of the National Indian Gaming Commission for approval. The Commission has drafted a model ordinance to help the tribes.

Once the tribe and the Chairman approve the ordinance, it should request the state to negotiate the terms of the compact. The state is required to negotiate in good faith. This will ensure that the interests of both sovereign entities are met with respect. The main interests of the tribe will be to raise revenues to improve governmental services to its members and to move toward economic self-sufficiency. Jurisdiction over tribal lands and activities therein is paramount to the self-determination of the tribe. The tribes and states share a concern in preserving law and order for the safety of the citizens, the players, and the Indians. As a matter of public policy and safety, some states are opposed to the gambling industry and the reputation it carries. However, the states also have an interest in generating revenue. Indian gaming has proved to be helpful to the states by indirectly improving their economies.

The terms of the compact will vary depending on the type of facility and the tribal-state relationship. The issues may cover hours of operation, wager and pot limits, size of the facility, taxation, site of operation, etc. The compact may allocate the appropriate criminal and civil

jurisdiction between the state and the tribe necessary for the enforcement of such laws and regulations (25 U.S.C. 2710(d)). This is not a permit for the states to impose any tax, fee, or financial obligation.

If the negotiations reach a standstill, the tribe and state must each submit a proposal to a court-appointed mediator. If the state wishes to challenge the mediator's decision, the Secretary of the Interior will settle the dispute. The Secretary will only disapprove a plan if it violates federal law or trust restrictions (25 U.S.C. Sec. 2710). The Secretary will give notice of approval in the Federal Register.

The land upon which the facility will be constructed is crucial to the entire Act. The tribal government must have control over the land. Under Section 2703 of the Indian Gaming Regulatory Act, the term "Indian lands" means:

(a) all lands within the limits of any Indian reservation; and

(b) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

Provisions exist for gaming on newly acquired Indian lands in Section 2719 of IGRA. Many tribes have regained former lands with profits from various economic activities. As a general rule, regulated gaming is not authorized on Indian lands acquired after October 17, 1988, unless the

lands are within or bordering existing lands, or to former lands if the reservation was extinguished. Exceptions to the rule always surface. The Secretary of the Interior will waive the prohibition if the land is either (a) acquired from a land claim settlement, (b) acknowledged as the tribe's initial reservation, or (c) restored to federal recognition (Kading 1992, 335). The descriptions of these lands correlates to those depicted in Imre Sutton's political/geographical view of Indian country (Figure 4). Some Indian rights can be exercised on former lands. Specific forms of gambling and hunting and fishing rights are examples.

The Act also made an exemption for specific lands in Oklahoma. If the Indian tribe has no reservation and such lands are located in Oklahoma, then the land must fall under one of two categories. "Such lands may be within the boundaries of the Indian tribe's former reservation, as defined by the Secretary of the Interior. Or, such lands are contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma" (25 U.S.C. Sec. 2719).

According to the U.S. Code Congressional and Administrative News, Senate Bill 1035 was sent to the Indian Affairs Committee on May 26, 1993 to amend the Indian Gaming Regulatory Act. The House of Representatives counterpart, House Bill 2287, was also sent to committee on May 26, 1993. The House bill was submitted to the Natural Resources

Committee and the Judiciary Committee. Senate committee hearings on the amendments were held April 20-26, 1994, according to Mr. Tracy Burris, Chickasaw Nation Gaming Commissioner in Oklahoma (Burris 1994). Mr. Burris was invited to speak on behalf of his experiences with Indian gaming in Oklahoma.

National Indian Gaming Commission

The National Indian Gaming Commission (NIGC) was created within the Department of the Interior to implement the Indian Gaming Regulatory Act. The Committee is composed of three full-time members selected as follows: a Chairman shall be appointed by the President, and two associate members appointed by the Secretary of the Interior. At least two members of the Commission must be enrolled in an Indian tribe. As of July, 1993, the NIGC consisted of Chairman Anthony Hope, Associate Commissioner Joel Frank Sr., and Associate Commissioner Jana McKeag (Reeser 1992, B-4). Mr. Frank is a member of the Seminole tribe, and Ms. McKeag is a member of the Cherokee tribe. Two members, including the Chairman, shall have a term of office of three years. One member shall have a term of office of one year.

The actual document which details the work of the NIGC is rather lengthy with 99 sections, most of which are reserved. Under the General Provisions subchapter, annual fees are established. Using "generally accepted accounting

principles," each class II gaming operation under the jurisdiction of the Commission shall pay a pro-rated fee based on gross gaming revenues. Class III gaming is not discussed in this section. Although the formulas are irrelevant to this analysis, the limit of fees to be collected during any fiscal year is $1,500,000. That is a large sum, indicating how lucrative the "bingo" business can be.

Subchapter B outlines the approval process for Class II and Class III gaming ordinances. The tribe must submit a request for approval of an ordinance and a copy of the ordinance. A tribe may appeal any disapproval of a gaming ordinance. The guidelines explicitly tell the tribes how they must use their gaming revenues. It seems out of line for this Commission to tell a sovereign government how to manage its income. Yet, its responsibilities are linked to the trust status of the Indian lands. The principal intention, seemingly ignored, of the Indian gaming business is self-determination for the tribes.

Management contracts and background investigations comprise a third subchapter. Some tribes opt to hire an outside management firm to run the gaming operation. The Commission checks to ensure that the firms are not taking advantage of the tribes. A contract is not to exceed seven years, and the contractor's fee shall not exceed 40% of the net revenues. The contract shall not convey any interest in land or other real property held by the tribe. The Chairman

will conduct a background check on all members of the management team. This requires a current photo, references, financial statement, fingerprints, and responses to questions, among other items. This section is carefully planned to prevent any person with a criminal record or habits from entering the Indian gaming business. Although it is conceivable that some may slip through the system, it is essential to protect the tribes from harm or illegal activity. This action is justified by the guardian-ward relationship that exists between the federal government and the tribes.

