PUBLIC LAW 280, TRIBAL SOVEREIGNTY, AND THE VALUE OF SOVEREIGNTY

An Undergraduate Research Scholars Thesis

by

JORDAN DUNLAP

Submitted to the Undergraduate Research Scholars program at
Texas A&M University
in partial fulfillment of the requirements for the designation as an

UNDERGRADUATE RESEARCH SCHOLAR

Approved by Research Advisor: Dr. Linda Radzik

May 2020

Major: Philosophy

TABLE OF CONTENTS

Page

ABSTRACT 1

Literature Review 1
Thesis Statement 3
Theoretical Framework..........3
Project Description 3

ACKNOWLEDGMENTS..........5

KEY WORDS..........6

INTRODUCTION..........7

CHAPTER

I. THE HISTORICAL AND LEGAL CONTEXT OF PUBLIC LAW 280..........9

The Relationship Between the Federal Government and Tribal Nations..........9
The Landscape of Federal Indian Jurisdiction..........20
The Facets of Public Law 280..........24

II. THE VIOLATION OF THE DOCTRINE OF TRIBAL SOVEREIGNTY..........31

The Federal Trust Responsibility..........31

III. THE NEED FOR A SOLUTION TO PUBLIC LAW 280..........45

Occurrences of Violet Crime on Reservations..........45
Attributing Causation to an Observed Correlation..........48

IV. SOVEREIGNTY AND SELF-DETERMINATION..........60

The Ethnicization of Indigenous Peoples..........60
Indigenous Peoples' Moral Right to Self-Determination..........63
Conclusion..........75

CONCLUSION..........79

WORKS CITED 84

ABSTRACT

Public Law 280: Its Impact on Tribal Sovereignty and the Value of Sovereignty for Public Law 280 Tribes

Jordan Dunlap
Department of Philosophy
Texas A&M University

Research Advisor: Dr. Linda Radzik
Department of Philosophy
Texas A&M University

Literature Review

Public Law 280 was a piece of legislation that dramatically altered the landscape of federal Indian jurisdiction. In order for its legal implications to be made clear, I will first define the general context of federal Indian law, the pillars of governance that tribal nations are able to exercise, and the relationship between tribal nations and the federal government. I will satisfy this requirement of my essay by using the definitional foundations put forth by Michalyn Steele in her article "Congressional Power and Sovereignty in Indian Affairs," as well as the account given by Vanessa J. Jimenez and Soo C. Song in their article, "Concurrent Tribal and State Jurisdiction under Public Law 280" (Steel 2018; Jimenez 1998). Likewise, I will refer to several influential Supreme Court decisions that shaped these principles.

In establishing the jurisdiction exercised by tribal nations prior to the enactment of Public Law 280, I will consult two legal dictionaries that are predominantly concerned with educating

the general public about the relationship between the federal government and tribal nations. First, I will look at *Native Americans and the Law: A Dictionary,* written by Gary Sokolow; secondly, I will look at *Indian Jurisdiction*, written by Kirke Kickingbird (Sokolow 2000; Kickingbird 1983).

Tribal lawyer and indigenous scholar Carole Goldberg, has made an extensive contribution to the legal analysis of Public Law 280 through several essays that can be found in the publication of *Planting Tail Feathers: Tribal Survival and Public Law 280* (Goldberg 1997). In these essays, she discusses how Public Law 280 negates the federal trust responsibility, one of the four pillars supporting the doctrine of tribal sovereignty (Goldberg-Ambrose 1997). I will use this book to provide an account of Public Law 280 in Chapter 2 and to explain how the federal trust responsibility is violated by the statute's enactment. I will use her research to argue that because Public Law 280 tribes no longer possess the federal trust responsibility, they are no longer to be considered sovereigns at all.

In Chapter 3, I will turn to the research conducted on behalf of Duane Champagne in his book entitled *Captured Justice: Native Nations and Public Law 280*, Annita Lucchesi in her report entitled "Missing and Murdered Indigenous Women and Girls," and the policy brief published by the National Congress of American Indians regarding violent crime committed against Native women. These documents will allow me to establish what an absence of sovereignty looks like for Public Law 280 tribes, and why a solution is warranted.

Finally, in Chapter 4, I will utilize Anna Stilz's article, "Decolonization and Self-Determination" to explain why Public Law 280 tribes have a moral right to self-determination that ought to be seen as a replacement for their diminishment of tribal sovereignty. Likewise,

Joanne Barker's essay, "For Whom Sovereignty Matters," will prove beneficial for these purposes.

Thesis Statement

The doctrine of tribal sovereignty is violated by Public Law 280. Therefore, Public Law 280 tribes have a moral claim to self-determination.

Theoretical Framework

Throughout the course of my research, the method of comparative equilibrium will be implemented. Using this theoretical framework will allow me to build my argument from a legal, as well as from a philosophical perspective.

Project Description

My research objectives for this project are to determine the consistency of Public Law 280 and the doctrine of tribal sovereignty. Likewise, I will develop an argument for how this legal finding contributes to the larger conversation of what it means to be sovereign. To fulfill these objectives, I will provide a legal analysis that will answer my research question: Does Public Law 280 violate the doctrine of tribal sovereignty? The legal analysis will include a historical and legal background so that it can be understood how tribal nations exercised jurisdiction before the enactment of Public Law 280. After this is completed, I will compare the doctrine of tribal sovereignty with the jurisdictional stipulations put forth in Public Law 280 so that I am able to determine the consistency of the two legal texts.

I will take the answer to my findings to contribute to the philosophical discussion surrounding the concept of sovereignty, where I will explore the value of sovereignty and what the contemporary application of this concept actually looks like. This will be done through the

lens of tribal nations, a group of people for whom consideration has not always been applied when examining the philosophical underpinnings of sovereignty. In other words, thus far, most theories of sovereignty have been developed in response to the political histories of European nations and have tested the conditions of sovereignty against the activities of *those* nations, while there is a small amount of literature that holds up the conditions of governance that tribal nations abide by to the paradigm of sovereignty. Furthermore, an even smaller amount of literature exists that provides an examination of sovereignty as it applies to Public Law 280 tribal nations. The significance of this project lies in the fact that it serves to fill this gap in the conversation surrounding the concept of sovereignty.

ACKNOWLEDGMENTS

I would like to thank my thesis advisor, Dr. Linda Radzik, for her constant guidance and advice that she has given me on this document since this summer. She went above and beyond to support me and provide me with the resources that I needed to see its completion, giving her undivided attention to each of the students in our research group during our weekly meetings. I truly could not have asked for a better mentor.

I would also like to thank the rest of the Glasscock Summer Scholars for their constant guidance and support in helping me write my thesis. I am deeply thankful for all of the discussions that we shared over the course of our many meetings. Each of you continuously listened to my research goals, and provided me with helpful feedback that shaped the development of this project. I have thoroughly enjoyed getting to know each of you.

Additionally, I would like to thank my partner, Dillon Davis, for being a persistent beacon of love and support.

KEYWORDS

S	Sovereignty
PL-280	Public Law 280
TN	Tribal Nations
L	Lawlessness
IP	Indigenous Peoples
FTR	Federal Trust Responsibility
SD	Self-Determination

INTRODUCTION

In 1953, Public Law 280 was enacted, a federal statute that transferred both criminal and civil jurisdiction from concurrent rule between tribal nations and the federal government to state governments in six U.S. states. It is one of the most controversial and problematic pieces of legislation in federal Indian law, as it drastically altered the political landscape and sovereign status of over 70% of the federally recognized tribes in the U.S. This piece of legislation is the central topic that I will be concerned with placing under strict scrutinization. As I will argue in this essay, because it diminishes the federal trust responsibility—one of the four necessary conditions of the domestic-dependent form of sovereignty that the federal government defines for tribal nations—it effectively eliminates the doctrine of tribal sovereignty. Thus, a problem arises. Tribal nations are *meant* to be defined as sovereign political entities, and yet, Public Law 280 does not recognize this status. As I will illustrate, it follows, then, that Public Law 280 tribes have a moral claim to self-determination, which includes defining their own political systems in a way that protects basic human rights and ensures that they are politically enfranchised.

Chapter 1 will primarily be dedicated to explicating Public Law 280. I will outline the conditions of the statute by explaining the sovereign status of tribal nations, the way it impacts the authority of both states and tribes, and how the landscape of federal Indian jurisdiction existed prior to its enactment. After I satisfy this task, I will more closely analyze the federal trust relationship in Chapter 2, which is eliminated by Public Law 280 due to the way in which it fosters lawlessness on reservations. I will argue that as a result, the sovereign status of Public Law 280 tribal nations ceases to exist. In doing so, I will explore the reasons that could possibly

account for the problem of lawlessness in Chapter 3, and what it looks like when tribal nations are meant to have sovereignty, but do not. Finally, in Chapter 4, I will establish the value of sovereignty for tribes by turning the instrumentalist and the democratic view of self-determination. These arguments will be used to conclude that Public Law 280 tribes have a moral claim to self-determination based on the deleterious effects of Public Law 280.

CHAPTER I

THE HISTORICAL AND LEGAL CONTEXT OF PUBLIC LAW 280

1. The Relationship between the Federal Government and Tribal Nations

An account of the general context of tribal law and the relationship shared between tribes and the federal government is in order before I can proceed into a discussion about Public Law 280 (hereafter, Public Law 280 will be referred to as PL-280). Although the pillars by which tribal governments are supported are often deemed as intricate and confusing, they can be generalized into four principles that can better inform the conversation surrounding PL-280: (1) aboriginal land claim; (2) the federal government's power to exercise plenary authority over Indian affairs; (3) the state's limited ability to interfere with Indian affairs unless given expressed consent to do so by Congress; and (4) the federal trust responsibility (Jimenez 1641). Together, these four principles comprise the doctrine of tribal sovereignty, and are necessary conditions for tribal sovereignty to exist. These four pillars of governance define a *kind* of sovereignty that the federal government has coined as "domestic-dependent" sovereignty (Cherokee Nation v. Georgia). I admit that the idea of being both a sovereign and a dependent is intuitively contradictory—yet, this is what the U.S. had promised to the tribes—a way of being both.

I do not mean to claim that the federal government's definition of domestic-dependent sovereignty is a normative one. For the purposes of my paper, it ought to be thought of as a type of sovereignty that has been conceived in a particular time and place. The four pillars are meant to serve as a way for tribal nations to possess both the status of a sovereign and of a dependent.

As I will demonstrate at a later point, the domestic-dependent account of sovereignty detailed ultimately proves to be fraudulent. It is obliterated by PL-280's enactment. I will briefly take the time to define each of the pillars of governance comprising the doctrine of tribal sovereignty; however, the reader ought to be aware that I will set forth accounts of these concepts only insofar as they are concerned with the argument pertaining to PL-280 that I will develop throughout this paper.

1.1 Aboriginal Land Claim

In discussing the sovereign status of tribal nations, it is imperative to establish *from where* they are able to draw their sovereignty. As human rights attorney Vanessa J. Jimenez explains, "Indian tribes have long been recognized as 'domestic dependent nations,' vested with inherent tribal sovereignty" that predates the formation and establishment of the United States (Jimenez 1641).[1] So, what gives tribal nations the ability to draw upon a type of sovereignty that existed before the establishment of the United States? The common law concept of an *aboriginal land claim* is one of the cardinal sources of support for the inherent tribal sovereignty that tribal nations possess, as it necessitates the formal recognition of the sovereign status of tribal nations. In discussing this terminology, it is important to note that "the doctrine of tribal sovereignty [is] a principle of federal law [that] finds its roots deep in the legal soil predating America's founding" (Steele 316). Likewise, tribal nations do not derive their sovereignty from the federal

---

[1] Indian tribes were first referred to as "domestic dependent nations" in the 1831 Supreme Court case *Cherokee Nation v. State of Georgia.* It was in this same case that the Court determined that the Cherokee Nation ought to be thought of as "a distinct political society, separated from others, capable of managing its own affairs and governing itself, [since it has], in the opinion of a majority of the judges, been completely successful doing so [up until the point of the ruling]l" (Cherokee Nation v. Georgia). It is because of this argument that Indian nations were thereafter determined to be "domestic dependent nations," since "they occupy a territory to which [the Court] assert[s] a title independent of their will, which must take effect in point of possession when their right of possession ceases" (Cherokee Nation v. Georgia).

government, nor do they derive it from the United States Constitution. Their sovereignty is derived from their original inhabitance of the North American region (or rather, an aboriginal land claim). Tribal nations were not granted the right to *be* sovereign or to exercise sovereign authority, but rather "the *inherent* governing authority of tribes as stemming from an *aboriginal sovereignty*…has never been extinguished" (Steele 315). The acknowledgement of tribal nations' aboriginal land claim is a prerequisite to establishing their sovereign status, especially considering the relationship that tribal nations have historically shared with the federal government of the United States.[2]

Aboriginal land claim possessed by tribal nations grounds the basis for the possession of sovereignty by tribal nations, but it fails to answer what tribal nations can actually *do* with their sovereignty. The Supreme Court has characterized these abilities by multiple statutes and treaties. Delegations stemming from inherent tribal sovereignty include "(1) the power to 'regulat[e] their internal and social relations;' (2) sovereign immunity from suit; and (3) the power to prescribe laws for their community and enforce these laws against their members" (Jimenez 1642). Also, the Supreme Court has held that a tribe is able to prosecute its members despite its dependent status, geographical fixation within the borders of the United States, and its obligatory answerability to the control of the federal government (Jimenez 1643).

[2] There have been several instances throughout the history of the U.S. political landscape where tribal nations have not been treated respectfully, just as they have not had their sovereign status acknowledged. The Trail of Tears, the Carlisle Indian Industrial School, the prolific number of instances in which treaty and land rights have been violated, and the initial act of colonization of the North American region by European settlers name just a few. In 1823, in the Supreme Court case *Johnson v. M'Intosh,* it was determined that the U.S.'s discovery of the North American region "necessarily gave to the nation making the discovery the sole right of acquiring the soil from the natives" (Johnson v. M'Intosh). It was not until the Supreme Court decision rendered in *Cherokee Nation v. Georgia* that this fallacious "discovery doctrine" was overturned with the determination that "it cannot be questioned that the right of sovereignty, as well as soil, was notoriously asserted and exercised by the European discoverers...and there is not an instance of a cession of land from an Indian nation, in which the right of sovereignty is mentioned as a part of the matter ceded" (Cherokee Nation v. Georgia). Thus, the rationale behind the decision rendered in *Cherokee Nation v. Georgia*, the Supreme Court's usage of an aboriginal land claim acknowledges and respects tribal sovereignty in contrast to previous historical instances.

Although the platform from which tribal nations are able to draw their sovereign status is much more complex than the explanation that I have just put forth, this vague outline will be sufficient for defining PL-280 so that I can move into a larger discussion about what it means to be sovereign.

