



Public Law 280



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Topics



- ❧ Basic Principles of Federal Indian Law
- ❧ Congressional Eras
- ❧ PL 280



Basic Principles



- ❧ Tribes are independent entities with inherent self-government
- ❧ Congress can regulate tribes
- ❧ States are excluded from Indian affairs unless Congress delegates authority to them
- ❧ Federal trust responsibility



Congressional Eras



Era	Time Frame
Establishment of the Federal Role (Treaty Making)	Contact-1820
Cherokee Cases & Indian Removal	1820-1887
Allotments & Attempted Assimilation	1887-1934
IRA and Preservation of the Tribes	1934-1953
Termination & Relocation	1953-1968
Tribal Self-Determination	1968-present



Establishment of the Federal Role

Contact - 1820



- ❧ Europeans had little choice but to deal with the Indian tribes as independent nation.
- ❧ Treaties often dealt with:
 - ❧ Terms of peace
 - ❧ Exchanges of land and goods
 - ❧ Preservation of rights
- ❧ Written in English
- ❧ Feds often selected individuals to negotiate with – not necessarily the traditional leaders of tribes



1794 Treaty of Canandaigua

- ❧ “The United States having thus described and acknowledged what lands belong to the Oneidas, Onondagas, Cayugas, and Senecas, and engaged never to claim the same, nor to disturb them, or any of the Six Nations, or their Indian friends residing thereon and united with them, in the free use and enjoyment thereof.”
- ❧ Funds for the delivery of goods (calico) “which shall be expended yearly forever”



Cherokee Cases & Indian Removal 1820-1887



❧ Johnson v. McIntosh

- ❧ tribal land grant to individuals
- ❧ “doctrine of discovery”

❧ Cherokee Nation v. Georgia

- ❧ Cherokee was not foreign nation that could file action with SCOTUS to challenge Georgia’s attempts to pass a law
- ❧ “domestic dependent nations”
- ❧ “guardian” and “ward” relationship

❧ Worcester v. Georgia

- ❧ Missionaries arrested by Georgia for failing to obtain license
- ❧ Excluded states from power over Indian affairs



1838 Treaty with the Oneida

- ❧ The Oneida ceded and relinquished all right, title and interest in the land previously reserved in a cession from the Menominee excepting the land currently occupied near Green Bay in exchange for securing the present reservation as well as a sum of money.
- ❧ “From the foregoing cession there shall be reserved to the said Indians to be held as other Indian lands are held a tract of land containing one hundred (100) acres, for each individual, and the lines of which shall be so run as to include all their settlements and improvements in the vicinity of Green Bay.”