The final subchapter describes the provisions for compliance and enforcement without which IGRA would be ineffective. The Commission monitors the gaming operation through inspection of books and records, subpoenas, and audits. Notice of violation, order of temporary closure, and civil fines are the means of enforcement. The Chairman may assess a fine less than or equal to $25,000 per violation, against a tribe, management contractor, or individual operating Indian gaming. Decisions may be appealed.

To tie this entire Act together, it is important to remember the beginning intentions of the designers. They sought to balance the tribal need for self-sufficiency with the states' assertions of police power within their borders. Congress is still not completely satisfied with the results of IGRA, as proposed amendments are circulating. Changes

nothwithstanding, litigation has determined that the Indian Gaming Regulatory Act was not unconstitutional in Red Lake Band of Indians and the Mescalero Apache Tribe v. Swimmer (1990). On June 4, 1990, the U.S. District Court in Washington, D.C., held the Act to be a valid exercise of the power of Congress to legislate with regard to Indian tribes.

The Indian Gaming Regulatory Act will not be the final word on Indian gaming in the United States. As amendments to the Act circulate in the committee rooms on Capitol Hill, the Indian gaming industry grows exponentially. According to figures from 1990 in International Gaming & Wagering Business magazine, charitable gaming is legal or authorized in 31 states. Thoroughbred pari-mutuels are legal and operative in 33 states and pending operation in 10 others. Even casinos are legal or authorized in eight states (Worsnop 1990, 637). As long as the states merely regulate these activities, the Indian tribes are allowed to open similar enterprises on Indian lands. Tribal-state compacts are the only obstacle, and that is not much of one. The possibilities for tribal profits are numerous. The list includes slot machines, sports betting, keno, greyhound racing, and jai-alai. Gambling appears to be one of the most lucrative routes to the Indians' independence from the purse strings of the federal government.

CHAPTER IV

A CASE STUDY OF OKLAHOMA

Loosely translated from Choctaw Chief Allen Wright's name for this state, Oklahoma means "Home of the Red People" (Strickland 1980, 6). At one time or another, Oklahoma has been home to more than 60 tribes. Only a few of those tribes were living within the state when the Europeans arrived. Nomadic bands of Indians followed the migratory herds across the state, but few were permanent (Strickland 1980, 3).

The major stimulus for Indian settlement in Oklahoma was the expansion of white settlement in the eastern United States. Empty promises, underhanded deals, and belligerent colonists were the first to drive Indian tribes from traditional homelands. Treaty negotiations and warfare pushed the Indians further out of the way. As early as 1803, Thomas Jefferson was formulating the idea of a permanent Indian territory beyond the frontier of white settlement (Strickland 1980, 3). As the result of white policy, more than 60 tribes were removed to, and resettled in, Oklahoma. This policy can be characterized by voluntary migrations, inducements by treaties, and forced removals. The last factor was implemented by President Andrew Jackson

in the 1830's through the Indian Removal Act. This policy focused on tribes in the south and the northern Indians of Ohio, Indiana, Illinois, and New York. Between 1789 and 1850, over 245 treaties were imposed on the Indian tribes, conveying ownership in 450 million acres of land at 20 cents per acre (Hanson 1980, 467).

Billed as the most notorious removal, the Five Civilized Tribes moved from the southeastern states to Oklahoma under a series of treaties. The Five Civilized Tribes are the Cherokee, Creek, Choctaw, Chickasaw, and Seminole. The term "civilized" indicated that these tribes had accepted the ways of the white man and settled into a sedentary lifestyle. Actually, the agrarian lifestyle preceded contact with civilization for some of these tribes. This group early determined that survival required adaptation.

The "Trail of Tears" tells the story of the hardships endured from the South to Oklahoma. Almost sixty thousand members of these five tribes followed the trail, and as many as one-fourth died from exhaustion and exposure (Strickland 1980, 4). The Seminole tribe traveled from Florida. The Cherokee and Creek originated in Alabama and Georgia. The Choctaw and Chickasaw came mostly from Mississippi. This removal lasted over 20 years, beginning with the Choctaw treaties of 1816 and ending with the Seminoles flushed out of the swamps in the 1840's (Morris 1986, 20). The treaties spelled out an exchange for their homelands in the South

with large tracts of land in Oklahoma. These reservations of land were to be free from white intrusion. Many other plains and woodland tribes ultimately settled on separate reservations in Oklahoma. The removal policy had created confrontations between the native Plains tribes and the incoming Five Civilized Tribes (Sutton 1975, 49). There was a sharp division between hunting and agarian tribes. As an outgrowth of this policy, "Indian Territory" came into common use as the designation for the lands of the Five Tribes and others settled among them (Cohen 1982, 772).

The state of Indian life in Oklahoma changed after the Civil War. The Five Civilized Tribes had sided with the Confederacy and practiced slavery. As a penalty, all Five Tribes were forced to cede the western portion of their tribal lands and were confined to smaller reserves. Their ceded lands were allocated to over 20 other tribes (Pevar 1983, 231). These treaties also abolished slavery, granted rights-of-way for railroads, and authorized increased federal control. White settlers were forcing another period of expansion into Indian Territory.

The federal government was still unsatisfied with the progress of Indian acculturation into white civilization. As long as the Indians were secluded from the influence of civilized life, they would retain their traditional ways. The answer was dependent on the break up of the reservations. The proponents of this philosophy believed that the white man's concept of property, individual

ownership, was the best. The authors of the Dawes Act really believed what they were doing would benefit Indians and was in their best interest.