1.2 Plenary Powers Doctrine

The second principle that defines the governance of tribal nations is the plenary power of the federal government. Since tribal nations do not possess the same degree of independence as a foreign state, but rather that of a domestic dependent nation, tribal nations are subject to unconditional, or plenary, Congressional authority (Cherokee v. Georgia). First formally established in the 1886 Supreme Court case *United States v. Kagama,* the plenary powers doctrine gave Congress authoritative legislative abilities over Indian Country,[3] with this power being subject to judicial review (Sokolow 190). From the beginning of the U.S.'s relationship with tribal nations, there has been question regarding the extent to which Congress ought to be constitutionally allowed to regulate affairs in Indian Country. The decision rendered in *United States v. Kagama* is significant to the placement of tribal nations in the framework of federal

[3] Indian Country is the geographical territory encompassing the federally reserved lands (better known as "reservations") in which tribal nations are located. As Professor Carole Goldberg explains, "Indian Country status is important because almost all of the special legal principles defining tribal jurisdiction and limiting state jurisdiction apply only to territory within that label" (Goldberg 127).

Indian law, because it was the first deliberate attempt to establish a solution to this problem.[4]

It is in *Kagama* that the Court determined that "'power of the [federal] government over these remnants of a race once powerful' is broad and plenary because 'it alone can enforce its laws on all the tribes'" (Batzer 289). The reverberations that this language had on tribal sovereignty is apparent in the way that it did not restrict the passage of PL-280.

1.3 The Limited Interference Abilities of State Governments

The plenary powers doctrine creates a fluid transition to the definition of the third principle of governance that characterizes the sovereignty of tribal nations: the limited interference ability by state governments to assert authority over Indian affairs absent expressed consent to do so by Congress. Jimenez maintains that "one of the clearest and most persistent themes involving Indian sovereignty has been the continuous struggle by the states to assert

---

[4] The question regarding the extent of Congress's interference with Indian affairs on reservation was first brought to the forefront with three Supreme Court cases that came to be known as the Marshall trilogy, which also happen to be the three Supreme Court cases that initially constructed the principles upholding the doctrine of tribal sovereignty. The 1823 Supreme Court case, *Johnson v. M'Intosh*, was the first of the three cases. In this case, "British subjects and their heirs, claimed title to property conveyed to them by the Indians, [while] the defendants on the other hand, received their title directly from the United States government" (Batzer 288). Both parties believed their claim to be superior. The court concluded that the United States had a superior title because they were the ones to have discovered the land (Johnson v. M'Intosh). As a result, "the white settlers who had title conveyed by the U.S. government were permitted to purchase and sell the land, while tribes retained only the right to occupy and use it" (Batzer 288). The fallacy in this argument is that the North American region was not discovered by the U.S., or any European nation for that matter. Tribal nations already occupied the territory. How could the U.S. have "discovered" the region if there were already people living there? The fallacious argument comprising this decision is generally referred to as the discovery doctrine.

The second case comprising the Marshall trilogy is the 1831 Supreme Court case, *Cherokee Nation v. Georgia,* in which, as I have previously explained, Indian tribes were determined to be "domestic dependent nations" (Cherokee Nation v. Georgia). However, as tribal lawyer MacKenzie T. Batzer states, "the Court at the same time acknowledge[d] that tribal self-government was important, laying the foundation for future conflicts over tribal autonomy" (Batzer 288). In the year following this case, *Worcester v. Georgia* took place, and became the third and final case to make up the Marshall trilogy. In *Worcester v. Georgia,* the Court held that Georgia state laws did not have effect over Cherokee Nation territorial boundaries, thus referring to tribes as "'distinct, independent political communities, retaining their original natural rights'" (Batzer 288). The significance of this case lies in the Court's expression and advocacy of tribal self-governance and autonomy; however, "neither the Court nor the government expounded on what they believed these 'original natural rights' to be'" (Batzer 288). Concerning the material established in the Marshall trilogy, it is apparent that Congress's ability to impose on Indian affairs taking place on reservations permeated the landscape of federal Indian law during this time period. Each of these three cases insofar as they stand on an individual basis contribute to the development of the doctrine of tribal sovereignty, and must be considered in the discussion of the historical context of how *United States v. Kagama* shaped the plenary powers doctrine.

greater control over Indian reservations, usually at the expense of federal or tribal governments" (Jimenez 1645). The Supreme Court's stance on state interference in Indian Country is best encapsulated through the infringement test and the preemption test. I will first define the infringement test, while providing an example of how it typically operates. Afterward, I will do the same for the preemption test.

> The *infringement test* arises when a state government desires to exercise jurisdiction in Indian Country, and deals strictly with matters of civil dispute. An attempt at state authority extension would fail the test if tribal self-governance would be infringed upon. An attempt at state authority extension would pass the test if tribal self-governance would not be infringed upon.

In 1832, Justice Marshall ruled in *Worcester v. Georgia* that state laws were void in Indian Country and could not be enforced within reservational territory (Worcester v. Georgia). The Supreme Court has since held "the states have only limited authority over Indian Country absent an express grant by Congress" (Jimenez 1645). Even though the ruling in *Worcester* has never been expressly overruled or extinguished, the Supreme Court has nonetheless held that states have the power to wield limited authority over Indian Country (Jimenez 1645).[5] This

---

[5] As Jimenez iterates, this can be seen with several Supreme Court cases, such as in *California v. Cabazon Band of Mission Indians* (1987), in which it was determined that the State of California was unable to regulate gaming activity on reservations, as gaming is considered to be a civil regulatory ordinance rather than a facet of civil jurisdiction. The court held that the statute that the State of California used in their argument, PL-280, did not explicitly state their intention to regulate civil regulatory ordinances such as gaming (Jimenez 1645).

The same principle can be seen with the 1976 Supreme Court case, *Bryan v. Itasca County*, in which a similar ruling was issued, as the defendant employed the same statute in their argument. Thus, in determining "whether the grant of civil jurisdiction to the States conferred by [PL-280] is a congressional grant of power to the States to tax reservation Indians except insofar as taxation is expressly excluded by the terms of the statute," the Court ruled that if "Congress intended Public Law 280 to give the states general civil regulatory power over reservations, 'it [ought to] have expressly said so'" (Bryan v. Itasca County; Jimenez 1645). In addition, Jimenez explains that the rulings in *McClanahan v. Arizona State Tax Commission* (1973) and *Williams v. Lee* (1959) protect tribal sovereignty by guarding the established claim in *Worcester v. Georgia*, thereby concluding that states have limited opportunities to assert jurisdiction unless that power is explicitly granted to them by Congress.

precedent was first established in the 1959 Supreme Court case, *Williams v. Lee*, which is where the infringement test first emerges.

The application of the infringement test becomes relevant when state governments desire to assert authority over activities in Indian Country that are not already being regulated by Congress under the plenary powers doctrine. Thus, "in the absence of federal law concerning a particular issue, courts use the infringement test to determine whether state or tribal courts have jurisdiction over a particular type of civil dispute" (Sokolow 146). In his book, *Native Americans and the Law,* Gary Sokolow states that these civil disputes commonly pertain to "action for debts, negligence, land use, and so on" (Sokolow 146).[6] A state government often seeks to assert jurisdiction in scenarios where courts determine that they may have more of a claim than tribes to exercise such authority. As Sokolow explains, tribal nations have rights of self-governance, just as a state or a country might have, which are crucial values to their existence as a sovereign nation (Sokolow 146). Without being able to exercise these rights, tribal nations cease to exist as effective governing bodies. The question of the infringement test is "whether state regulation would infringe [upon] (or violate) a tribe's right to govern itself," and can be interpreted as an endeavor to protect the sovereign status of tribes (Sokolow 146).

State regulation typically passes the infringement test when assertion of authority over reservation activity would not infringe upon the rights of tribal nations. The level of "interest" that the sovereign in question would have over the matter at hand is viewed in terms of who would be subjected to state authority. The two parties in question are divided into Indians and

---

[6] There are several instances in which attempts on behalf of the state government to regulate affairs in Indian Country would be unlawful no matter what. Sokolow lists these instances as including "the taxation or licensing of retail stores and merchandise located on trust lands; negligence cases arising between Indians in Indian Country; and marriages, divorces, and child custody cases concerning tribal members" (Sokolow 147).

non-Indians. If the state attempts to assert authority over subject matter pertaining to non-Indians, they would have a strong claim to having interest in doing so, and the infringement test would most likely pass. If the state attempts to assert authority over subject matter pertaining to Indians, it is not as likely to pass. Pertaining to affairs taking place within Indian Country, tribal nations are seen as having a stronger claim to authority over Indians, while states are seen as having a stronger claim to authority over non-Indians.[7] Courts may grant a state government jurisdiction so that they are able to handle a lawsuit that has arisen on a reservation as a result of, for example, a non-Indian getting into a car accident with another non-Indian. This is where the application of the infringement test becomes tedious. On one hand, state governments have an interest in lawsuits with both parties consisting of their citizens. On the other hand, tribal nations have a right to regulate and uphold traffic laws within their own territories. This is simply an account of how the infringement test operates. One could argue that the nature of the infringement test itself creates room for infringement upon tribal sovereignty. However, this is an undertaking far too onerous for the purposes of this paper.

In recent years, the employment of the preemption test by courts has gained popularity. As I will explain, this facet of the third pillar of the doctrine of tribal sovereignty deals with matters of criminal law and is based on a completely different set of principles than the infringement test, often resulting in more significant limitations of tribal authority.

---

[7]These are two of the governing principles of the infringement test. Of course, they are not without controversy. Arguably, tribes ought to be seen as having a greater interest over *activities* in general that occur within Indian Country. States are seen as having a greater interest over *activities* that occur within state territory, regardless of who the subject is. Tribes are rarely perceived as having interest over the activities of their citizens that take place in state territory on account of their Indian status. Yet, states are permitted to claim that they have an interest over the activities of their citizens that take place in Indian Country, as is apparent by the nature of the infringement test.

The *preemption test* arises when state governments desire to regulate a particular area of the law. The preemption doctrine holds that the authority behind the laws of the federal government shall prevail against state, local, or tribal law. If a state legislature attempts to enact a piece of legislation that would conflict with a federal law that is already in place, then that means federal law preempts state authority. If a state legislature attempts to enact a piece of legislation that would not conflict with federal law, then that means that there are not any federal laws regulating this subject matter, and therefore, federal law would not preempt state authority.

This reasoning behind the Supreme Court's adoption of such a policy is based upon two aspects of the Constitution: the Supremacy Clause (Article IV, Clause 2), which "'declares that treaties and federal statutes are the 'supreme law of the land,'" and the Indian Commerce Clause (Article 1, Section 8, Clause 3), which "gives Congress the right to regulate Indian affairs" (Sokolow 190). As Sokolow explains, the preemption doctrine is in place because of the simple fact that it is more cohesive for legislators, enforcers of the law, and citizens to have certain areas of public policy that remain uniform. For example, what if each state had their own set of laws for air traffic regulation? The results would be disastrous. A uniform set of air traffic regulations displays *complete* federal preemption.

As Sokolow further explains, there is also *partial* federal preemption. When this is the case, the federal government typically sets a threshold of what a state's laws have to be. This concept can be easily explained with minimum wage. The federal government has set the *minimum* hourly wage to be $7.25. The State of Maryland has instead set their minimum wage to be $11.00 (Maryland Department of Labor). Maryland is not breaking any laws by setting their

minimum wage higher than $7.25, but they *would* be breaking the law if they set their minimum wage below the threshold of $7.25. This is because federal law preempts the laws of lower governments.

The matter of preemption complicates itself when its applications are examined with respect to tribal nations. The Supreme Court has determined that "under the Indian Commerce Clause (Article 1, Section 8, Clause 3) of the U.S. Constitution, the federal government has a near monopoly on the regulation of issues pertaining to Native Americans" (Sokolow 190). Likewise, through the plenary powers doctrine, Congress typically has full authority to regulate the affairs of tribal nations. In almost all cases, federal law fully preempts that of the state when dealing with tribes as an area of subject matter. States do not typically have the authority to pass laws pertaining to tribes, unless they are given expressed consent to do so by Congress. The federal government dictates the relationship between states and tribes. The sale and regulation of trust lands, management of trust funds, and the extent to which states may exercise jurisdiction in Indian Country are areas pertaining to Indian law that only the federal government can regulate. Federal authority preempts any attempts by the states to regulate these areas.

1.4 The Federal Trust Responsibility

The final principle of tribal governance is the federal trust responsibility, a formally established relationship between tribes and the federal government. The earliest formulation of the federal trust responsibility was articulated in the Northwest Ordinance of 1787, which affirmed the sovereign status of tribes and dictated the special nature of responsibility that the federal government held in their relationship to the tribal population residing in the U.S. In A.T. Anderson's article, "Unique Relationship," the federal trust responsibility is summarized in four

stipulations:

> "(1) The utmost good faith would always be observed toward the Indians.
>
> (2) Indian lands and property would never be taken from them without their consent.
>
> (3) Laws 'founded in justice and humanity' would, from time to time, be made to protect Indian rights.
>
> (4) The sovereign, natural right of self-government of Indian nations and tribes would be respected and protected by the United States." (Anderson 29).

The federal trust responsibility is meant to serve as a kind of partnership that serves to protect tribes and move them towards self-sufficiency (Anderson 29).

The commitments entailed by the federal trust responsibility were expounded upon in the 1831 Supreme Court case, *Cherokee Nation v. Georgia,* in which the court ruled that legislation on behalf of the State of Georgia was not applicable to reservations. The Court affirmed that the federal government of the United States has an obligation to protect and support the flourishing of tribal nations, which would not be upheld by the administration of state laws in Indian Country. Since tribal nations are "a state of pupilage" and "their relationship to the United States resembles that of a ward to his guardian...the federal government is entrusted with the task of preserv[ing] the confidence and friendship of the Indians, prevent[ing] their suffering for the want of the necessaries of life, [and] preserv[ing] public safety for the citizens of Indian Country" (Cherokee Nation v. Georgia). As tribal nations *are* domestic dependent nations, this principle serves as a form of insurance that the federal government has a formalized obligation to ensure the wellbeing of tribal communities.

Jimenez argues that the federal trust responsibility serves another purpose. Theoretically, “the trust responsibility should serve as a check on the ability of Congress to enact laws that [could be] destructive to Indian tribes’ self-government and the ability of the executive to act unjustifiably against tribal interests” (Jimenez 1648). In conclusion, the federal trust responsibility can be thought of as serving the purpose of ensuring that the federal government will contribute to the prospering of tribal nations, while simultaneously safeguarding against any unwarranted assertions of jurisdiction on behalf of Congress, which is unarguably consistent with the stated purpose of the federal trust responsibility. As will become apparent in Chapter 2, this pillar of tribal sovereignty will come under intense scrutiny when examined through the lens of PL-280.