Allotments & Attempted Assimilation 1887-1934

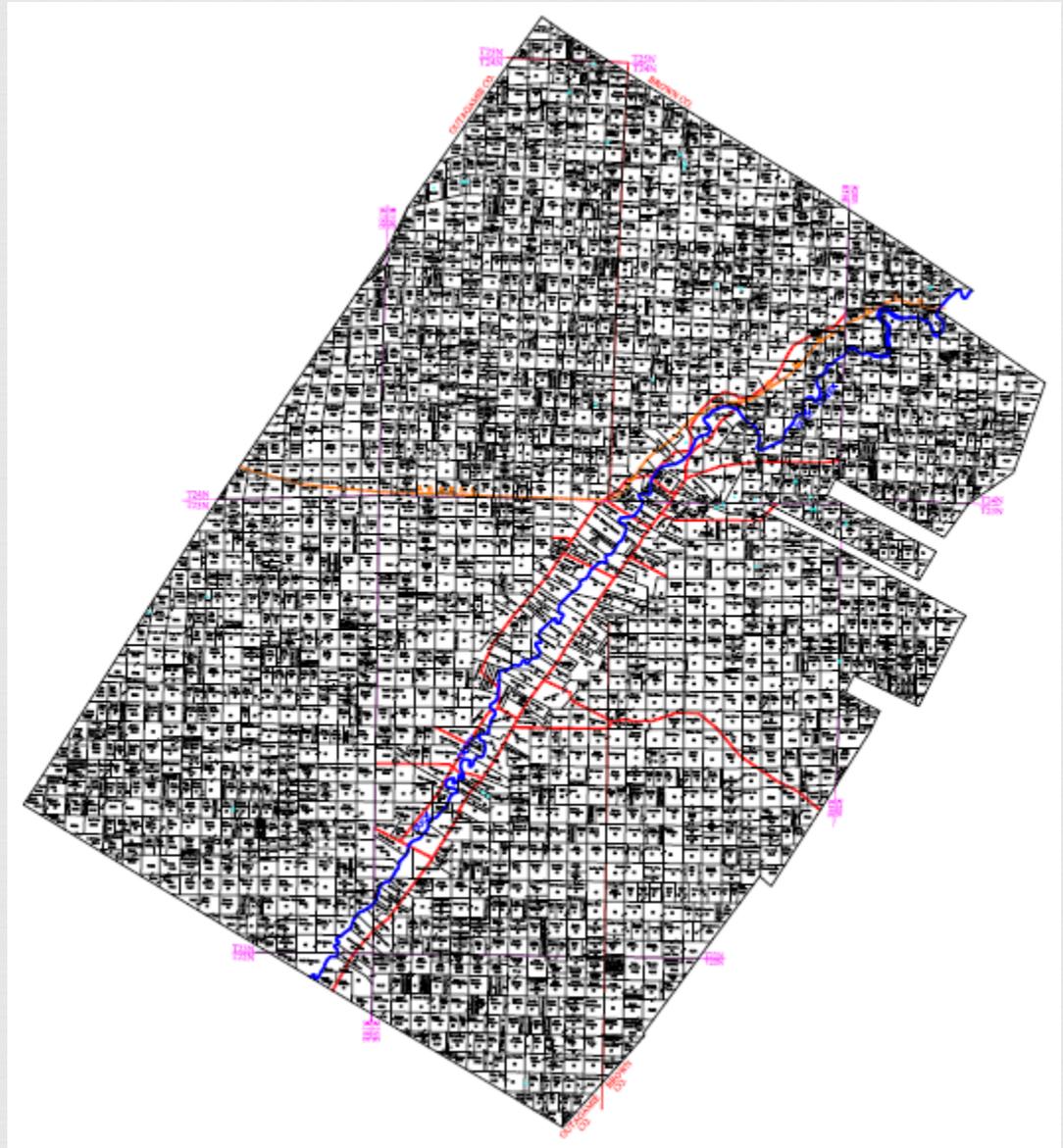


- ❧ Congress passed the Dawes General Allotment Act in 1887
- ❧ Intent was to move away from communal, tribal economies toward an agrarian, individualistic one
- ❧ Divided up tribal landholdings and gave title to individual tribal members, held in trust for a period of 25 years
- ❧ Congress passed the Burke Act in 1906 to allow for immediate removal of trust status of allottee was deemed competent



Allotment of the Oneida Reservation

- ❧ Oneida Reservation Allotment Completed By 1891
- ❧ 1,530 Allotments
- ❧ Average Allotment – Roughly 40 Acres



Meriam Report



- ❧ 1928 report evaluated the success of the Allotment Act
 - ❧ Act was successful in breaking up tribal landholdings
 - ❧ Act failed to assimilate Indians into mainstream society
 - ❧ Indian people experienced drastic declines in health, income, and education
- ❧ Indians throughout the United States lost ownership of sixty-five percent of their land, totaling approximately ninety million acres.



IRA & Preservation of Tribes 1934-1953



- ✧ In 1934, Congress passed the Indian Reorganization Act
 - ✧ Restore management of tribal affairs to tribal governments
 - ✧ Establish a process to reacquire tribal land bases



Oneida Constitution & Land Acquisition

- ❧ 1934 - Tribe votes to accept application of the IRA (vote was to NOT opt out)
- ❧ 1936 & 1937 - Tribe adopts and Secretary approves Oneida Constitution pursuant to the IRA
- ❧ 1937 - Tribe and United States began to reacquire title to land on the Oneida Reservation for the Tribe



Termination & Relocation

1953-1968



- ❧ General termination mid 1940s to mid 1960s. Congress targeted tribes that were “qualified for full management of their own affairs” to pass “legislation for removal of legal disability of Indians by reason of guardianship by the federal government.”
 - ❧ Congress terminated the Menominee in 1954
- ❧ In 1953 Congress passed Public Law 280
- ❧ Indian Relocation Act of 1956 (Adult Vocational Training Program) – paid for moving expenses and vocational training