The allotment movement began with the General Allotment Act of 1887. Also known as the Dawes Act, it provided for mandatory allotment of all reservation land. The President was authorized to allot tribal lands in designated quantities to reservation Indians, and the Indians were permitted to select their own lands. The Act established allotments of 80 acres of agricultural land or 160 acres of grazing land to each Indian. Allotted land is the land that was selected by or patented to an allottee as his proportionate part of the common domain of his tribe (Mills 1919, 37). The General Allotment Act excepted the Five Civilized Tribes, Osages, Miamis and Peorias, and Sac and Foxes in Oklahoma (Cohen 1982, 784). Subsequent amendments brought some tribes under the Act, but most tribal lands of the Five Civilized Tribes and Osages were allotted under separate agreements and statutes between 1897 and 1902. The Dawes Commission, headed by the sponsor of the Dawes Act, was directed to allot the remaining reservations and dissolve their governments (Cohen 1982, 785). The land remaining after the allotments was opened up for white settlement. Although Dawes sought to help the Indians, the Act sacrificed Indian lands to westward expansion.

By 1890, the state had been split into the twin territories of Oklahoma and Indian. The Organic Act of May

2, 1890, was passed by Congress to give Oklahoma Territory a formal government. It carved the new territory out of the region to the west of the Five Civilized Tribes' land. Indian territory still included the Five Tribes and seven northeastern tribes. The legislative history of this Act indicates that the establishment of Oklahoma Territory was not meant to compromise the governing authority of the tribes still located therein, including the Osage tribe (Pipestem 1978, 280).

By 1906, a delegation was created to write a constitution for the new state of Oklahoma. The Enabling Act clearly indicates that the new constitution may not limit or impair the personal or property rights of the Indians currently residing in either Oklahoma or Indian Territory. Oklahoma's entry into the Union was predicated on a disclaimer of title and jurisdiction over Indian trust lands. Adopted into the state constitution as Article I, Section 3, the state promised to:

> Agree and declare that they forever disclaim all right and title in or to...all lands lying within said limits owned or held by any Indian, tribe, or nation; and that until the title to any such public land shall have been extinguished by the United States the same shall be and remain subject to the jurisdiction, disposal and control of the United States....

The allotment process had diminished the geographic area over which tribal jurisdiction might be exercised, but it

did not terminate tribal powers of self-government (Pipestem 1978, 24). Since Oklahoma was granted statehood in 1907, there have been no Indian reservations in the state. The Osage mineral interest is an exception. Every reservation fell under the thorough allotment policy, but the tribes still retain trust land protected by the federal government.

The 1990 census of the United States lists Oklahoma's Indian population at 252,430, which gives Oklahoma the largest count in the country. Over 67 distinct Indian tribes are represented in the state. Table I is a list of the 37 tribes that maintain council houses and their location in Oklahoma (Oklahoma Tourism and Recreation Department 1993, 92).

Jurisdiction

Even though the land base of tribes in Oklahoma has been greatly reduced by express acts of Congress, their inherent powers of self-government remain intact. The allotment process destroyed reservation boundaries before statehood. However, the Oklahoma Organic Act of 1890 and the Oklahoma Enabling Act of 1906 confirmed and reserved jurisdiction to the tribes over their members and property. Recent court decisions affirm the fact that Oklahoma tribes, even those whose reservations have been abolished, have the same governmental powers other tribes have (Cheyenne-Arapaho Tribes v. Oklahoma, 1980).

Table I. Federally-Recognized Indian Tribal Headquarters in Oklahoma

Tribe	City
Absentee Shawnee	Shawnee
Apache	Anadarko
Arapaho	Concho
Caddo	Binger
Cherokee	Tahlequah
Cheyenne	Concho
Chickasaw	Ada
Choctaw	Durant
Citizen Band of Potawatomi	Shawnee
Comanche	Lawton
Muscogee (Creek)	Okmulgee
Delaware Tribe of Eastern OK.	Bartlesville
Delaware Tribe of Western OK.	Anadarko
Eastern Shawnee	Seneca, Missouri
Fort Sill Apache	Apache
Iowa	Perkins
Kaw	Kaw City
Kickapoo	McCloud
Kiowa	Carnegie
Loyal Shawnee	Jay
Miami	Miami
Modoc	Miami
Osage	Pawhuska
Otoe-Missouria	Red Rock
Ottawa	Miami
Pawnee	Pawnee
Peoria	Miami
Ponca	Ponca City
Quapaw	Quapaw
Sac & Fox	Stroud
Seminole	Wewoka
Seneca-Cayuga	Miami
Tonkawa	Tonkawa
United Keetoowah Band of Cherokee	Tahlequah
Wichita	Anadarko
Wyandotte	Wyandotte
Yuchi	Okmulgee

To summarize a previous discussion of Indian country, the definition includes Indian reservations, dependent Indian communities, and Indian allotments. The 1948 Indian country statute resolved existing doubts in favor of federal jurisdiction. The purpose was to develop a uniform rule. The courts have rejected attempts to exclude the lands of eastern Oklahoma tribes, formerly of Indian Territory (Cohen 1982, 779). A mutual agreement between Oklahoma and federal officials recognizes a jurisdictional and governmental unit known as Indian country, which does not generally operate within the Oklahoma court structure. In DeCouteau v. District County Court (1975), the court held that an Indian tribe's jurisdictional powers are not dependent upon reservation status (Pipestem 1978, 320).

Indian country in Oklahoma is limited to dependent communities and allotments. Dependent Indian communities have been judicially defined as tribal Indian communities under federal protection. Because Congress exercises supervision over many Indians in Oklahoma, it is conceivable that several Indian communities within the state are dependent (Cohen 1982, 776).

Allotments take many legal shapes. The allotted lands were assigned by the federal government to an Indian, while the unallotted lands were controlled by the tribe. The lands were put into trust by the federal government to protect against illegal purchase by white settlers. Such

lands are exempt from state and local taxation, as long as they continue the trust status. Restricted allotments in Oklahoma show the fee (title) as owned by the Indian allottee subject to a restriction against alienation held by the United States (Cohen 1982, 617). The period of restriction over most of the allotted lands in Oklahoma has been extended indefinitely. Tribes are also able to purchase former or new lands and place them in trust status under the Oklahoma Indian Welfare Act (Getches 1979, 433). The acquired lands are exempt from state control, reinforcing tribal sovereignty in the state.