2. The Landscape of Federal Indian Jurisdiction

Each of the four pillars of governance that I have just outlined—aboriginal land claim, Congress’s plenary powers, state authority over Indian affairs, and the federal trust responsibility—can be thought of as principles that constitute the channels of governance lorded over by tribal nations. In other words, these domestic-dependent principles are how the federal government has defined tribal sovereignty. Now that an account of tribal sovereignty and the relationship between tribal nations, state governments, and federal governments has been put forth, I will discuss the jurisdictional powers of tribal nations prior to the enactment of PL-280. Defining the statutes that pertain to Indian jurisdiction up until the point of PL-280’s passage will show how the scope of federal and state intrusions on tribal sovereignty was transformed significantly leading up to the statute’s enactment in 1953. In this section, I will discuss four pieces of legislation that will be relevant in determining whether or not PL-280 infringes on tribal

sovereignty: the Trade and Intercourse Acts of 1790, the General Crimes Act of 1817, the Assimilative Crimes Act of 1825, and the Major Crimes Act of 1885.[8]

2.1 The Trade and Intercourse Acts of 1790

The significance of the Trade and Intercourse Acts of 1790 is that they are often seen as the earliest example of jurisdictional intrusion in Indian Country on behalf of the federal government. A series of six laws, the Trade and Intercourse Acts followed the practices of several early colonial governments, which bestowed themselves with jurisdictional regulation in Indian territories that honed in on the prevention of corrupt trade activities (Kickingbird 17). At the time of their passages, the Acts claimed to be a protective measure against white traders by regulating the purchase and consumption of liquor and by discouraging the habitation of white settlers in Indian Country (Kickingbird 17). As Kirke Kickingbird elaborates in his book, *Indian Jurisdiction,* "the drafters of the first Trade and Intercourse Act relied on the theory that Indian sovereignty meant 'tribes should be considered as foreign nations and tribal lands protected by treaty, even when situated within the boundaries of a state, [they] should be considered as outside the limits of jurisdiction of states'" (Kickingbird 17). In Section 25 of the Trade and Intercourse Act of 1834 it is stated that:

> "And be it further enacted, that so much of the laws of the United States as provides for the punishment of crimes committed within any place within the sole and exclusive jurisdiction of the United States, shall be in force in Indian Country." (Kickingbird 17)

As Kickingbird claims, even though the Act professed to be shielding the interests of the

---

[8]Here, I am concerned with the jurisdictional powers possessed by tribal nations that had a direct impact leading up to the enactment of PL-280. I will not provide a full historical account of the jurisdictional abilities of tribal nations, as it is unnecessary for the purposes of this essay.

indigenous people, it ultimately encroached upon the jurisdictional powers of tribal nations by enacting a statute that enabled concurrent jurisdiction between the federal government and tribal nations in areas where the tribal nations had previously possessed exclusive jurisdiction.

2.2 The General Crimes Act of 1817

The General Crimes Act of 1817 is another instance of the federal government infringing upon tribal jurisdiction. This piece of legislation permits federal jurisdiction over interracial crimes in Indian Country, such as in cases where there is a non-Indian offender and Indian victim, or when there is an Indian offender and non-Indian victim. The Act authorizes jurisdictional assumption on behalf of the federal government except in cases where there is an Indian offender with an Indian victim, in cases where an Indian offender has already been prosecuted under tribal law or in a tribal tribunal of justice, or in cases where there has been a ratification of an anterior treaty (Kickingbird 17).

2.3 The Assimilative Crimes Act of 1825

The Assimilative Crimes Act quite literally serves the purpose of *assimilating* state laws into the federal legal system. Kickingbird explains that "the purpose of the Act was to fill a jurisdictional void within territories known as 'federal enclaves' and thereby prevent such enclaves from becoming sanctuaries for white criminals fleeing prosecution from local laws" (Kickingbird 18). In the absence of a federal statute in an enclave, the Assimilative Crimes Act necessitated that the enclave's surrounding territory would assume the federal criminal laws existing in the surrounding territory (Kickingbird 18). Therefore, even if a small crime such as larceny—which is usually a misdemeanor depending on the amount of property stolen—was a crime within the enclave's surrounding territory, but not a crime according to federal criminal

law, then the crime became a federal criminal offense under the Assimilative Crimes Act. Surprisingly, Indian Country was not listed as a piece of land over which this law would extend when it was originally enacted; however, in 1946, the Supreme Court saw this "gap" in jurisdictional extension as a legal lacuna to be filled, ruling in *Williams v. United States* that the Assimilative Crimes Act was to be applied in Indian Country (Kickingbird 18).

2.4 The Major Crimes Act of 1885

The fourth piece of jurisdiction that shaped the jurisdictional landscape of tribal nations prior to the enactment of PL-280 was the Major Crimes Act, which was the first piece of legislation that explicitly stated that its intent of passage was to assert federal jurisdiction over crimes committed within Indian Country. The Act was seen as Congress's response to the 1883 ruling in *Ex parte Crow Dog.* The initial impetus to *Ex parte Crow Dog* was the occurrence of Crow Dog fatally shooting Brule Sioux Chief, Spotted Tail, resulting in a Dakota[9] territorial court ruling that Crow Dog was to be hanged for his crimes. The Supreme Court overruled this decision, determining that "the murder of one Indian at the hands of another was within the exclusive jurisdiction of the tribe pursuant to the General Crimes Act" (Jimenez 1651). The ruling in *Ex parte Crow Dog* denied the attempted imposition by the Bureau of Indian Affairs (BIA) and Department of Justice to extend state and federal law onto reservations, instead deferring the matter to "the sovereign right of the Brule Sioux tribe to determine the resolution of the killing under Brule law and existing Brule dispute resolution mechanisms" (Jimenez 1651). The decision sparked outrage amongst members of Congress serving at the time of its ruling; hence, the Major Crimes Act was passed to ensure that the federal government had jurisdiction

---

[9]North Dakota and South Dakota had not yet been admitted into the Union as the 39th and 40th states. At this time, they were still one territory, known as the State of Dakota.

over the following major crimes: "murder, manslaughter, kidnapping, maiming, a felony under Chapter 109A, incest, assault with intent to commit murder, assault with a dangerous weapon, arson, burglary, robber, and a felony under Section 661" (Jimenez 1652).[10] The Major Crimes Act is supposed to be interpreted as tribes now having concurrent jurisdiction with the federal government over the enumerated major crimes, and as no longer having exclusive jurisdiction (Kickingbird 18).

3. The Facets of Public Law 280

Now that I have depicted both the powers of governance and the jurisdictional abilities that tribal nations were permitted to exercise before the enactment of PL-280, adequately understanding the intricacies of this statute will be a manageable task for the reader. In defining PL-280, it will be necessary to not only examine its language, but to provide an account of how the sovereign status of the impacted tribes has been altered. Specifically, I will be concerned with contributing to the larger discussion of what it means to be sovereign in order to ascertain whether or not tribal nations *actually* possess and are able to exercise sovereign powers. Although this portion of the essay will be rather black letter in nature, I shall endeavor to remain consistent with the language employed in the statute at the time of its original passage in 1953, while venturing to build a bridge into an analysis of how the sovereign status of tribal nations has been reoriented and what this means for the concept of sovereignty, philosophically. Defining PL-280 will lead us into an examination of how the statute has impacted tribes both within and outside of the constraints of the law.

3.1 Public Law 280: An Overview

---

[10] Chapter 109A pertains to most felonies that fall under the category of sexual misconduct. Section 661pertains to felonies committed within special maritime and territorial jurisdiction that deal with theft of personal property.

In the 1831 Supreme Court case, *Cherokee Nation v. Georgia*, it was established that states did not have jurisdiction over Indians on reservations. This changed with court affirmation that "Congress may, in the exercise of its power over Indian affairs, authorize states to exercise jurisdiction that [they] would not otherwise possess" (Goldberg 1). One of the earliest mechanisms through which the states were given the opportunity to utilize this power was with the enactment of PL-280 in 1953, as it unilaterally transferred both tribal criminal[11] and civil[12] jurisdictions—which were shared concurrently between the tribes and the federal government up until this point—to six U.S. states.

These six states were under a mandatory obligation to abide by PL-280, while other states were given the option to assume jurisdiction over *certain* tribes within their borders or over *certain* areas of civil or criminal jurisdiction. By authorizing these transfers, PL-280 eliminated almost all of the federal government's jurisdictional duties in Indian Country. Perhaps the outcome of this statue that has inspired the most polemical of criticisms made by both tribal nations and state governments is that PL-280 authorized state jurisdiction to be exercised to a

---

[11]Only inferences can be made regarding the rationale behind Congress's inclusion of criminal jurisdiction in the statute. Professor Carole Goldberg believes that it was because "the foremost concern of Congress at the time of enacting PL-280 was lawlessness on the reservations and the accompanying threat to Anglos living nearby," which is evinced by the conditions of jurisdiction that I have elaborated on in the antecedent section (Goldberg 49). Goldberg maintains that "the primary law enforcement thrust of PL-280 is further evinced by the fact that several predecessor bills offered the states criminal jurisdiction only, and PL-280 itself exempted several restrictions completely from state jurisdiction solely because they had legal systems and organizations 'functioning in a reasonably satisfactory manner'" (Goldberg 49). In other words, states were barred from asserting jurisdiction over tribes such as the Warm Spring Reservation or the Metlakata Indian community, as is exhibited by the federal government's acknowledgment that their legal systems were more "acceptable" in comparison to other tribal legal systems, consequentially leading to their exemption from PL-280.

[12]Just as is the case with criminal jurisdiction, we can only infer why civil jurisdiction was included in PL-280. Goldberg provides a strong claim regarding PL-280's inclusion of criminal jurisdiction; however, it is less obvious as to why civil jurisdiction was appended. The Senate Report on PL-280 declared that the Indians "'have reached a stage of acculturation and development that makes desirable an extension of State civil jurisdiction,'" implying that American-Indians were now "allowed" to be released from second-class citizenship and from the paternal watch of the Bureau of Indian Affairs (Goldberg 50). It is most likely the case that the transfer of civil jurisdiction to states was an afterthought, and was merely incorporated as a part of the statute to induce further assimilation (Goldberg 50).

greater degree than was afforded to the federal government before its passage. In Chapter 2 of this paper, I will discuss why this particular issue is of relevance to my research question and why it is a harsh, deliberate affront to tribal sovereignty.

3.2 Mandatory PL-280 States

PL-280 can be divided into two jurisdictional categories: "mandatory PL-280 states" and "optional PL-280 states" (hereafter, mandatory states and optional states, respectively). In defining PL-280, I will begin first with elaborating upon its stipulations regarding mandatory states. The mandatory states include California, Minnesota, Nebraska, Oregon, Wisconsin, and Alaska (Goldberg 2).[13] The statute imparts that both federal criminal and civil jurisdiction was to be withdrawn, authorizing the six designated states to exert concurrent jurisdiction alongside tribal nations (Goldberg 1). Specifically, mandatory states were to have

> "'jurisdiction over offenses committed by or against Indians in the areas of Indian Country listed [in the statute]...to the same extent that such State or Territory has jurisdiction over offenses committed elsewhere within the State or Territory, and the criminal and civil laws of such State or Territory shall have the same force and effect within such Indian Country as they have elsewhere within the State or Territory.'" (Goldberg 50)

In other words, PL-280 initiated a unilateral transfer of jurisdiction from the federal government —who previously shared concurrent jurisdiction with tribal nations—to the state governments in

---

[13] PL-280 dictates that all territories of Indian Country in the States of California and Nebraska will be affected by the statute. However, in the State of Minnesota, all of Indian Country is affected except the Red Lake Reservation. In the State of Oregon, all of Indian Country is affected except the Warm Springs Reservation, and in the State of Wisconsin, all of Indian Country is affected except the Menominee Reservation (Goldberg 5). The entirety of Indian Country in the State of Alaska is affected by PL-280 except the Annette Islands, and the Metlakatla Indian community (Goldberg 6).

the listed states. Tribal nations in mandatory states are now answerable to the criminal and civil laws of both the federal and state government; ergo, state governments are able to assert jurisdiction in areas where they previously had none at all.

3.3 Optional PL-280 States

The vague language employed in PL-280 enables states that were not specified as being a mandatory state to assume jurisdiction over tribal nations within their borders if they desired to do so. Section 7 of PL-280 states that:

> "The consent of the United States is hereby given to any other State not having jurisdiction at such time with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, Obligate and bind the State to the assumption thereof." (PL-280)

PL-280 says that the mandatory states are required to assume jurisdiction over the tribal nations within their borders; however, it never bars other states from doing so. In fact, it actually grants other states permission to assume jurisdiction, so long as they clear up any contradiction that would otherwise prohibit them from adopting this responsibility.[14] Nevada, Florida, Idaho, Iowa,

---

[14] Optional states are further divided into two categories: states with disclaimers in their constitution and states without disclaimers in their constitution. The disclaimers within the states' constitutions can be thought of as provisions that serve to limit the jurisdiction that the states are able to assert over activities in Indian Country, for they generally stipulate that Indian trust lands and the title of those lands "shall remains 'under the absolute jurisdiction and control of the Congress of the United States'" (Goldberg 69, 70). The disclaimers explicitly declare that the states are not to infringe upon the jurisdiction of tribal nations within their borders, as the title of those lands are entrusted to the federal government, *not* to the state governments. In order for the optional states to utilize the advantages of PL-280, it was necessary for them to take the required legislative action so as to not contradict the disclaimers in their constitutions.

On the other hand, states without disclaimers do not run into the same complication. If a state government does not have a stipulation in their constitution that would prohibit them from asserting jurisdiction over tribal nations, then that state is known as an optional PL-280 state without disclaimers. These states do not need to pass affirmative legislation that would clear up any disclaimers within their constitution, because none exist. It would only be necessary to affirmatively legislate the assumption of jurisdiction over tribal nations if the state government wishes to become a PL-280 state.

Washington, South Dakota, Montana, North Dakota, Arizona, and Utah have all taken advantage of this ability, comprising the second jurisdictional category stemming from PL-280 known as the optional states (Goldberg 2).

3.4 The Consent Condition

Although there are treaties that acknowledge the requirement of tribal consent for *federal* assumption of jurisdiction, there are none in effect that acknowledge the requirement of tribal consent when there are attempts by the *state* to assume jurisdiction, which is how Congress managed to avoid the consideration of tribal consent when it legislated PL-280. It was not until the Indian Civil Rights Act of 1968 that consent conditions regarding PL-280 were actualized for tribal nations. Professor Carole Goldberg of the UCLA American-Indian Studies Center, arguably the most eminent PL-280 scholar, conveys in her book *Planting Tail Feathers* that "the 1968 Act declared that state jurisdiction could be acquired one tribe at a time, so long as the majority of the adult enrolled members of the tribe expressed their consent in a special election, [and] finally, in a more controversial action, it allowed acceptance of jurisdiction over some subject matters but not others" (Goldberg 55). Further discord has stemmed from the way in which the consent condition did not retroactively extend to tribal nations who were affected by state assumptions of jurisdiction prior to the Indian Civil Rights Act of 1968, such as mandatory PL-280 tribes and various optional PL-280 tribes within states who were on the primal frontiers of authorizing the jurisdictional assumptions afforded to them by PL-280. The consent condition was only to be applied to *future* attempted assumptions of jurisdiction.