Tribal Self-Determination 1968-present

- ❧ Indian Civil Rights Act of 1968
- ❧ Indian Financing Act of 1974
- ❧ Indian Self-Determination and Education Assistance Act of 1975
- ❧ Tribal Self Governance Act of 1994
- ❧ Native American Housing Assistance and Self-Determination Act of 1996
- ❧ Tribal Law and Order Act of 2010
- ❧ Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012



Public Law 280



- ❧ In 1953, Congress passed Public Law 280 to address perceived lawlessness on Indian reservations.
- ❧ Granted several named states (including Wisconsin) criminal jurisdiction over offenses committed by Indians on reservations.
- ❧ Opened state civil courts to suits by and against Indians.



Public Law 280 (cont.)



PL 280 did not:

- ❧ Make state, county or local civil regulations applicable to tribes or tribal members
- ❧ Give the state taxing authority over tribal members
- ❧ Terminate tribes or authorize any state jurisdiction over tribes
- ❧ Terminate treaty rights
- ❧ Eliminate any tribal jurisdiction
- ❧ Interfere with trust status of land



Three Categories of Jurisdiction

- ❧ Civil cause of action includes disputes between two individuals such as a contract dispute or a divorce.
- ❧ Criminal prohibitory laws are laws that prohibit an activity altogether.
- ❧ Civil regulatory laws are laws regulate a person's activity.



GENERAL Rules - Civil Cause of Action

	Tribal Member
Tribe	Tribal members can access tribal courts to resolve civil causes of action.
State	-PL 280 granted states concurrent jurisdiction. Tribal laws will be given full force and effect only if the tribal laws are not inconsistent with state laws. -non-PL280 states have no jurisdiction



GENERAL Rules – Criminal Prohibitory Jurisdiction

	Tribal Member	Non-Member
Tribe	Tribes retain the inherent authority to criminally punish tribal members.	Except for the provisions in VAWA, tribes do not have the jurisdiction to criminally punish non-Indians.
State	-PL 280 granted named states criminal prohibitory jurisdiction over offenses committed by tribal members. -non-PL280 states have no jurisdiction	Wisconsin has criminal prohibitory jurisdiction over non-members.



GENERAL Rules - Civil Regulatory Jurisdiction

	Tribal Member	Non-Member
Tribe	Unless limited by treaty or statute, tribes retain inherent civil regulatory jurisdiction over tribal members.	Unless one of the <u>Montana</u> exceptions are met, tribes do not have civil jurisdiction over non-members.
State	State civil regulatory laws do not apply to tribal members.	The state has civil regulatory jurisdiction over non-members.



Civil vs. Criminal Jurisdiction

- ⌘ If an activity is generally permitted, subject to regulation, the law is probably a civil regulatory law.
- ⌘ If the activity violates the state's public policy, then the law is probably a criminal prohibitory law.
- ⌘ California v. Cabazon
- ⌘ Wisconsin Court's unique interpretation



Who Has Jurisdiction?

Some Factors to Consider:



- ❧ Is the person a tribal member or a non-Indian?
- ❧ Did the activity happen on tribal land or non-Indian land?
- ❧ Is the person married to a tribal member, or has the person entered into a contract with the tribe?
- ❧ Are there any federal laws or treaties that might apply?
- ❧ What are the tribal and state interests at stake?



A Few Potential Challenges to tribal Jurisdiction

- ❧ Jurisdiction under *Montana*
- ❧ Reservation disestablishment claims
- ❧ Tribal organization under the Indian Reorganization Act
- ❧ Non-contiguous land ownership
- ❧ Overlapping municipal and tribal jurisdictions
- ❧ Perceived jurisdictional differences between tribal fee and tribal trust land



Retrocession



- ❧ In 1968, Congress authorized the United States to accept retrocession by any state over all or a portion of its jurisdiction
 - ❧ State request triggers the process (either from the governor or the legislature)
 - ❧ Secretary of the Interior needs to accept (or partially accept) the retrocession request



Retrocession (cont.)



- ❧ Notice the lack of mechanism for tribes to initiate retrocession. Tribes have used political initiatives to get process started.
- ❧ Tribes need to commit substantial resources to create infrastructure necessary to handle increased responsibilities that come with retrocession.