To determine the extent of tribal autonomy in Oklahoma, the criminal and civil jurisdiction models must be employed. Refer to Figure 6 for the criminal jurisdiction. The first question determines the location of the crime. Dependent Indian communities and tribal and individual allotments are present in Oklahoma and constitute Indian country, as defined in the statute. If the crime occurred in Indian country, the test continues.

Does Public Law 280 apply to Oklahoma? Public Law 280 does not apply in Oklahoma for two reasons. First, Oklahoma was not chosen as a mandatory state under this law. Second, the state legislature has not formally followed the procedure set forth under P.L. 280 for assumption of jurisdiction (Pipestem 1978, 271). The Oklahoma constitution contained a disclaimer of jurisdiction over the Indians, which had not been amended prior to the passage of

the Indian Civil Rights Act of 1968. This Act prohibited states from assuming jurisdiction without the consent of the Indian tribes within each state. The test for jurisdiction continues.

If the crime is committed by an Indian against an Indian or non-Indian in Indian country, does the Major Crimes Act apply? If the crime is listed as one of the 14 major crimes, then the Act applies and the federal government has jurisdiction. If the crime is minor and against an Indian, the tribe should retain complete jurisdiction. Victimless and consensual crimes, like gambling and prostitution, are considered minor by the courts. The tribe and the federal government may share concurrent jurisdiction if the victim is a non-Indian. The state of Oklahoma may not exercise jurisdiction over this category of victims and defendants.

In 1978 Attorney General Larry Derryberry stated, "The State of Oklahoma possesses no jurisdiction to prosecute crimes and offenses defined by the Major Crimes Act, committed by Indian against Indian, upon trust allotment lands within the geographic boundaries of Oklahoma defined as 'Indian Country'" (Strickland 1980, 76). In fact, this statement preceded a move on May 17, 1978 to authorize Oklahoma Indian courts to handle such criminal jurisdiction. The Bureau of Indian Affairs concluded that the tribes could establish criminal codes and courts to control criminal conduct by Indians in Indian country if their tribal

constitutions allowed them to do so (Strickland 1978, 77). The maintenance of a jural system is an important component of tribal sovereignty.

Crimes by a non-Indian against an Indian in Indian country cannot be prosecuted by the tribal government. If the crimes falls under the General Crimes Act, the federal government has jurisdiction to protect the Indians as wards. The state retains jurisdiction over its citizens if federal law does not preempt it. Victimless crimes in this category are subject to state court jurisdiction.

The final category involving only non-Indians would belong to the state jurisdiction of Oklahoma. The case of United States v. McBratney (1881) held that states can prosecute a non-Indian who commits a crime against another non-Indian in Indian country, even without congressional consent (Pevar 1983, 130). Oklahoma is no exception to this rule.

Civil jurisdiction in Oklahoma is a more complex issue. Congress has made a point to involve the state of Oklahoma in several civil matters of the tribes. In reference to the Civil Jurisdiction model in Figure 7, a special category was created to facilitate the situation in Oklahoma. Broadly categorized, several federal statutes grant Oklahoma courts jurisdiction over specific Indian lands. Most of the laws are restricted to lands of the Five Civilized Tribes and the Osages. The arena of state court jurisdiction includes wills, heirship, probate and estate administration, and

partition (Cohen 1982, 787). These are codified under 25 U.S.C. Secs. 355, 375. In conjunction with these two sections, Oklahoma is the only state granted congressional consent to impose an inheritance tax on the estate of former-reservation Indians.

Section 355 provides for the partition of real estate of the lands of full-blooded members of the Five Civilized Tribes under the laws of the State of Oklahoma. It is concerned with inheritance, restrictions on alienation, taxation, descent, and distribution of said lands.

Section 375 authorizes the state courts to determine heirship of deceased members of Five Civilized Tribes. The courts determine heirship to Indian lands restricted against alienation and have jurisdiction to partition them. This section necessitates a special proceeding by the Oklahoma state courts.

Congress has also authorized the levy and collection of the Oklahoma gross production tax on oil and gas produced from the Osage mineral estate (Cohen 1982, 796). Tribal trust property is otherwise immune from state taxes on the tribal interest. It is generally excepted that property held in trust by the United States is protected against state property taxes. Nonetheless, Congress authorized this tax under the Oklahoma Indian Welfare Act of 1936.

Following the discussion of subject matter jurisdiction, it is necessary to consider the geographic extent of such control. How can the tribes provide services

for their members without reservations to serve as a base? Indian tribes in Oklahoma administer jurisdictional controls over their members through the use of Tribal Jurisdiction Statistical Areas (TJSA). These geographic divisions were created by the Census Bureau to facilitate data collection. These areas are delineated by federally recognized tribes in Oklahoma without a reservation. TJSA's represent areas which contain the Indian population over which one or more tribal governments have jurisdiction. If a territory is claimed by more than one tribe, the overlap area is called a "joint use area." The joint area is treated as a separate TJSA for census purposes (Bureau of Census 1992).

The Tribal Jurisdiction Statistical Areas replace the "Historic Areas of Oklahoma (excluding urbanized areas)" displayed in 1980 census data products. The Historic Areas of Oklahoma outlined the territory located within reservations of established boundaries from 1900 to 1907. All of these reservations were splintered prior to Oklahoma statehood in 1907.