Optional states can better adapt to the consent condition than mandatory states. PL-280 obligates mandatory states to assume jurisdiction on the statute's terms, which incidentally do

not allow them to condition their jurisdiction on the consent of tribal nations. In contrast, since optional states have more flexibility in shaping their jurisdictional landscape as it pertains to tribes, many optional states are able to provide consent conditions, albeit, many of these consent conditions were obtained through legal battles won by tribal nations (Goldberg 53). It is notable to mention that since this amendment was added in 1968, there have been several attempts at jurisdictional assumption by the state governments, yet no tribes have consented to the transfer (Champagne 12).

3.5 Retrocession

An additional qualification of the Indian Civil Rights Act of 1968 was a retrocession condition, which allowed for tribes to retrocede jurisdiction *back* to the federal government and out of the control of the state. Retrocession could be full or partial, being either geographical or offense based (Champagne 14). Congruent with the consent condition, retrocession was not retroactively applicable to tribal nations who already had their jurisdiction concurrently transferred to the rule of their respective state government. Instead, it would only be of pertinent use to *future* attempts of jurisdictional assumption. However, this condition is quite one-sided, as it unsubtly disregards the voices and opinions of tribal nations that would have otherwise been heard as a result of the consent condition. Moreover, a request for retrocession of jurisdiction back to the federal government and out of the control of the state government can only be initiated on behalf of the state government, not by tribal nations. Once the Secretary of Interior is notified of the state's desire for retrocession, they will either accept or decline the request, while consulting the state government representatives in the process. The Secretary of Interior is under

no obligation of any sort to facilitate communication with the tribal nation to be affected when determining their decision (Goldberg 62).

CHAPTER II

THE VIOLATION OF THE DOCTRINE OF TRIBAL SOVEREIGNTY

1. The Federal Trust Responsibility

In the previous chapter, I discussed the contents of PL-280, a federal statute that transferred jurisdiction over tribal nations from the federal government of the United States to the state governments in six U.S. states. That portion of my essay only served to establish the material germane to the central argument that will take place. In this chapter, I will formally pose my research question and move into an analysis regarding its relevance to PL-280.

Although I have outlined what PL-280 *does* and how it has an impact on tribal sovereignty, in reality, the provided information serves as more of an account of what the statute has prohibited tribal nations from doing since the time of its enactment in 1953. Just as this is how tribal sovereignty functions, it is also the nature of PL-280. It is a restricting force for tribal nations that provides the states with more authority over affairs in Indian Country, rather than the other way around.

Based on the contents of the governing mechanisms of tribal nations in Chapter 1, it appears as if PL-280 directly contradicts the affected tribal nations' ability to exercise their sovereign powers. Minimal legal action has been taken to bring this issue to light, which is partially due to both a restriction of tribal nations' ability to take advantage of the legal institutions created for this purpose and because of a general lack of public awareness concerning the effects of PL-280. When I began this project, my initial research question was: Does Public Law 280 violate the doctrine of tribal sovereignty? Be that as it may, if this were the only inquiry

that I had set out to answer, my claims would be lost amongst a sea of voices that have exclaimed the same answer as I have: *yes.* PL-280 most definitely violates the doctrine of tribal sovereignty for the affected tribes. In this portion of my essay, I will use the federal trust responsibility, one of the four pillars that upholds the doctrine of tribal sovereignty, in order to convey how tribal sovereignty is violated by PL-280, which will allow me to examine the value of sovereignty for tribal nations at a later point.

In Chapter 1, I outlined four of the defining factors of the federal trust responsibility, a formalized relationship between the federal government and tribes that is meant to ensure the devotion of resources towards the wellbeing and economic flourishing of tribal communities and to pave the necessary avenues that will potentially lead to tribal self-sufficiency. In this chapter, I will utilize the definition that I have provided so that I can make the claim that the federal trust responsibility is a pillar that has ultimately faltered as a result of PL-280.

As Professor Goldberg argues, notwithstanding Congress's claims that PL-280 was enacted to resolve the perceived problem of "lawlessness" in Indian Country, the problem has only increased. Prior to the passage of PL-280, "because tribal systems look[ed] so different and function so differently from non-Indian systems, outsiders often concluded there was no law at all" (Goldberg 5). These "outsiders," or rather, the federal government, failed to realize that before the settlement of European nations in North America, tribal nations actually functioned and flourished civilly without the imposition of taxes, without formal incarceration systems, and without tribunals of justice that follow the model of the U.S. court system by utilizing restorative justice systems or mechanisms of community policing instead. Tribal nations were perceived as

having an issue of lawlessness due to the federal government mistaking a legal system that differed from Western government structures for a complete absence of one.

Contrary to what the legislators of PL-280 believed, as Goldberg argues, there was not an issue of lawlessness on reservations *before* 1953; however, due to the deleterious effects of PL-280 and the way that it alters tribal sovereignty, there is *now*. The federal trust relationship shows how PL-280 has caused two kinds of lawlessness to manifest within PL-280 Indian Country. Goldberg categorizes the first as a *legal vacuum type of lawlessness* and the second as an *abuse of authority type of lawlessness.* I will elaborate on these two types of lawlessness while depicting what it looks like when they appear in tribal communities through an example pertaining to the abduction, murder, and mutilation of Polly Klaas that took place on the Coyote Valley Reservation within the State of California, one of the six mandatory PL-280 states.

1.1 Polly Klaas and Lawlessness in Indian Country

In 1993, a twelve-year-old girl and resident of the Coyote Valley Reservation by the name of Polly Klaas was abducted from her friend's bedroom during the night while she was sleeping over at her house. Her kidnapping mobilized the community in searching for her, which eventually attracted national attention. After a two month search, Polly Klaas's body was found in a nearby forest, dead and mutilated. Soon afterward, Richard Allen Davis, a previously suspected murderer, well-known burglar, and twice-convicted kidnapper, "was arrested for the crime on the Coyote Valley Reservation, near Ukiah, California, home to about two hundred Pomo Indians" (Goldberg 23). Davis had been staying with his sister, Darlene Schwarm, who had been living on the reservation for several years, renting a residence from a tribal member. Prior to Klaas's kidnapping, Schwarm's presence on the reservation was detected after several

tribal members had gathered reasonable suspicion that she was dealing drugs and partaking in other illicit activities out of her residence (Goldberg 23). Once tribal members gained knowledge of this, they unsuccessfully attempted to seek out legal action to have her evicted and moved off of the reservation.

As I will explain, although there were options of legal recourse that were technically available, their utilization was unattainable because of the restraints of PL-280. The tribe's inability to take advantage of options that may have prevented the atrocities committed against Polly Klaas conveys how PL-280 enables both legal vacuum lawlessness and abuse of authority lawlessness, which ultimately cause the fourth pillar of governance—the federal trust responsibility—to crumble.

Legal vacuum lawlessness occurs as a result of rifts or vacuums in jurisdictional authority, which often give rise to unofficial, communal policing efforts within a tribal community as an attempt to regulate crime, often culminating in eruptions of violence. Jurisdictional vacuums may exist because it is the case that no governing body has authority, or because, even if a government *does* have authority, they may lack the proper funding, resources, and institutional support to exercise that authority (Goldberg 12).

The first obvious path of legal recourse for the Pomo Indians to utilize in an attempt to evict Schwarm would have been for them to file a claim against Schwarm in a tribal court. However, the Coyote Valley Band of Pomo Indians, like many tribes in the U.S. affected by PL-280 have neither a tribunal of justice, nor operating police force in their system of government. This is partially due to the lack of funding that they receive for these services from

the federal government,[15] just as it is also a result of the fact that tribes traditionally do not have Western court structures that were meant to serve the purpose of prosecution. Regardless of the reason for not having an operative court system, the Pomo Indians were unable to take legal action against Schwarm on their own accord so that they could remove her inhabitation of the reservation.

Since the Coyote Valley Tribe was unable to file their claim in a tribal court, this gives rise to the question of whether tribes were able to pursue an eviction proceeding in state courts, since after all, PL-280 authorized them with the exercise of jurisdiction over civil disputes, such as this one. Because trust land was involved and because PL-280 specifically prohibits states to have authority over trust land, tribal members were prohibited from filing their claim in a California State court (Goldberg 24). Even though state law enforcement *did* hold the authority to arrest Schwarm, the pleas of tribal members received no response when they reached out for assistance (Goldberg 24). Although it would have been lawful for the Coyote Valley Tribe to file for Schwarm's eviction in the nearest federal court, as Goldberg explains, "forcing simple evictions into federal court is like requiring a college degree for a low-wage job. It is too costly, time-consuming, and rigorous to justify the ultimate benefit" (Goldberg 24). Members of the tribal community attempted to have Schwarm removed from the reservation for the two years leading up to Polly Klaas's death. There were limited official outlets for tribal members to take advantage of so that they could address the situation. As I will explain shortly, Polly Klaas's

[15] According to the BIA, it would cost the federal government an annual fiscal allocation of $16.9 million for the mandatory PL-280 tribes to receive funding parity to non-PL-280 tribes. However, it should be noted that non-PL-280 tribes do not receive significant funding from the federal government to build judicial and law enforcement branches either, so this number would be much higher if resources were distributed equitably (BIA).

murder was the tipping point for tribal members, which is why they felt as if there was no other choice but to take matters into their own hands.

Now that I have described the tensions existing on the reservation leading up to Klaas's murder and kidnapping, I will explain how the lack of legal remedies available to the Coyote Valley Band of Pomo Indians resulted in the legal vacuum type of lawlessness. When Richard Allen Davis was arrested, the FBI removed Davis and his sister, Schwarm, from the reservation to question them and to search the premises on which they were both residing, originally intending on allowing both of them to return to their residence once this process was over. Within this time frame, the Coyote Valley Tribe rapidly moved to employ their own efforts of communal law enforcement. At the entrance of the reservation stood "one dozen armed deputies of the Coyote Valley Tribal Council, hastily empowered for the occasion...limiting access only to tribal members" so as to restrict Allen and Schwarm from moving back onto the reservation (Goldberg 25). The deputies guarded the entrance for over an hour in the face of approximately sixty armed state law enforcement personnel before an agreement was reached that Allen and Schwarm were to be taken away from the reservation and denied any further entry.

A gap in jurisdictional authority is created when there are not accessible tools of legal remedy and when there is subsequently no governmental authority in control. Because of the minimal options that the Pomo Indians were able to utilize so that they could alleviate the situation with Darlene Schwarm, Polly Klaas was abducted and murdered. Hence, these occurrences demonstrate why legal vacuum lawlessness existed on the Coyote Valley Reservation because of PL-280. If tribal members had been able to take legal action against Schwarm and if state law enforcement had responded to their requests for assistance, then

perhaps they would not have felt as if the state played a role in Davis's murder of Polly Klaas, just as if they might not have felt as if they had no other choice but to form a blockade outside of the entrance to the reservation so that they could protect the members of their community (Goldberg 25). Had PL-280 allowed for Schwarm's eviction, her brother might have lived on the reservation through his own means, but he would have not been able to do so through a direct familial link. Consequently, the Coyote Valley Tribe surely recognized that if they had been successful in evicting Schwarm, Polly Klaas may still be alive. Since the tribe had been denied conventional methods of legal action, they attempted to mend the jurisdictional aperture in a way that *would* result in Schwarm and Davis being forced to leave the reservation, which in this case was the threat of violence (Goldberg 25).

These communal policing efforts also manifested as a result of local law enforcement ignoring requests to respond to the illicit activities of Darlene Schwarm. Even though PL-280 transferred criminal and civil jurisdiction over tribes from the federal government to state governments, does a body of governance truly exist if state police forces are not willing to protect tribal members and enforce the law? I agree with Goldberg's implication that the answer to this question is negative. The way that state law enforcement responded to the events leading up to Klaas's kidnapping are not sui generis to the Coyote Valley Tribe. As Goldberg explains, those who *do* hold jurisdictional authority in Indian Country—state and local law enforcement—"do not see themselves as accountable to reservation communities, either because those communities are a small political minority or because they do not contribute to the local property tax base" (Goldberg 30). Oftentimes, "state officials do not view themselves as part of the same political community as tribal members, who owe allegiance to their tribal governments, and

under federal statutes, often receive special exemptions from state laws such as those involving environmental regulation, gaming, and child welfare" (Goldberg 30). Ergo, it seems almost inescapable that state officials would not regard tribal members as belonging to the same political community that they do. Political communities are naturally formed amongst people with whom a sense of cultural and political values are shared. Perhaps there is not enough common ground for either tribal members or state law enforcement agents to forge this connection (Goldberg 31). It is obvious that there are political differences that divide these two parties. PL-280 seems to ignore these boundaries by generalizing law enforcement and tribes as being a member of the same political community. Law enforcement's failure to respond to tribal members' requests for their assistance and the resulting legal vacuum lawlessness that it creates can possibly be explained by the way in which PL-280 does not account for the disconnection between these two political communities. Instead, it groups them under the same label without any distinction.

The other classification of lawlessness created as a result of PL-280, abuse of authority lawlessness, most commonly occurs because PL-280 does not circumscribe the extent to which the state may exercise authority in Indian Country, which is most visible when state law enforcement intervenes in tribal communities in a way that disrespects tribal sovereignty. Abuse of authority type of lawlessness was present on the Coyote Valley Reservation when "local law enforcement and FBI officers swooped down on [Darlene Schwarm's] house without so much as a notice to tribal leaders" during their investigation of Polly Klass's murder (Goldberg 25). Disregarding the authority of the Coyote Valley Reservation Tribal Council and the welfare of the tribal members in this way was a serious slight to tribal sovereignty. The actions of local law

enforcement and the FBI shed light on a new problem. Similar to legal vacuum lawlessness, abuse of authority lawlessness on the Coyote Valley Reservation that took place as a result of the investigation of Klaas's kidnapping and murder was not, and is not, a sui generis occurrence. Goldberg contends that not only does an "absence of a tribal police force mean that there was no partner on the reservation for the federal and local police" to work with, but PL-280 also "diminished the stature of the tribe in the eyes of federal and local police, making them less attentive to the interests of the tribe" in addressing their concerns and respecting their authoritative powers (Goldberg 26). Here, I disagree with Goldberg's claim that the absence of a police force is what caused state officials to supersede the authority of the tribe. Instead, I would like to argue that this is not the case at all, but rather, there exists a general ignorance on behalf of law enforcement agents regarding the way that the government of the Coyote Valley Tribe is structured. For example, Article VII of the Constitution of the Coyote Valley Band of Pomo Indians states that one of the duties of the Tribal Council is to promote the general welfare of the tribe, which they ought to do by

> "enact[ing] laws, statutes, and codes governing the conduct of individuals and proscribing offenses against the Band; to maintain order to protect the safety and welfare of all persons within tribal jurisdiction; and to provide for the enforcement of the laws and codes of the Band." (Coyote Valley Band of Pomo Indians Constitution 20)

In addition, the Tribal Council of the Coyote Valley Band of Pomo Indians is vested with the power of conducting governmental relations "on behalf of the Band [thereby enabling them to] consult, negotiate, contract, or conclude agreements with federal, state, local, and tribal

governments and with private persons or organizations" (Coyote Valley Band of Pomo Indians Constitution 18). Although there is not an *official* tribal police force on the Coyote Valley Reservation, this problem is seemingly resolved, considering the Tribal Council has the power of law enforcement, just as they have the power to conduct government-to-government relations. It *could* be the case that an absence of a formalized police force is what caused the local government and the FBI to supplant the authority of the tribe as Goldberg claims, but it cannot be said that there was *no entity at all* with whom they were supposed to communicate. The Coyote Valley Tribal Council, after all, was created for this very purpose.