According to 1990 census records, Oklahoma is divided into 18 Tribal Jurisdiction Statistical Areas, including two joint areas and one reservation. The boundaries of these areas are not coincident with county boundaries within the state. The Department of Labor is the only federal agency that uses county boundaries instead of tribal boundaries for jurisdiction. According to the Census Bureau standards, Osage County is still classified as the Osage Indian

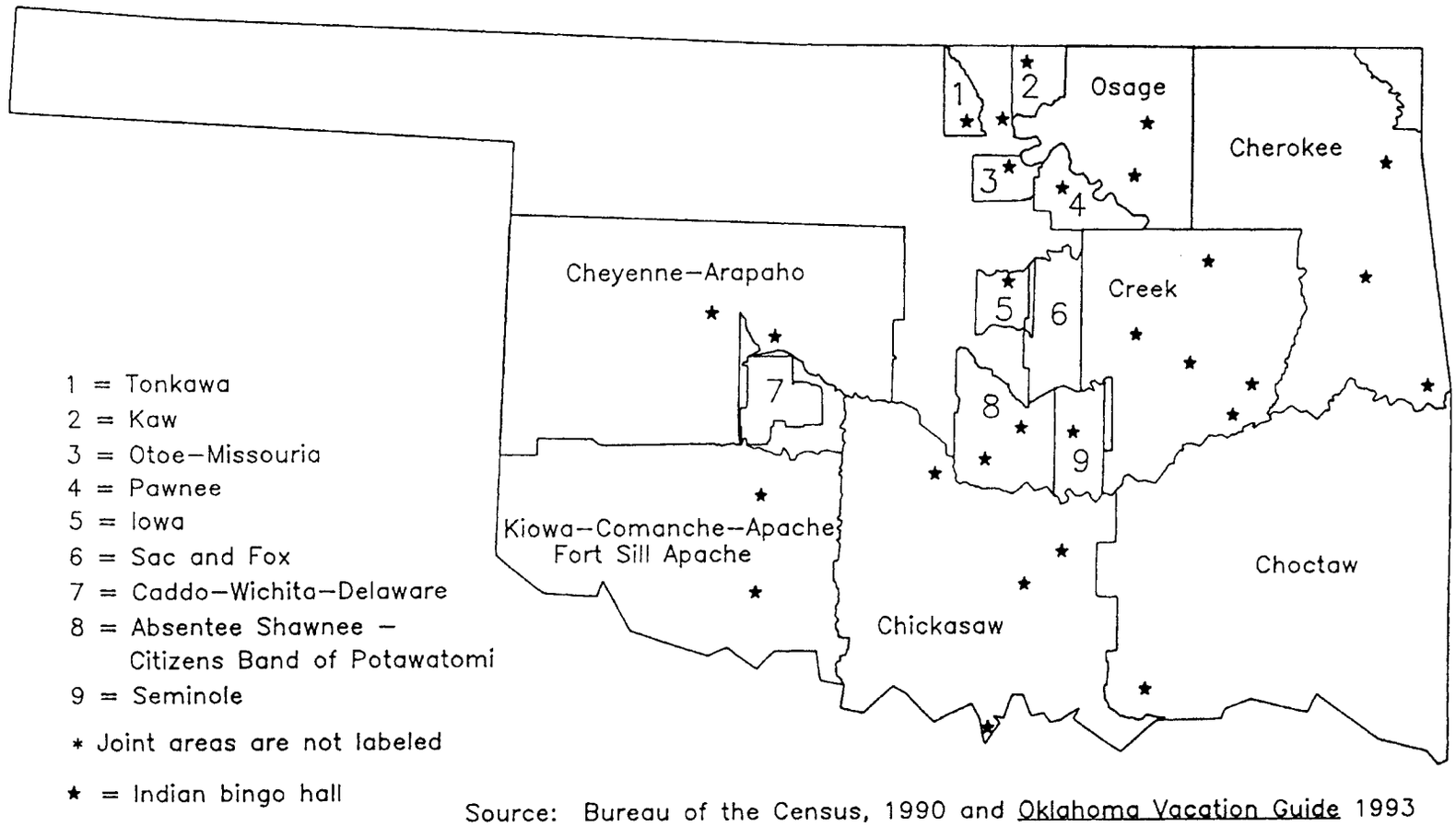


Figure 9. Tribal Jurisdiction Statistical Areas in Oklahoma

Reservation. The mineral estate is still owned by the tribe. Table II is a list of the TJSAs in Oklahoma and the amount of land covered by each. The TJSAs of the Five Civilized Tribes mirror their former reservation boundaries before statehood. See Figure 9. Each tribal area has at least one central agency to administer governmental services to the Indians.

Indian Gaming in Oklahoma

Is Indian gaming in Oklahoma treated any differently in comparison with other states? The answer is no. The lack of reservations does not require that this state be treated any differently. The definition of "Indian lands" under Section 2703 of the Indian Gaming Regulatory Act covers: any land held in trust by an Indian tribe or individual; or land restricted by the United States against alienation over which an Indian tribe exercises governmental power. The land does not have to be in reservation status to legally support an Indian gaming establishment. The gaming establishments in Oklahoma are most likely to be located on trust land. This land could already be in possession of the tribe or it could be purchased in accordance with a federal statute which allows the land to be taken into trust (Kickingbird 1985, 41).

IGRA does contain one exception for Indian land in Oklahoma. Section 2719 of the Act prohibits gaming on lands

acquired in trust by the Secretary of the Interior after October 17, 1988 unless the Indian tribe has no reservation on that date. If such lands are located in Oklahoma, they must be: (a) within the boundaries of the tribe's former reservation; or (b) contiguous to other land held in trust or restricted status by the United States for the Indian tribe in Oklahoma. This section of IGRA contains the only exception for Oklahoma from the rules as applied to all other states.

Precedent from the Seminole Tribe of Florida and the Cabazon Band of Mission Indians decisions narrowly defined the powers of state governments over Indian gaming, even under the authority of Public Law 280. These cases developed a test to determine whether state gaming laws were civil/regulatory or criminal/prohibitory. A state law is prohibitory if (a) the gaming activities are contrary to state public policy and (b) state interests in regulating gaming outweigh the tribal benefits received through gaming. If the state law prohibits all forms of gambling, then it is criminal/prohibitory and Indian gaming is forbidden in that state. Oklahoma's Charity Games Act must be applied to this test to determine the nature of the legislation, prohibitory or regulatory.

Oklahoma's bingo laws are listed under the title of Oklahoma Charity Games Act (1992). In the findings statement, the Legislature prohibits games of chance

Table II. 1990 Tribal Jurisdiction Statistical Areas in Oklahoma

Area Name	Land (sq. km.)
Absentee Shawnee-Citizens Band of Potawatomi	2,887
Caddo-Wichita-Delaware	1,675
Cherokee	17,354
Cheyenne-Arapaho	21,037
Chickasaw	18,916
Choctaw	27,485
Creek	12,038
Iowa	804
Kaw	791
Kiowa-Comanche-Apache-Fort Sill Apache	16,944
Osage	5,808
Otoe-Missouria	721
Pawnee	1,318
Sac and Fox	1,993
Seminole	1,469
Tonkawa	659
Creek-Seminole Joint Area	168
Iowa-Sac and Fox Joint Area	123

offered to the public by commercial operations other than charitable organizations. Games of chance include bingo, U-PIK-EM bingo, and breakopen ticket games. The "organizations" must be a religious, charitable, labor, fraternal, educational, lodge, or any veteran's or firemen's organization which operates without profit to its members. This Act is in the "interest of the health, welfare, and safety of the citizens of the State of Oklahoma" (Section 401). The Oklahoma Tax Commission is responsible for the enforcement of this act. Further analysis is required.

The state does allow bingo games to be conducted with certain restrictions. No bingo shall be conducted on Sunday. No bingo shall be conducted between the hours of midnight and 10:00 a.m. on weekdays. Daily bingo sessions are limited to one session per day. Prizes are restricted to $100 for a single game. These are all regulations, not prohibitions. Obviously, these gaming activities are not contrary to public policy in the State of Oklahoma. Case law must be consulted to balance state interests with tribal benefits.

The only mention of Indian tribes is noted in Section 415--Purchase and sale of supplies. Distributors are allowed to market bingo paraphernalia to charitable organizations, exempt hospitals, nursing homes, or a federally recognized Indian tribe or nation. Section 426 declares bingo cards to be contraband, unless purchased by a federally recognized Indian tribe or nation. These sections

seem to contradict the findings statement which excludes all commercial operations from conducting games of chance.

Oklahoma case law may provide the answers to the puzzle. United Keetoowah Band of Cherokee Indians v. Oklahoma (1991) sheds some light on the gaming controversy in Oklahoma. This case involved "pull tabs" at a bingo enterprise operated on a restricted allotment. The U.S. Court of Appeals for the 10th Circuit upheld a permanent injunction prohibiting the State from exercising criminal jurisdiction over the allotment. "The very structure of IGRA permits assertion of state civil or criminal jurisdiction over Indian gaming only when a tribal-state compact has been reached to regulate Class III gaming" (927 F.2d 1170).

However, a later case restricted the elements of a tribal-state compact. In Citizen Band Potawatomi Indian Tribe of Oklahoma v. John E. Green (1993), the District Court's decision was affirmed to limit the importation of video lottery terminals onto tribal land. Such devices are illegal under Oklahoma law. Lotteries are currently prohibited in the state, but the issue will be put to a vote by the public this year. A tribal-state compact under IGRA cannot involve forms of gambling which are prohibited by state law.

Charitable organizations in the state of Oklahoma are voicing opposition to the bingo law. The Tax Commission issued permanent rules on March 24, 1993. The organizations

claim that they are forced to cancel their fund-raising games, because the competition is too stiff. The regulations seem to hinder charitable games from competing with Indian-sponsored bingo games (Bradley 1993, 6A). While the Indian games award unlimited cash and prizes, the non-profit clubs are restricted to $100 per game.

Senator Rick Littlefield of Grove is the chief author of Senate Joint Resolution 18, which seeks to suspend the Tax Commission's rules. When the Act was passed, it was expected to produce at least $12 million a year from taxes on sales of bingo supplies by wholesalers. The revenues are lower than anticipated, because the state has over 19 Indian tribes offering bingo games that do not pay taxes (Bradley 1993, 6A).

Indian gaming establishments dot the landscape in Oklahoma. Currently, Class II games are the only ones played for profit in Oklahoma. Class I traditional games can be viewed by the general public at tribal ceremonies and pow wows throughout the summer in Oklahoma.

Bingo halls are bringing big business to the tribes. Bingo is an excellent way for tribes to test the gaming waters. The game has low start-up costs and a simple inventory. The tribes generally hire outside management firms to help run their bingo gaming. The usual fee is 45% of the profits. The Five Civilized Tribes, working together to preserve tribal autonomy, refuse to contract out with management companies. They prefer to run the games on their

own. The games provide employment for the Indians and revenue for the tribes, while indulging the habit of many small-time gamblers.

The tribes have adopted modern technology to their advantage in the industry. Many of the Indian gaming businesses operate a bus system in conjunction with the halls to supplement transportation for out-of-state visitors. The Otoe-Missouria "bingo buses" pick up bingo players from around the Midwest, from Nebraska to Texas. These people will ride for several hours before reaching their final destination--an Indian bingo hall off the beaten path.

Bringing the game to the far corners of the nation, the Creek Nation has pushed the standard game of bingo to new limits. The Creek Nation Bingo Hall in Tulsa produces live telecasts of MegaBingo, a 15-minute game beamed by satellite to 47 sites on 31 reservations in 10 states (Worsnop 1992, 393).