Local law enforcement (as well as the FBI in this case) have remained uneducated about the structures of tribal governments and the way that they function for far too long. An absence of a branch of government that is created specifically for the purpose of law enforcement does not mean that there is not a mechanism within the tribal government that fulfills the same duty—albeit in a different manner than state law enforcement—alongside other responsibilities that it may have.

The nature of tribal governments, such as that of the Coyote Valley Tribe, is overlooked by PL-280. Since members of Congress viewed tribes' absence of a police force (among other mechanisms of governance) as fostering lawlessness on the reservation when they enacted PL-280, it follows that they necessarily viewed the models of law enforcement that tribes *did* have in place as illegitimate or not capable of community upkeep. As with the Polly Klaas example, abuse of authority type of lawlessness occurs due to the disrespect of the structure of tribal governments, the failure to inquire by local, state, and federal law enforcement

entities, and the way in which PL-280 failed to adapt to the structures of governance already in place by tribal nations, arrangements that were not meant to mold to the constraints of PL-280.

1.2 How Public Law 280 Damages Tribal Sovereignty

As I explained in Chapter 1, PL-280 extended state civil and criminal jurisdiction over affairs in Indian Country. Although the statute was originally enacted to combat the perceived problem of lawlessness on reservations, this issue has only persisted as is depicted by the Polly Klaas example, which epitomizes both the legal vacuum type of lawlessness and abuse of authority type of lawlessness. The passage of PL-280 altered the landscape of federal Indian policy, not simply because it was the start of the assimilationist era of Indian policy, but because PL-280 is one of the first pieces of federal legislation that deliberately seeks to destroy the federal trust responsibility. Instead of the federal government "profess[ing] responsibility for the welfare of the tribes and tribal members...states [are now] assuming that responsibility, just as they [are] assuming responsibility for the education, welfare, and health care of needy non-Indians" (Goldberg 11). Ultimately, "the law substituted state legal authority for federal on all the designated reservations," thus, virtually eliminating the federal trust responsibility (Goldberg 9).

As Goldberg claims, conferring jurisdiction to the state was the cheapest way to deal with the perceived problem of lawlessness. It is relatively clear that Congress chose to reallocate federal funds away from tribes and towards other areas that they deemed to be more beneficial for their own purposes. Most tribes affected by PL-280 do not have the means to build tribunal infrastructures, nor do they have enough funding to support a branch of law enforcement. Furthermore, it is common for the concerns of PL-280 tribes to be ignored by local law

enforcement due to cultural differences and a general resentment towards the obligation that they have to enforce the law in Indian Country with little incentive (Goldberg 25).

Tribal nations do not receive federal support as a direct result of PL-280. If the federal government *actually* cared about upholding their federal trust responsibility, then they would not have transferred the functions that this relationship entails to the enumerated state governments. If the federal government *actually* cared about upholding their federal trust responsibility, then they would not have completely taken away funding for the governmental development of PL-280 tribes. If the federal government *actually* cared about upholding their federal trust responsibility, then they would have been more concerned with providing an alternative to PL-280 that fixed the perceived problem of lawlessness (such as allocating resources to fix the infrastructure of law enforcement in Indian Country) instead of removing federal funding altogether for over 70% of the tribes within the United States (Jimenez 1634).

Perhaps it can be said that if the federal government was truly dedicated to carrying out the federal trust responsibility, then they would not have passed PL-280 in the first place. However, since this statute *was* enacted, the federal trust responsibility is indubitably not being upheld. PL-280 did not fix the problem of lawlessness, it only made it more intractable.

This causes a strange Hobson's choice[16] to arise: Ought PL-280 tribes attempt to retrocede jurisdiction back to the parental clutches of the federal trust responsibility or ought they suffer the effects of lawlessness that have transpired from no funding at all? The two options from which PL-280 tribes can choose ultimately pertain to the scope of sovereign powers that

---

[16] A Hobson's choice is when a person (or group of people) is presented the option of choosing between two things. One of the options is what is available (and is typically seen as not very desirable), while the other option is nothing at all. For example, when a parent tells his child that she can either eat the meal that the rest of the family is having for dinner, or she can eat nothing at all, the child has been presented with a Hobson's choice.

they will be able exercise, another Hobson's choice in itself. Thus, the question becomes: Ought tribes have no sovereignty at all or the limited, domestic-dependent version that they had before PL-280's enactment?

The federal trust responsibility is just one out of the four pillars of governance that form the doctrine of tribal sovereignty. The domestic-dependent type of sovereignty that the federal government has applied to tribal nations no longer stands as seen with the way in which this pillar falters as a result of PL-280. Tribal sovereignty (or rather, domestic-dependent sovereignty) is a concept to be taken as a whole. Aboriginal land claim, the federal government's power to exercise plenary authority over Indian affairs, the state's limited ability to interfere with Indian affairs unless given expressed consent to do so by Congress, and the federal trust responsibility are all necessary conditions for tribal sovereignty to exist. Therefore, if one of the four pillars crumbles, tribal sovereignty in its entirety does as well. It would be feasible for the scope of this claim to be adjusted if one were to argue that the elimination of the federal trust responsibility only limits tribal sovereignty, confining it to stricter boundaries than before PL-280's enactment. However, I am making the claim that the political entity of a sovereign must have all of the traits that comprise their sovereign status, otherwise they cease to be a sovereign, but rather, they are something else entirely.

To conclude, since the four pillars of tribal governance are necessary conditions for tribal sovereignty, and since the federal trust responsibility fails to remain for PL-280 tribes, these tribal nations can no longer be considered sovereigns. In this next chapter, I will implement the research findings of Duane Champagne, the National Congress of American Indians, and Annita Lucchesi to show what a diminishment of sovereignty looks like for political entities that

are meant to be defined as sovereign. In doing so, I will draw the conclusion that the problem of lawlessness persists on PL-280 reservations, *because* PL-280 negates the sovereign status of tribes. This will lead us into a larger discussion that will examine why sovereignty is valuable for tribal nations.

CHAPTER III

THE NEED FOR A SOLUTION TO PUBLIC LAW 280

1. Occurrences of Violent Crime on Reservations

The implications for tribal nations' lack of sovereignty that emanate from PL-280's elimination of the federal trust responsibility go beyond a theoretical disposition of a philosophical concept. The effects are genuinely worrying. In this chapter, I will provide reports given on behalf of tribal members, crime statistics, and the viewpoints of law enforcement as to how PL-280 has changed Indian Country compared to non-PL-280 reservations. Doing so will not only highlight the lack of cultural understanding between state law enforcement and PL-280 reservation residents, but it will also shed light on the shortcomings of PL-280 and the incapabilities of state law enforcement to address the current issues facing Indian Country. After I present these problems, I will be able to adequately articulate my argument regarding the value of sovereignty for PL-280 tribal nations in the chapter posterior to this one.

Recently, with movements such as "No More Stolen Sisters" and hashtags frequently appearing on social media such as #WeAreNotForgotten, #WeAreNotInvisible, and #DragTheRed,[17]there has been a push by the indigenous community for the American public to

[17] The meaning behind the latter two hashtags is readily apparent. They serve to convey the message that the women that have gone missing or have been murdered are not a mere number forming the aggregate of a statistic. They were a real person, and they endured a horrendous atrocity. The hashtags communicate that even though this issue has just begun to receive national attention, these women will not be forgotten by those who have suffered its effects for much longer.

#DragTheRed is a hashtag that first appeared on social media in 2014, encouraging searches for missing and murdered indigenous women and girls within the vicinity of the Red River. Volunteers of the movement drop metal bars along the banks of the Red River and "drag" a metal detector across, hoping to find remains of their bodies.

address the treatment and prospect of life quality for Native American women. According to the National Congress of American Indians (NCAI) Policy Insights Brief of 2013, the NCAI Policy Research Center found that, “Native women experience violence...at a higher rate than any other group [in the U.S. population]” (NCAI 1). I will go over some of the examples of how crime impinges on the lives of Native American women living on reservations, which will inform the discussion of what an absence of tribal sovereignty actually looks like.

Sexual assault and instances of rape are perhaps the most daunting category of crime facing Native Women living on reservations. According to the NCAI Policy Research Center, American Indians and Alaska Natives (AI/AN) are 2.5 times more likely to experience violent crimes and 2 times more likely to be a victim of rape or sexual assault in comparison with all other races (NCAI 2). Additionally, 61% AI/AN women have experienced assault of some sort within their lifetimes, which is a rate of roughly 10% higher than the women of all other races (NCAI 1).

34% of AI/AN women will be raped in their lifetimes, while only 19% of African American women, 18% percent of white women, and 7% of Asian and Pacific Islander women will experience rape (NCA 3). Rape occurrences amongst Native American women are further anomolized when the race of the perpetrator is examined. For instance, white perpetrators make up 65.5% of the rapists who rape white women, African-American perpetrators make up 89.9% of the rapists who rape African-American women; yet, Native American perpetrators make up only 14% of the rapists who rape Native American women (Perry 4). That means 86% of the perpetrators who rape Native American women are not within their own race, which is a stark outlier when compared to other races. In addition, 83% of white women who experienced

stalking perceived the perpetrator to be white, and 66% of African-American women who experienced stalking perceived the perpetrator to be African-American (Baum 4). Similar to the rape statistics, only 11% of AI/AN women who have experienced stalking perceived the perpetrator to be of their own race (NCAI 2). Are these perpetrators aware of the way in which crime often goes unprosecuted on PL-280 reservations? Are they aware of the lack of law enforcement presence or the gaps in jurisdiction? Of course, I am merely stating correlations, but notable ones, nonetheless. Later in this chapter, I will propose a possible source of causation for similar occurrences of crime.

I will now turn to the statistics regarding missing and murdered indigenous women and girls (MMIWG). In 2016, the third leading cause of death amongst AI/AN women was homicide (NCIC). Within the same year, there were 5,712 cases of MMIWG reported to law enforcement; yet, only 116 of these cases were logged in the U.S. Department of Justice database (Lucchesi 2). Lack of crime reporting and scarcity of information are not uncommon when it comes to this issue. Annita Lucchesi, a PhD Candidate at the University of Arizona has mobilized in response, creating the Sovereign Bodies Institute MMIWG Database that enables tribal members to report MMIWG cases that they are aware of, but have been formally recorded. In 2019, the National Crime Information Center (NCIC) reported that there were 10,447 MMIWG in the United States (NCIC). Within the same year, Lucchesi's database gathered over 3,000 reports of MMIWG that had not been reported by state or federal law enforcement, although she estimates that she is missing anywhere from 25,000-30,000 more cases (Lucchesi 22). Her findings imply that there was a much larger number of MMIWG than was reported by state or federal law enforcement, the NCIC, and her database.

Based on the available data, the NCAI suggests that “Native women on tribal lands lack the most government protections from the threat of violence against them” (NCAI 1). In her mappings through the Urban Indian Health Institute, Lucchesi uses the data gathered by the NCAI to find the geographic distributions of the occurrences of violent crime in Indian Country. The regions with the highest number of cases of MMIWG are the Southwest, which includes the States of Nevada, Utah, Arizona, and New Mexico; the Northern Plains, which includes the States of Montana, Colorado, North Dakota, South Dakota, Nebraska, and Minnesota; the Pacific Northwest, which includes the States of Washington, Oregon, and Idaho (Lucchesi 10). She classifies the State of Alaska and the State of California as their own two regions because of the high rates of violent crime that independently occur within their borders (Lucchesi 10). As I explained in Chapter 1, there are six mandatory PL-280 states and ten optional PL-280 states. Of the regions listed, eight out of the ten optional PL-280 states—Nevada, Utah, Arizona, Montana, North Dakota, South Dakota, Washington and Idaho—comprise the fifteen states with the highest numbers of MMIWG cases. Additionally, five out of the six mandatory PL-280 states—Nebraska, Oregon, Minnesota, Alaska, and California—are amongst the top fifteen states with the most cases. This means that combined, the MMIWG in both optional and mandatory PL-280 states dominate the rankings, taking up thirteen of the top fifteen spots of states in which the most MMIWG cases take place.

2. Responses to Violent Crime on Reservations: Attributing Causation to an Observed Correlation

The aim of the research conducted on behalf of Lucchesi and the NCAI was to identify the geographical occurrences and the rate at which crimes on reservations take place on a

broader scale as it pertains to and impacts all American Indian and Alaska Natives alike. The conclusions of their research were astounding, showing that Native women on PL-280 reservations suffer the brunt of most of the violent crime that takes place within Indian Country.

Many indigenous scholars, bodies of tribal governance, and activist non-profit organizations attribute the abundance of reservation-based crime to the significant dearth of funding given to law enforcement, the need for enforceable policy framework, cultural incompatibility and a strained understanding of cultural practices on behalf of law enforcement, uncongenial communications between the tribal community and law enforcement, and nonexistent tribal branches of government. In his book *Captured Justice: Native Nations and Public Law 280*, Duane Champagne sets out to fixate on these claims, applying them specifically to PL-280 states, rather than to Indian Country in its entirety, filling a much needed void within the PL-280 literature. He assumes the violent crime statistics that I have listed above in order to move into a discussion that changes directions from the traditional course of action within his field. Conducting over 350 interviews spanning across both mandatory and optional PL-280 jurisdictions, as well as non-PL-280 affiliated reservations so as to compare the results, Champagne surveys "tribal officials; state, local, and federal law enforcement officers; and state, local, and federal criminal justice officials" in order to asses the "availability, quality, and sensitivity of reservation law enforcement in criminal justice" (Champagne 61). In this section of my paper, I will work with Champagne's findings, for they will be essential in the assemblage of my argument that will delve into the value of sovereignty for PL-280 reservation residents so as to inform future policy.

2.1 Changes in Political Structures Caused by PL-280

Indeed, Champagne makes similar claims to Goldberg and the NCAI about the factors that capacitate lawlessness in PL-280 jurisdiction, adducing

> "infringement of tribal sovereignty, failure of state law enforcement to respond to Indian Country crimes or to respond in a timely fashion, failure of federal officials to support concurrent tribal law enforcement authority, a consequent absence of effective law enforcement altogether, leading to misbehavior and self-help remedies that jeopardize public safety, discriminatory, harsh, and culturally insensitive treatment from state authorities when they do attend to Indian Country crimes, [and] confusion about which government is responsible and should be contacted when criminal activity has occurred or presents a threat" as aggravations of the problem. (Champagne 3, 4)

In order to understand Champagne's findings, I must first address the tensions that have existed between tribal governments and state governments since colonization efforts first began in this country. Government power and control over resources have often been acrimonious points of contention between tribal and state governments, which have only been exacerbated by changing viewpoints in ideologies in federal Indian policy and court decisions. Attempts at jurisdictional assertions by state governments have often been hampered by the federal trust responsibility. Tribes have typically held a negative view towards state infringement of jurisdiction, for fear that "state jurisdiction would prevent them from defining norms and administering justice according to evolving tribal traditions, and would expose tribal members to indifferent or hostile law enforcement institutions" (Champagne 6).