The discussion of Indian gaming in Oklahoma is limited to Class II gaming, because Class III gaming enterprises are not currently in operation in the state. At least four tribes have expressed an interest in pari-mutuel wagering. The Comanche Tribe has proposed building a horse track near Lawton. The Tonkawa Tribe is interested in simulcasting off-track betting. The tribes are required by the Indian Gaming Regulatory Act to draw up a tribal-state compact before such business can be opened to the public. According

to the Federal Register Notices for October 23, 1992, the Assistant Secretary of the Department of the Interior, through his delegated authority, approved the Tribal-State Class III Gaming Compact between the Citizen Band Potawatomi Indian Tribe of Oklahoma and the State of Oklahoma as enacted on July 6, 1992. However, the tribe has not engaged in any such activity to date.

Intertrack and harness, quarter horse, and thoroughbred pari-mutuels are legal forms of gambling in Oklahoma. These activities are considered Class III by the Indian Gaming Regulatory Act. Based on IGRA, it is reasonable to assume that Indian tribes are also authorized to contract for these activities on Indian land.

Indian gaming in Oklahoma is regulated by the Oklahoma Indian Gaming Association. This organization is composed of tribal members who conduct gaming establishments in the state. They assist Oklahoma tribes by providing technical assistance, model codes and ordinances, and model investor and operator contracts (Kickingbird 1983, 24). The tribes may also belong to the National Indian Gaming Association, which is a lobbying organization located in Washington, D.C. (Burris 1994). A membership list contains the following tribes:

Apache
Cherokee
Choctaw
Citizen Band Potawatomi
Eastern Shawnee
Absentee Shawnee
Chickasaw
Comanche
Delaware (Western)
Iowa

Kaw
Ponca
Sac and Fox
Muscogee (Creek)
Quapaw

According to the Oklahoma Vacation Guide for 1993, over 29 Indian bingo halls are located within the state. The number of halls fluctuates as more tribes become involved in the pursuit for profit. Figure 9 shows the location of all Class II Indian gaming operations in Oklahoma. Most of the Indian gaming halls correspond to the appropriate TJSA. However, others do not follow the pattern, like the Ponca Tribal Bingo Center. Several tribes failed to report their jurisdictional areas to the Census Bureau in 1990. As a result, several gaming enterprises appear to be located on land owned by the state. Some tribes, like the Chickasaw, manage more than one gaming hall. Anadarko is the only city that contains two bingo halls, according to the 1993 listing. The lack of tribal bingo facilities in northwestern Oklahoma correlates to the history of the area. Historically, the western portion was considered No Man's Land until 1890 (Morris 1986, 54). This land was never claimed by any Oklahoma Indian tribes.

It is interesting to note that many halls are located in relatively rural areas with small population bases surrounding them. How are the tribes able to generate enough business to remain open? Distance decay does not appear to be a problem, because many tribes bring the players to the game. As discussed earlier, tribal bingo buses are loaded with players from midwestern and southern

states seeking fortune at Oklahoma Indian gaming establishments.

The businesses must be located on trust land or Indian country to be legal. The case of Indian Country, U.S.A., Inc. v. Oklahoma Tax Commission (1987) supports the location in Indian country in Oklahoma. The Court of Appeals held that the Muscogee (Creek) Nation's bingo business was located on the tribe's original treaty lands and was "Indian country," even though the site was not on a reservation or land held in trust by the federal government. As a result, the business was not subject to state regulation (Reeser 1992, E-136).

A fairly recent article in Indian Gaming magazine explores Oklahoma tribal gaming facilities. The four gaming centers operated by the Chickasaw Nation are located in Ada, Sulphur, Goldsby, and Thackerville. These operations have provided over 300 jobs and entertainment for up to 1,000 patrons per session. Revenue is used in Chickasaw tribal programs for senior citizens, the head start program, social services, and job training (Indian Gaming 1991, 9).

Located in Durant, the Choctaw Bingo Hall benefits the tribe and community as well. Profits have been used to purchase two buses for tribal travel and to bring in players. The revenues go into the General Fund which is applied to the Elderly Nutrition Program, Commodity Program, higher education, and to provide medicines for Choctaw people. The tribe collects toys at the Hall for needy

Choctaw children. Helping the community, the Hall hosts an annual "Chamber Night" to benefit the Durant Chamber of Commerce. Sponsorship donations are often raised for such organizations as MDA, Special Olympics, and Boy Scouts (Indian Gaming 1991, 12).

The Ponca Tribal Bingo hall offers high stakes bingo two or three times a month, ranging from $11.99 to $3,000 per game. Payouts at other times reach $250 and $500. The hall is run by an outside firm, which contributes $35,000 to the tribe a month (Indian Gaming 1991, 14).

Bingo halls in Oklahoma seat anywhere from 100 to 1,500 people per session. Prizes range from a few dollars at small halls to $1,000,000 for MegaBingo. Each tribe applies the profits to different programs, but they all must be related to governmental services provided by the tribe. These revenues have boosted the employment rate and economy of Oklahoma Indian tribes. They are returning to a period of self-sufficiency and internal sovereignty, which are vital to the survival of the tribes.

CHAPTER V

SUMMARY AND CONCLUSIONS

Jurisdictional conflicts can occur in any geographic area and on almost any subject. Although the legal system is set up to resolve such conflicts, rarely are the solution set in stone for general application. Jurisdiction is riddled with exceptions and complicated situations which often cannot be forseen. As the conflicts arise, federal, state, and tribal governments must compromise and respect the other views. Tribal governments and state governments are two sovereign entities who often fight over the same geographic area and subject matter. Indian gaming is an area of tremendous conflict, as it is a relatively new subfield of Indian law.

Results

The first objective was to develop a general classification scheme for jurisdictional conflicts between Indian tribes, the federal government, and the states. The conflicts were broken down by subject into criminal and civil jurisdiction. A flowchart was developed for each subject to be applied on a national scale.

Criminal jurisdiction in Indian country is dependent on the race of the victim and defendant. Civil jurisdiction is also based on the race of the plaintiff and defendant in the suit. Indian tribes generally exercise jurisdiction over crimes that occur in Indian country between Indians. If the crime involves non-Indians, then the federal and/or state governments become involved. In civil matters, tribal governments have exclusive jurisdiction over actions that involve Indian plaintiffs and defendants or non-Indian plaintiffs. Neither model can be strictly applied to all situations across the country. Every Indian tribe and state exist under different circumstances.

The second objective was to apply the above models to Oklahoma. Oklahoma was effectively worked through the test for criminal jurisdiction. Each question was addressed and applied to Indian tribes in the state. In comparison, Oklahoma did not correspond to the entire civil classification. Oklahoma differs significantly from other states by virtue of several Congressional grants of civil jurisdiction. The subjects of probate and heirship fall specifically under the state court jurisdiction on lands of the Five Civilized Tribes and the Osages. The significance of this grant of authority from Congress can be traced to the history of Indian Territory. In upholding the guardian-ward relationship, Congress has made a point to control the activities of the Five Civilized Tribes since their removal to Oklahoma.

The third objective was to develop a typology of the title status of Indian lands in Oklahoma. After a thorough legal analysis, it was discovered that land status is insignificant in Indian gambling. The tribe may purchase or acquire additional land, and it immediately becomes Indian country. As long as the tribe once held title to or formerly resided on the land, the status is irrelevant.

Aside from the legal determination, attempts were made to consult the Bureau of Indian Affairs. Unfortunately, problems were discovered upon contact with the two Bureau of Indian Affairs offices in the state. The BIA office in Muskogee has only been in operation for approximately one year. Presently, the office does not handle any of the land status records mentioned in the Code of Federal Regulations. They are in the process of tracing heirship and ownership of allotment parcels for the Five Civilized Tribes, which are under their jurisdiction. The BIA office in Anadarko may contain such records, but verification of access is a time-consuming process. A detailed explanation of the need for such documents must be provided in a written request. The Agency then determines if such access would violate the Privacy Act. To date, nothing has been received from the Agency. Because actual status is not important, this line of inquiry was not pursued further.

The fourth objective was to map the Indian gaming establishments in Oklahoma. Several sources were consulted to create the map (Figure 9) which portrays the location of

the gaming centers. On-site visits were conducted for Ponca Tribe of Oklahoma Bingo, Otoe-Missouria Bingo, Cimarron Bingo Casino in Perkins, and the Goldsby Gaming Center. The other gaming halls were contacted by telephone to verify the operation. The map illustrating the Tribal Jurisdiction Statistical Areas was overlayed with the halls to aid in analysis. Most of the bingo halls are located in the appropriate TJSA. However, one hall appeared to be out of place. This outlier coincided with a tribe, the Poncas, that did not report jurisdictional areas to the Census Bureau in 1990. A majority of the halls are located in the central and eastern portions of the state. Historically, these portions constituted Indian Territory and the Cherokee Outlet.

It is important to study the results in relation to the hypotheses which were developed prior to this investigation. First, no amount of research would allow such a generalization that the majority of cases will fall under federal jurisdiction. The answer is not that simple. On Indian lands, tribal governments retain limited powers of sovereignty and control over its members. Tribes are allowed to deal with internal matters, unless Congress has said otherwise. The federal government must uphold the guardian position when conflicts arise, to protect the tribes from further desecration of autonomy. It can be generalized that the states are allowed little, if any, intrusion into tribal affairs, absent a grant from Congress.

Second, Oklahoma is not an exception to the models of criminal and civil jurisdiction because there are no reservations. The codified definition of Indian country includes Indian reservations, as well as dependent Indian communities and Indian trust allotments. This definition covers the Indian tribes residing in Oklahoma.

Third, this hypothesis can be restated to explain the land status in general. Former reservation land in Oklahoma is either owned in trust by the tribe or an individual, or it is restricted against alienation by the United States. Most of the tribes in Oklahoma still retain a tribal land base, although there are exceptions to this rule. In addition, tribes are allowed to purchase former lands or adjacent lands which become Indian country. These lands can be categorized as "acquired" Indian lands. Thus, the status of the Indian land is irrelevant to Indian gaming by virtue of the codified definition. "Acquired" Indian lands could be added as another category to Sutton's model. Imre Sutton's political/ geographical view of Indian country (Figure 4) best illustrates the situation of gaming in Oklahoma, minus the reservation. The hunting and fishing rights, which are exercised on former tribal lands, are similar to the placement of gaming enterprises, which may be established on former tribal lands.

Fourth, it is agreed that the Indian bingo halls in Oklahoma are located on tribal property which is held in trust by the federal government.

Further Research

The issue of Indian gaming is wide open for several avenues of research. An economic impact study could be performed to assess the Indian gaming industry on a statewide basis or by individual tribes. One could geographically analyze the effects of distance decay and the threshold principle on the gaming establishments. This would also incorporate statistical methods to determine population base and location analysis. The study could include tourism dollars, local profits, and state tax receipts. The Indian tribes are not the only ones to benefit from the industry. Indian gaming brings in a substantial sum of out-of-state money.

Spatially, one could trace the origins of people that play Indian bingo in Oklahoma. Are they generally from the Midwest? Does Oklahoma Indian bingo offer better prizes or better facilities? Why are they drawn here? A survey would best facilitate this line of study.

An Indian gaming database could be created to aid the study and administration of Indian gaming in the United States. It would help the federal government to keep abreast of the state of affairs. It could be used as a marketing tool by the various Indian tribes. State governments could use this data to help control the involvement of organized crime within state borders.

Opportunities for study in Indian gaming are numerous. This discussion is by no means a limitation of possibilities. This issue is relatively new to the United States, as it became popular in the 1980's.

Conclusion

The fields of geography and law interlock well for a study of Indian gaming. Indian gaming is a prime example of jurisdictional conflicts which involve federal, state, and tribal governments in a complicated struggle for control. The Indian gaming industry is a lucrative business which has attracted national attention. The Indian tribes are using profits to improve economic self-sufficiency.

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