After World War II, President Eisenhower desired to make cuts to the federal budget, which is why he decreased funding to the BIA. "While additional federal law enforcement

activity or support for strengthening tribal law enforcement might have [decreased the perceived problem of lawlessness, which was part of President Eisenhower's rationale for the reallocation of funds]," Champagne claims that either one of these alternatives would have combatted the problem of "lawlessness" in Indian Country (Champagne 9). Instead, it was cheaper for the federal government to essentially pass off the federal trust responsibility to state governments.

I do not want to paint the states as being the "bad guys," although it is obvious that they could better handle their jurisdictional and law enforcement duties in Indian Country, as I will explain in a moment. The fact of the matter is that states are their own governing entities with their own issues that accompany that status. The situation that the federal government has created with the enactment of PL-280 is not an ideal situation for tribes, nor is it for the states. As I am sure other scholars of tribal law would agree, this governmental rearrangement harms the wellbeing of tribal nations much more severely than state governments.

The federal trust responsibility was quite literally replaced by state governments as a result of PL-280. In non-PL-280 jurisdictions, the Federal BIA police enforce crime alongside tribal law enforcement (granted that a tribal government has an operative tribal police force). PL-280 eliminated the presence of the Federal BIA police on the reservations of roughly 70% of federally recognized tribes, and replaced them with state or county law enforcement (hereafter, I will use "county-state law enforcement" as a synecdoche for state and county law enforcement, as the literature that I am referencing throughout my research does not specify which police force is assigned to each reservation) (Jimenez 1634). Trading the Federal BIA police for a county-state police force meant that a prolific number of Indian police officers were discharged from service. Many reservation residents and tribal law personnel regarded active Indian police

officers as essential to the understanding of the way in which tribes operate as political communities (Champagne 10).[18] Although PL-280 did not eliminate tribal jurisdiction, but rather changed the way that it functions. It shifted concurrent authority from between the federal government and tribes to between state governments and tribes. The federal government often uses this as an excuse as to why PL-280 tribes do not need to receive funding to support developments concerning tribal law enforcement, tribunals of justice, or government infrastructure.

In addition to replacing the Federal BIA police with county-state law enforcement, criminal trials and matters of civil dispute would be taken up in state, rather than federal courts (Champagne 7). Moreover, PL-280 strengthened non-tribal law enforcement authority on reservations. Before PL-280—and for tribal nations that are not affected by PL-280—misdemeanors and other minor infringements of the law were often exclusively under the responsibility of the tribes (Champagne 7). PL-280 changed the functions of tribal courts in this way, delegating concurrent jurisdiction to state courts and allowing for increased penalization of crimes committed by Indians under both state and tribal law (Champagne 7). For the first time, as Charles Wilkinson has put it, '"tribal members would have to appear in state courts before white judges and juries for offenses committed on the reservations"' (Champagne 7). This usurpation of tribal authority *would* be a serious offense to tribal sovereignty had the concept not been expunged altogether with the passage of PL-280 and subsequent elimination of the federal

---

[18] The "Indian preference laws" were put into place through the 1934 Indian Reorganization Act and were later upheld in the 1974 Supreme Court decision, *Morton v. Mancari* (Champagne 10). The laws indicate a preference for qualified American Indian and Alaska Natives to fulfill vacancies in governmental positions in order to fulfill the purpose of serving tribal communities. The Indian preference laws are still in place for other bureaucratic functions pertaining to Indian affairs, but since the Federal BIA police no longer serves on PL-280 reservations, they become a moot point.

trust responsibility as I argued in Chapter 2. Shared jurisdiction between the tribes and the states is a result of a result, an effect of tribal sovereignty that has already been obliterated.

2.2 Responses to PL-280 Law Enforcement

In this section, I will address the issues pertaining to PL-280 that I have previously stated through responses given by PL-280 reservation residents and law enforcement personnel. Doing so will allow me to determine the value of sovereignty for PL-280 tribal members and to discuss future policy implications for PL-280 tribes in the next chapter.

One of the key areas of PL-280 that has been criticized is the inefficiency of law enforcement. According to the 2000 Bureau of Justice Statistics (BJS) Report entitled *Tribal Law Enforcement,* 171 tribal law enforcement agencies were in operation in that year. Out of the top twenty ranked agencies, only three were in states affected by PL-280; "two of these tribal agencies were in Florida, an optional state, [while] the third tribe was in Washington, another optional state" (Champagne 20). Champagne recently conducted his own survey over the matter. He found that "PL-280 tribes in mandatory states, apart from Alaska, account for 40% of all tribes in the lower 48 states, yet they represent only 15% of all tribal police departments" (Champagne 21). In other words, only 20% of mandatory PL-280 states have tribal police departments, while 70% of the remaining lower 48 states have tribal police departments (Champagne 21). Notwithstanding these statistics, all of the PL-280 tribes, both mandatory and optional, are policed by county-state law enforcement whether they have a tribal police force or not.

When PL-280 reservation residents were asked if county-state police overstep authority, 48.6% of reservation residents answered affirmatively; whereas, when non-PL-280

reservation residents were asked if BIA police tend to overstep authority on reservations, 24.3% of reservation residents answered affirmatively (Champagne 70). Based on these findings, it is clear that PL-280 reservation residents believed county-state police to have overstepped authority more often than non-PL-280 reservation residents felt the same about BIA police. When asked this question as a part of Champagne's survey,

> "most respondents interpreted the question about overstepping authority to mean that police officers have committed violations of civil rights or abusive action towards community members. Some also interpreted the question to encompass issues of jurisdiction between police departments, mainly tribal and county-state police in Public Law 280 situations." (Champagne 70)

Champagne attributes the higher percentage of affirmative responses by PL-280 reservation residents to the jurisdictional vacuums created by PL-280 that Goldberg discusses in *Planting Tail Feathers* (Champagne 69). After all, if there are jurisdictional uncertainties, how can law enforcement entities be certain that they are operating within their own sphere of authority if they are not even sure what those bounds are? Also, how can residents know whether law enforcement officers are respecting those jurisdictional limits or not?

The predominant responses answering the question of how it is that county-state police overstep authority were that they used excessive force (answered by 9% of respondents), that they had no respect for tribal law (answered by 11% of respondents), that they discriminated against tribal members (answered by 5% of respondents), and that they arrested without proper warrants (answered by 6% of respondents) (Champagne 71).

When PL-280 reservation residents were asked how well county-state police serve the county in comparison to the reservation, the responses trend even more negatively than when they were asked if county-state police tend to overstep authority. While 23% of PL-280 reservation residents said that county-state police serve the reservation community as well as they serve the rest of the county, 63% felt as the reservation community is underserved by county-state police, and 14% of respondents were unable to offer an assessment (Champagne 71). When asked to explain their answers, there seemed to be a recurring tone that was disheartened by the minimal resources designated towards the furtherance of policing programs. One respondent said:

> "'You know, I don't see the programs that they offer to off-reservation communities; even if it be small, like 'cop watch' or 'neighborhood watch' or something like that. I don't see them coming out to the reservation and trying to offer those types of programs. I don't see, again, the responsiveness they would give to non-reservation calls...And I just don't see them including reservations in these sorts of programs at all.'" (Champagne 72)

Another theme that reappeared amongst the respondents' answers was the lack of presence of county-state police on reservations. One respondent explained that they answered in this manner because they believed that the crimes committed on the reservation were more likely to go unprosecuted than crime off the reservation (Champagne 72).

Champagne observed this latter pattern of answers to such an extent that he issued it as a question in his survey. He wanted to know whether a lack of county-state law enforcement presence on reservations inhibited their ability to patrol effectively. When asked if county state

police patrolled effectively, 34% of PL-280 reservation residents answered affirmatively (Champagne 77). Shockingly, when asked to reflect upon their own efforts and answer the same question, 78% of county-state police answered affirmatively (Champagne 77). The striking irony of the responses given by county-state law personnel is that they do not do any patrolling on reservations whatsoever. Instead, tribal police or tribal contract officers patrol reservations, while county-state police come on call, leaving their post outside of the reservation, which can be more than 100 miles away from remote reservation areas (Champagne 77). It is not surprising then, that PL-280 reservation residents with operative police forces said that "tribal police responded promptly at a rate about twice that of county-state police, 82.9% to 44.8%" (Champagne 76).

There is a similar imbalance in responses when reservation residents and county-state law enforcement were asked how well county-state police understand tribal culture. When asked if they felt as if they had a good understanding of tribal culture, 61% of county-state police say that they have a good understanding of tribal culture (Champagne 82). PL-280 reservation residents starkly disagree, only 20% saying that they feel as if county-state police have a good understanding of tribal culture (Champagne 82).[19] Some of the responses by tribal members indicated that it is often the case that county-state police often disregard the tribes' elder system, the establishment of strong family units as an informal system of the law, the relationship that indigenous people share with authority figures, ceremonial activities, and tribal sovereignty (Champagne 83). The responses of the county-state law enforcement officers and PL-280

[19] When asked how well police communicate with tribal communities, the answers followed a similar trend. 83% of county-state law enforcement affirmed good communication with the tribe, while only 39% of PL-280 reservation residents felt as if county-state police had established strong channels of communication with the tribe (Champagne 82). In contrast, when asked the same question, 72% of BIA police said that they believed that they had good communications with the tribe, and 55% of non-PL-280 reservation residents said that they felt the same way (Champagne 82).

reservation residents not only provide yet another example of the way in which county-state police do not adequately understand their position in relation to tribal governments, but the responses also present evidence for county-state law enforcement being the direct agents that foster the problem of lawlessness on PL-280 reservations.

2.3 Funding

Undeveloped tribal police departments, jurisdictional uncertainties, ineffectiveness of county-state police services, and cultural incompatibilities have been noted as contributing to the problem of lawlessness for which PL-280 is responsible. One of the most common hypotheses explaining these factors is a lack of federal funding. Since most of the research pertaining to the funding of Indian Country has dealt with non-PL-280 tribes, Champagne, once again, sets out to mend this lacuna in the literature.

PL-280 was an unfunded mandate, which means that the counties in PL-280 states receive no federal funding for the onus that they must take on. The respective state in which they are located must be the one to provide specific counties with law enforcement funding. "Because the trust land on reservations is exempt from county property taxes, and the Indians who live on reservations are exempt from state taxes on the money they earn and purchases they make on the reservation," PL-280 counties are at a considerable fiscal disadvantage in administering law enforcement to tribes (Champagne 115). As a result, those who have to carry the burden of policing cannot even raise the revenue that they require. Whether a tribe taxes their citizens is dependent on if that particular tribal nation chooses to do so, oftentimes, the answer being no. While in recent years, tribes have found a way to stimulate the economy through the gambling and gaming industry, the unfortunate reality is that not all tribes have these monetary resources to

dip into, and even if the tribes have them, they are under no obligation to give them to the county.

Through the BIA, the Department of Interior is the entity at the federal level that provides funding to all tribal nations and native villages in the U.S. The Justice Research and Statistics Association showed that in the fiscal year of 1998, “PL-280 tribes in mandatory states are nearly twice as likely to be without BIA law enforcement funding altogether as are non-PL-280 tribes,” with 91.8% of mandatory PL-280 tribes and 82.8% of optional PL-280 tribes receiving *no federal funding whatsoever for law enforcement services* (Champagne 121). It is worth mentioning that PL-280 tribes heavily rely on county-state police to maintain order. These tribes seldom have their own law enforcement services and the funds to create departments specifically for this purpose. As I have shown in the prior sections to this one, this can create a dire crime environment on PL-280 reservations. Thus, it would seem that the options from which PL-280 tribes must choose are likely to be strenuous no matter which is selected. PL-280 tribes can either suffer the effects of county-state law enforcement, attempt to scrape together resources to support an operative tribal police force (which, of course, may or may not be effective, depending on if the tribe’s monetary means can sustain the department’s continuation), or they can request to retrocede jurisdiction back to the federal government. However, as I elucidated previously, this third option is unlikely to be successful.

In contrast to the views held by many indigenous scholars about the problems created by PL-280, many reservation residents disagreed with their claims that lack of funding was primarily responsible for *all* of the issues stemming from the statute. When asked whether lack of funding was the source of poor quality of law enforcement, nearly 36% of PL-280 reservation

residents did not believe inadequate funding to be an issue. Instead, "the most common alternative explanations that reservation residents offered for inadequate law enforcement services were a lack of priority given to reservation law enforcement; insensitivity, misunderstanding, and lack of communication; and an absence of cooperative efforts between the county and the tribe" (Champagne 127, 128).

The claims held by reservation residents sound similar to those of Vanessa J. Jimenez in her article "Concurrent Tribal and State Jurisdiction under Public Law 280." She asserts that the most beneficial amelioration to the effects of PL-280 would be to empower tribal governments, since the denial of self-determination of tribal nations is the source of the problems we have surveyed here. In the next chapter, I will make use of Joanne Barker's essay, "For Whom Sovereignty Matters," to untangle how complaints about funding, lack of law enforcement presence, and cultural incompatibility are issues stemming from the elimination of the federal trust responsibility and subsequent negation of the domestic-dependent type of sovereignty that happened as a result of PL-280. In applying her arguments, it will become apparent how PL-280 is the vehicle of colonization at play. In this next chapter, I will explain how the problem of lawlessness that stems from the collapse of the fourth pillar of tribal sovereignty entails PL-280 tribal nations to having a moral claim to self-determination and how self-determination is related to sovereignty. The argument that I will employ will allow me to draw the conclusion that self-determination is the value of sovereignty for PL-280 tribes, and that they have a moral claim to drawing their own political boundaries.

CHAPTER IV

SOVEREIGNTY AND SELF-DETERMINATION

1. The Ethnicization of Indigenous Peoples

As I explained in Chapter 3, funding as well as sundry other aspects contribute to the way in which sovereignty is eliminated by PL-280. One of the crucial components of the domestic-dependent form of sovereignty—the federal trust relationship—becomes virtually negated. Sovereignty is often deemed as a crucial source of self-governance, something any nation needs to function properly as a political entity. It has been heavily sought after by tribal nations, the desire only increasing after the enactment of PL-280 in 1953. This brings up a question that has seldom been asked within the context of the literature: What is the value of sovereignty for tribal nations? As I will explain in this chapter, the value of sovereignty for tribal nations is self-determination.

After World War II, "sovereignty," although not a new political concept to tribal nations, gained a new meaning for tribes in response to the racist ideologies of the assimilationist era of federal Indian policy in which PL-280 was enacted. Indigenous peoples no longer wanted to be racialized, or seen as "minority groups" that were beneficiaries of the administration to which they belonged. Tribes, after all, do not feel as if they have the same "ethnicity" as other tribes, but rather, they feel that they have different cultures from one another. Consolidating all indigenous people under one identity (in the U.S., American-Indian), was a gross equivocation on behalf of the federal governments in many countries. Indigenous peoples both within the U.S.

and across the globe did not feel unified under this shared label. Instead, individual tribes felt as if this "ethnicization" was an extremely inaccurate misrepresentation of who they were as a people. Before European settlement in North America, tribes had never before used racial status as a means of distinguishing themselves from other tribes, not only because race was a concept obviously not yet invented, but because even if it had been, it would have been irrelevant. Cultural lines draw distinctions between tribes, not racial ones.

The ethnicization of tribal sovereignty can be found in the very four pillars constructed by the federal government in an attempt to support their domestic-dependent definition of the concept, which are (1) aboriginal land claim; (2) the federal government's power to exercise plenary authority over Indian affairs; (3) the state's limited ability to interfere with Indian affairs unless given expressed consent to do so by Congress; and (4) the federal trust responsibility. Tribal sovereignty is defined almost solely on racial terms, or rather tribes are given their sovereign status for the stand alone reason that they are American-Indians. This mold does not extend to the sovereignty of states, or even the sovereignty of the U.S., so why tribes? Why would the federal government define tribal sovereignty in a way that not even the tribes would have gone about defining it? There are 573 federally recognized tribes in the U.S. today. How can their varying interests be represented if they are *all* given virtually the same definition of sovereignty? To make matters worse, almost 460 of these tribes are subjected to the constraints of PL-280. As seen with my earlier explanation of crime and policing efforts, it seems as if PL-280 tribes are subjected to increased ethnicization in their definition of "sovereignty" (or lack thereof) than are non-PL-280 tribes. Not only were their sovereign powers already severely

restricted by the federal government prior to PL-280's enactment, but they are circumscribed even further by the jurisdictional authority of the state government.

The legal framework defining tribal sovereignty for all of the tribes within the U.S. has been heavily researched and criticized by tribal law scholars, such as Vine Deloria Jr., John Corntassel, and Felix Cohen, yet there has been little attention paid to the sovereign conditions of PL-280 tribes. In Chapter 1, I outlined the doctrine of tribal sovereignty, while later discussing an overview of PL-280 and its controversial stipulations. In Chapter 2, through the example pertaining to the abduction and murder of Polly Klaas, I showed how PL-280 obliterates the doctrine of tribal sovereignty by eliminating the federal trust responsibility, thereby engendering the problem of lawlessness on PL-280 reservations. In Chapter 3, I expounded upon this example by examining statistics pertaining to other Missing and Murdered Indigenous Women and Girls to indicate that Polly Klaas's murder was not a sui generis occurrence. I satisfied this task by establishing the factors responsible for the treatment of American Indian and Alaska Native women on reservations by considering the impact that the minimal police presence and general lack of funding has on PL-280 tribes and reservations. Doing so revealed that sovereignty is not just a theoretical concept, but a component of reality that can have harsh, concrete implications. The content put forth in these chapters allows me to formulate the central claim that I have been concerned with making throughout the course of this essay: since PL-280 tribal nations have had their sovereign status demolished as a result of PL-280, these tribes have a moral claim to self-determination. As I will extrapolate throughout this chapter, to claim that PL-280 tribes have a moral claim to self-determination is to claim tha*t they have a moral claim to build their own definition of sovereignty*.

2. Indigenous Peoples' Moral Right to Self-Determination

In this chapter, I will argue for another reason as to why there is a problem of lawlessness because of PL-280: tribal nations are denied self-determination. The doctrine of tribal sovereignty is negated as a result of PL-280, true, but even reversing PL-280's jurisdictional changes and restoring the federal trust responsibility would not ensure a meaningful form of sovereignty for the tribes. The "domestic-dependent" form of sovereignty that existed prior to PL-280 only appears to be a partial form of sovereignty, which as I maintain, is not a form of sovereignty at all, but something else entirely. I will use the groundwork that I have put forth in the prior three chapters to show why PL-280 tribes have a moral claim to self-determination, and why it is the case that without self-determination, domestic-dependent tribal sovereignty is not beneficial for tribes, nor will it ever be a solution to PL-280. This claim could be useful for an argument pertaining to the fruitlessness of the domestic-dependent form of sovereignty in its entirety; however, I will be concerned with its application so that I can shed light on the way in which the domestic-dependent account of sovereignty as it existed prior to the enactment of PL-280 is not beneficial to PL-280 tribes. It gave the federal government too much power in determining their sphere of authority, as is evinced by how they easily passed on the federal trust responsibility onto states. Thus, PL-280 tribes ought to be able to draw their own political boundaries.

As indigenous scholar Joanne Barker explains, indigenous peoples want sovereignty to be defined as "concrete rights to self-government, territorial integrity, and cultural autonomy under international customary law" (Barker 18). These discursive strategies in particular are what eventually led to the United Nations' *Declaration on the Rights of Indigenous Peoples* in 2006

(Barker 19).[20] In the *Declaration*, there was a momentous issue in the campaign that was given considerable focus, one that has befuddled colonizing nations for centuries: not all tribes' sovereignty is the same. By focusing on their right to self-determination, not necessarily their right to sovereignty, indigenous peoples were successful in arguing that they ought to be referred to as *peoples*, which connotes a political collective, not *people*, which connotes a minority group (Barker 19). The difference in semantics.better communicates the claim that it is a political collective that is asserting a right to self-determination, a "legal category that came to be defined by group rights not to be discriminated against on the basis of race, ethnicity, gender, sexual orientation, or physical or mental ability, and to determine one's own governments, laws, economies, identities, and cultures" (Barker 19). With this definition in mind, indigenous peoples no longer were to be viewed as an ethnic group that was under the dominion of their respective colonizing sovereign, they were now to be thought of as sovereign *nations*.

The *Declaration on the Rights of Indigenous Peoples* sought to alter this mindset that has been routinely held by colonizing sovereigns by "translat[ing] human rights principles for indigenous peoples into the specific rights of self-determination, including provision for aspects of tradition, custom, property, language, oral histories, philosophies, writing systems, educational systems, medicines, health practices, resources, lands, and self-definition" (Barker 19). Indigenous leaders that participated in the development of the *Declaration* intended these rights to be *indivisible* and *inseparable* aspects of their identities as sovereigns (Barker 19). Thus, for

[20] There are many countries that have had to ameliorate the legal status of indigenous peoples (New Zealand, Australia, Canada, etc. name just a few), and who did so by signing the United Nations' *Declaration on the Rights of Indigenous Peoples.* So as not to generalize, I am not claiming that my argument applies to *all* indigenous peoples in the world. I am using the principles agreed upon by the broader indigenous community, applying them to the definition of sovereignty within the U.S., then chiseling that scope down even further, so that it only concerns PL-280 tribes.

indigenous peoples and tribal nations, human rights were synonymous with rights to self-determination, which were inextricably united with the concept of sovereignty. Furthermore, as Barker explains, "'sovereignty, in the final instance, can be said to consist more of a continued cultural integrity than of political powers and to the degree that a nation loses its sense of cultural identity, to that degree it suffers a loss of sovereignty'" (Barker 20).

Sovereignty on its own, especially the domestic-dependent version defined by the federal government, does not capture all of the various perspectives of indigenous culture, law, governance, and political identity, nor can these aspects all be put under one giant lens called tribal sovereignty. As I stated earlier in this paper, when I set out on this project, I originally wanted to prove that PL-280 violated the doctrine of tribal sovereignty. The answer that I found was that, yes, PL-280 violated the doctrine. This seemed like a moot point, seeing how eliminating the federal trust responsibility was a blatantly intentional reason as to why PL-280 was enacted. Tribal nations have always had a protected legal right to sovereignty, as is ensured by the Marshall Trilogy, the Supreme Court cases that originally set forth an account of domestic-dependent sovereignty. Yet, the federal trust responsibility has become nonexistent for PL-280 tribes, their legal right to sovereignty thus ignored.

Since the federal government has failed to honor their own portrayal of tribal sovereignty, I will instead demonstrate why PL-280 tribes have a *moral* claim to self-determination. Using self-determination in my argument will convey that tribes ought to be entitled to decide their own definition of sovereignty so as to rectify the effects of PL-280 without being subjected to a racialized definition of the concept. In doing so, I will endeavor to show that the absence of self-determination for PL-280 tribes is what contributes to the persistence of lawlessness on

reservations, similar to the other factors that I listed in Chapter 3. Additionally, I will argue that PL-280 tribes have a moral right to self-determination to illuminate that tribal sovereignty has no value without self-determination.

2.1 Instrumentalist View of Indigenous Peoples' Moral Right to Self-Determination

Similar to the characterization of self-determination utilized by Joanne Barker, in her article, "Decolonization and Self-Determination," Anna Stilz claims that "'all peoples have the right of self-determination,' by virtue of which 'they freely determine their political status and freely pursue their economic, social, and cultural development'" (Stilz 1). She uses three different perspectives, the instrumentalist view, the democratic view, and the associative view, to argue that self-determination is morally required if decolonization is ever to fully take place. For the purposes of my essay, PL-280 is considered to be the particular vehicle of colonization that I am concerned with, and indigenous peoples (or PL-280 tribes) will stand in for those subjected to the practices of colonization to whom Stilz refers in her article. Although Stilz argues that the first two views of self-determination fail to account for why indigenous peoples have a moral right to self-determination, and that this claim can only be supported by the associative view, I maintain that the first two *can* be used to establish PL-280 tribes' moral claim to self-determination. I will first begin with the instrumentalist view to show why self-determination is a valuable component of sovereignty for PL-280 tribes, and why they ought to be able to possess it.

The instrumentalist view establishes a moral claim for self-determination for a group of people whose respective colonial state has failed to achieve minimally just rule (Stilz 2). Allen Buchanan defends the instrumentalist view by saying that if a political entity protects peoples'

basic human rights, thereby allowing them to flourish, then that entity is ruling legitimately, and its subjects do not have claim to self-determination (Stilz 6). However, if the ruling political entity does not protect peoples' basic human rights, then it follows that they must not be flourishing, and so, they would have a claim to self-determination. For Buchanan, self-determination is a "*remedial* right against a government that persists in serious injuries" (Stilz 6).[21]

As is well known, the effects of colonization were and still are horrendously vile. Rape, murder, and slavery occurred as a result. The colonizing sovereign often justified these atrocities, alongside the initial act of colonization, by claiming that they were "civilizing" the indigenous peoples. Other times, they allegedly did so to provide indigenous peoples with an "enlightened" form of government or culture (Stilz 5, 7). Indeed, this language of colonization sounds strikingly similar to the rationale behind PL-280's enactment. The legislators of PL-280 cited a perceived problem of lawlessness on reservations that urgently needed repair (or rather, that tribes needed to establish "some form" of civilization). Additionally, the assimilatory goals of PL-280 sought to "enlighten" tribes by integrating their cultures and governing styles with the rest of American society.

Stilz rejects Buchanan's defense of the instrumentalist view by pointing out that it does not provide indigenous peoples with a moral right to self-determination because "the view

---

[21] Buchanan also holds that people have a right to self-determination if a political entity displaced an already existent, legitimately ruling political entity. Stilz does not directly respond to this claim, because she says that she is unsure of the connection between this viewpoint and the rest of his argument. I will not respond to this claim of Buchanan's not for this reason, but because delineating an account of what a legitimately ruling political entity is, and fitting the federal government into that definition (since the role of the federal government was replaced by the state government as a result of PL-280) would be too onerous of a task for the purposes of this essay. However, I thought it worth mentioning that state governments displaced the authority of the federal government. Under the auspices of Buchanan's argument, this contention may grant PL-280 tribes a secondary claim to self-determination.

recognizes no difference between being ruled by a domestic government (as long as it protects one's human rights) and being ruled by a foreign government (that does the same)" (Stilz 7). She believes this to be problematic because even if a group of people are not denied their basic human rights by a foreign government, they are still denied the right of self-rule. If a group of people is successful in conforming to the "civilization" mandates directed towards them by the colonizing sovereign, there is not a case for self-determination. Stilz supports Buchanan's view in that it requires the colonizing sovereign to protect the basic human rights of a group of people, but she claims that it is otherwise too weak to support a claim to self-determination, as Buchanan only puts forth the basic duties that a sovereign ought to have towards *all* of its subjects. It does not recognize the needs that specifically pertain to *colonized* subjects. Although Stilz's argument may be applicable to a larger discussion, I will employ Buchanan's views in this section, as they will prove to be more proficient in conveying the shortcomings of the federal government towards PL-280 tribes. Furthermore, Buchanan's view will shed light on how the federal government is not even fulfilling their fundamental duty of protecting the basic human rights of PL-280 tribes, which therefore, establishes their right to self-determination.

Stilz assumes that "basic human rights" is a minimal standard, perhaps what is typically associated with Hobbesian natural rights. Under this view, a group might have those minimal rights fulfilled without possessing what amounts to self-determination. However, Barker's account of basic human rights for indigenous peoples encompasses a much larger domain of values than the version assumed by Stilz. If we interpret Buchanan's "basic human rights" to include the richer set of rights put forth by Barker, then for indigenous peoples, having those rights recognized will be the same as gaining self-determination.

Referencing Barker's article, "human rights principles for indigenous peoples [are translated] into the specific rights of self-determination, including provision for aspects of tradition, custom, property, language, oral histories, philosophies, writing systems, educational systems, medicines, health practices, resources, lands, and self-definition" (Barker 19). These elements of individual tribes' cultures are inseparable from what it means for them to possess basic human rights. PL-280 is meant to assimilate tribes with the rest of American society, eliminating these aspects of who they are as a people, along with their already established structures of government. The defense of basic human rights is necessary to the defense of this richer set of values, even if it is not sufficient for the defense of those values.

PL-280 denies the affected 460 tribes their basic human rights through its strict conformity to an ethnicized account of sovereignty. In its application to PL-280, ethnicization does not necessarily delineate political boundaries between tribes on account of race (although this is arguably a relevant consideration), but rather, it becomes pertinent because of the way in which it generalizes which tribes are to be under the statue's authority. PL-280 was enacted to resolve the perceived problem of "lawlessness" on reservations, and to not only transfer tribal criminal and civil jurisdiction from the federal government to state governments, but to additionally include the federal trust responsibility in this shift of authority. Analyzing each of these two concepts from an instrumentalist perspective will explain why PL-280 tribes have a moral claim to self-determination.

First of all, I will examine the problem of lawlessness to convey why the instrumentalist view provides PL-280 tribes with a moral claim to self-determination. When white settlers first observed tribes' systems of governance in place, they determined that there

was no existing political entity at all. This was a conspicuous mischaracterization that is primarily due to the fact that these outsiders simply did not understand how tribal governments operated. For instance, tribes often constructed tribunals of justice to achieve restitution, rather than retribution as is typical of the U.S. judicial system (Becker 8). Tribal leaders often did not issue commands by which tribal members were expected to abide, but rather, they considered the opinions of each tribal member when faced with a decision, and allowed group consensus to guide them towards a conclusion (Becker 8). This differs from the U.S., since legislation is issued as a formal directive once it is passed into law by a majority vote. Additionally, tribes often sought to protect their wellbeing through the protection of their cultures and traditions, they often used alternative forms of currency, tribal members did not pay taxes, and incarceration was uncommon. Of course, this is a generalized overview of *some* characteristics possessed by *some* tribal governments. It is not meant to be a complete portrayal of what *all* tribal governments are like.

The federal government interpreted the tribes' differing styles of government—from their own and from other tribes—to mean that there was not a system of law in place at all. Of course, the elimination of the federal trust responsibility by PL-280 does not create a new type of sovereignty for tribes, but rather divests them of their former one, which leaves them with no sovereignty at all. Since there are approximately 460 different PL-280 tribes, it follows that there are approximately 460 different cultures, traditions, and philosophies that inform these tribes' structures of government. As Barker's article states, the cultures, traditions, and philosophies of each tribe are what comprise the identity that is crucial to their existence as a political entity, which is why indigenous peoples have chosen to include these elements in their definition of

basic human rights. PL-280 does not consider the basic human rights of each tribe that falls under its domain, since it effectively generalizes them all under the same label, employing the perceived problem of lawlessness as a justification for doing so. Generalization, in this way, is ethnicization. For the federal government to racialize tribal sovereignty was for them to misunderstand the fundamental nature of tribal governments, due to the way in which they differed from their own government and *due to the fact that they were tribes.* Therefore, PL-280's application of a single structure of governance to over 460 differing styles of rule is a blatant ethnicization of the sovereign status of tribes, thereby *disregarding the basic human rights of most, if not all PL-280 tribes.* Redrawing the political boundaries of PL-280 tribes by grouping them under a solitary definition of sovereignty paid no heed to the basic human rights of each of the tribal nations. In conclusion, Buchanan's argument concerning the instrumentalist view supports a moral claim to self-determination for PL-280 tribes.

Alluding to the other reason for PL-280's passage provides just as strong of a moral claim for self-determination when considered from an instrumentalist view. As I mentioned earlier, PL-280 was enacted to combat the perceived problem of lawlessness on reservations and to eliminate the federal trust responsibility. Such an action is perhaps even more ethnicized than was the first rationale that I discussed.

After World War II, President Eisenhower sought to cut down the federal government's budget. The BIA was one of the areas that he deemed apt for fulfilling this objective. With the enactment of PL-280, states would assume the duties of the federal trust responsibility, thereby relieving the federal government of their financial obligation to promote the wellbeing of tribes.

If tribal courts, police forces, and developments in governmental infrastructures are to receive funding, it would no longer come from the federal government, but from the states.

The political reorganization dictated by PL-280 neither considered the sovereign status of tribes, nor how their different administrations were organized, but rather, the rationale behind PL-280's passage essentially generalizes tribal nations into a line on a balance sheet, a mere number signifying their value. The deferral of the federal trust responsibility makes 460 tribes appear as if they were a burden for the federal government *because* they were tribes. The very idea that tribal nations were anyone else's responsibility other than the federal government's was based on the insultingly paternalistic view that tribes were "uncivilized," as if they were children that needed to be dealt with. Thus, the elimination of the federal trust responsibility as a reason for PL-280's passage is yet another way in which the ethnicized motivations informed the sovereign status of tribes. PL-280 does not consider the basic human rights of tribal nations. However, it *did* take into account which action would be fiscally beneficial for the federal government. Therefore, this reason for PL-280's enactment shows the power of Buchanan's view, despite Stilz's concerns. PL-280 protects the interests of the federal government, not the basic human rights of indigenous peoples. This rationale behind PL-280's passage conveys another reason as to why the instrumentalist view establishes a strong moral claim to self-determination for PL-280 tribes.

2.2 Democratic View of Indigenous Peoples' Moral Right to Self-Determination

Stilz includes another reason in her article as to why indigenous peoples have a moral right to self-determination, which she refers to as the democratic view. Although she argues that it ultimately fails as a justification when applied to decolonization in its entirety, I contend that it

is more powerful than Stilz recognizes. As she defines it, under the democratic view, "decolonization [is] morally required because subject peoples lack[] *democratic representation*. What [gives] these peoples self-determination rights [is] their claim to be politically enfranchised" (Stilz 3). In terms of PL-280, the democratic view can be equated to meaning that because tribes were not democratically represented in the enactment of PL-280, a response is warranted.

The democratic view empowers indigenous peoples with a stance in the political web that goes beyond that of the ethnicized beneficiary. It recognizes that tribes have a fundamental claim to democratic representation, and that governmental actions that deny them that (such as PL-280) are illegitimate. As I will explain, the way in which PL-280 politically disenfranchised PL-280 tribes is twofold. First of all, mandatory PL-280 tribes were deprived of democratic participation when they were denied the opportunity to consent to the Act's initial passage in 1953. Secondly, PL-280 disenfranchised tribes over which the 1968 retrocession amendment would extend. This process gives states all the real power. Tribal nations must convince state governments to petition to retrocede jurisdiction back to the federal government and are unable to initiate this process on their own terms. Under the democratic view, PL-280 tribes have been denied the opportunity to participate in political decision making. I will use this framework to explain why self-determination is required as a response to PL-280.

The process of political incorporation is one way in which PL-280 did not permit tribes to be included in political decision making. After the passage of the 1968 Indian Civil Rights Act, optional PL-280 tribes were authorized to give consent to any assumptions of state jurisdiction that would take place in the future, but the amendment would not retroactively apply

to tribes who had already had their jurisdiction assumed by their respective state governments. Since these tribal nations were unable to consent to transfers of jurisdiction that occurred before 1968, it follows that they were not included in the political decision making process. PL-280 politically disenfranchised them in this way. Thus, when the consent condition of PL-280 is examined, the democratic view establishes a moral claim to self-determination for PL-280 tribes.

Additionally, PL-280 tribes are denied participation in the democratic decision making process, considering the state is the only political entity that can initiate retrocession. If tribes would like to retrocede authority back to the federal government, they must negotiate with their respective state governments for this process to commence.

One might object to this latter claim, saying that tribes *are* considered in the political decision making process that pertains to retrocession, since they simply have to discuss the matter with state governments. I would respond to this objection by pointing out that the applicable authority in this political decision making process in particular is not proportionate for the two parties. Why does the state government not have to reach out to tribes to initiate retrocession? Why would the state government be the one authorized with denying tribes' appeals for retrocession? I believe that the answer to these questions is most obviously engendered in the fact that PL-280 was not meant to empower tribes' powers of decision making; instead, it appears as if the direct opposite is true: the statute was enacted for the very purpose of politically disenfranchising them. The critic might respond to this response, claiming that PL-280 still leaves room for political enfranchisement, it just happens to not do so in *this* particular instance, to which I would respond by asking the critic to explain how tribes are presented with increased opportunities to participate in political decision making. Would occurrences of abuse

of authority or vacuum lawlessness as seen on the Coyote Valley Reservation qualify? Or perhaps, would the thousands of missing, murdered, and abused American Indian and Alaska Native women serve as an example of political enfranchisement as a result of PL-280? What about the ineffectual law enforcement personnel that are meant to regulate crime on PL-280 reservations? Could the denial of basic indigenous rights be considered an instance in which tribes were included in the political decision making process?

I pose these rhetorical questions, facetiously, of course. Occurrences of abuse of authority lawlessness displace the voices of tribal leaders, completely excluding them from discussions meant to determine a proper course of action. The heavy onset of violence suffered by American Indian and Alaska Native women not only is a violation of autonomy, as it limits decision-making in daily tasks, but it also marginalizes their participation in democratic institutions. In some instances, they have vanished against their will as an active member in society altogether.

3. Conclusion

As I have shown, both the instrumentalist and the democratic view convey why PL-280 tribes have a moral right to self-determination. The instrumentalist view states that a group of people have a moral right to self-determination if they have been denied minimally just rule by the ruling sovereign. PL-280 tribes claim that their identity as a people must be represented in the political institutions in which they are to participate. However, the evidence shows that PL-280 denies them that right. I utilized Buchanan's defense of the instrumentalist view to defend my claim. Stilz contends that Buchanan has set the bar too low for colonized subjects to have a claim to self-determination. I concede that Stilz has a point. The protection of

basic human rights is a fundamental duty of the ruling sovereign, and using basic human rights as a moral claim to self-determination fails to distinguish colonized subjects as having a different set of values than the rest of the population. Buchanan *does* set the bar too low, and yet the federal government and PL-280 states have not even met that bar. If we assume the protection of basic human rights in Buchanan's defense to mean the much richer set of rights argued for by indigenous peoples in Barker's article, then his argument proves better suited for our purposes than Stilz's objection. He has a weaker set of guidelines for establishing self-determination, because he requires the sovereign to have very minimal duties. The weaker claim argued for by Buchanan establishes a much stronger claim to self-determination for PL-280 tribes, because it sheds light on the minimal efforts being made by the ruling sovereigns (the states and the federal government) to protect the basic human rights of indigenous peoples. Thus, because Barker's definition of basic human rights are denied by PL-280, Buchanan's defense of the instrumentalist view illustrates why PL-280 tribes have a moral claim to self-determination.

The democratic view states that a group of people have a right to self-determination if they are denied participation in political decision making processes, or if they are politically disenfranchised. As is evinced by the retrocession process and the consent condition, it would seem that PL-280 tribes *are* politically disenfranchised. Although the 1968 Indian Civil Rights Act enabled optional PL-280 tribes to consent to any attempted assumptions of jurisdiction by their respective state governments, PL-280 tribes that had their jurisdiction assumed by their respective states prior to this amendment were unable to consent in the same way. Therefore, the latter set of tribes have been politically disenfranchised by PL-280. Under the democratic view, these tribes have a moral claim to self-determination.

Additionally, the retrocession process conveys why PL-280 tribes have a moral claim to self-determination. If PL-280 tribes would like to retrocede jurisdiction back to the federal government, then they must request that their respective state government initiate this process. If the state declines, then the attempt at retrocession has failed. There is no other avenue for retrocession for PL-280 tribes. The way in which tribal nations are not given equal authority to the states in the retrocession process is another way that they are politically disenfranchised, and hence, another reason why PL-280 tribes have a moral claim to self-determination.

In conclusion, sovereignty is valuable for tribes when they possess self-determination. As shown with the effects of PL-280, tribes are both politically disenfranchised, just as they are denied basic human rights. PL-280 causes the federal trust relationship to falter, and thus the (albeit, already restricted) domestic-dependent account of sovereignty in place prior to its enactment ceases to exist. PL-280 tribes are meant to function as sovereign political entities. Both the democratic view and the instrumentalist view convey why PL-280 tribes have a moral right to have this status restored, and why PL-280 tribes ought to be able to draw their own political boundaries. The way that Barker defines basic human rights for indigenous peoples is central to who indigenous peoples are as a political entity. Additionally, deciding the nature of their respective governments is a value essential not only to PL-280 tribes' ability to self-govern, but to *any effective political entity.* Because PL-280 deprives tribes of the protection of their basic human rights, and because they are excluded from political decision making, it follows that per the democratic and the instrumentalist view, PL-280 tribes have a moral claim to self-determination, which is where they ultimately locate the value of sovereignty. In conclusion. self-determination would allow PL-280 tribes to define an account of sovereignty that is specific

to their own tribe, thus restoring the protection of basic human rights and participation in decision making that is denied by PL-280.

CONCLUSION

The domestic-dependent definition of sovereignty, or rather the way in which the federal government defines tribal sovereignty for tribal nations is an already unique way of defining sovereignty to begin with. Primarily, it is not typical for a governing sovereign to define another sovereign's status for them. It is just as peculiar that one of the four principles of governance upholding the doctrine of tribal sovereignty portrays tribal nations as a beneficiary of the federal government. The four pillars of the doctrine of tribal sovereignty—aboriginal land claim, Congress's plenary powers, state authority over Indian affairs, and the federal trust responsibility—are the necessary conditions for tribal sovereignty. If one of these pillars falters, *tribal sovereignty in its entirety ceases to exist as well*.

In Chapter 2, I explained that one of the reasons for PL-280's enactment was to combat the perceived problem of lawlessness on reservations. The federal government mistakenly concluded that because tribal nations had systems of government that looked differently from the Westernized version implemented in the U.S., they must not have had any in place at all. There was not an issue of lawlessness prior to PL-280's enactment; however, after 1953, there *was* a problem of lawlessness persisting on PL-280 reservations. Carole Goldberg gave an account of two types of lawlessness that have occurred from PL-280: abuse of authority lawlessness and legal vacuum lawlessness. Abuse of authority lawlessness most commonly occurs because PL-280 does not circumscribe the extent to which the state may exercise authority in Indian Country, which is most visible when state law enforcement intervenes in tribal communities in a way that disrespects tribal sovereignty. Legal vacuum lawlessness occurs as a result of rifts or

vacuums in jurisdictional authority, which often give rise to unofficial, communal policing efforts within a tribal community as an attempt to regulate crime, often culminating in eruptions of violence. Jurisdictional vacuums may exist because it is the case that no governing body has authority, or because, even if a government *does* have authority, they may lack the proper funding, resources, and institutional support to exercise that authority. I depicted what both of these types of lawlessness look like through the example pertaining to Polly Klass.

In Chapter 3, I used the research findings of Duane Champagne, the National Congress of American Indians, and Annita Lucchesi to explain the factors responsible for the abuse of authority and legal vacuum lawlessness: a lack of federal funding, police force presence, and tribal infrastructure developments. All of these components, as well as the occurrence of crime are what contribute to the annihilation of the federal trust responsibility. As I stated earlier, if one out of the four pillars of tribal sovereignty falters, then tribal sovereignty ceases to exist in its entirety. Therefore, PL-280 results in tribal nations' failure to govern as the already limited form of domestic-dependent sovereignty by which the federal government has defined them.

The federal trust responsibility was meant to ensure that the federal government has a formal, legalized right to ensure the wellbeing of tribal nations. One of the central reasons that the federal government enacted PL-280 was to transfer the federal trust responsibility to state governments along with civil and criminal jurisdiction over tribal affairs. Not only does this eliminate the federal trust responsibility (it is the *federal* trust responsibility, not the *state* trust responsibility after all), but it also eliminates PL-280 tribes' sovereign status. This is a harsh slight to tribal sovereignty, and it demands to be remedied. As I explained in Chapter 4, PL-280 tribes ought to be considered as having a moral claim to self-determination, as is supported by

the instrumentalist view and the democratic view. Self-determination necessitates that PL-280 tribes would have the right to draw their own political boundaries and decide their own notions of self-governance.

The instrumentalist view states that a group of people have a right to self-determination when they are denied minimally just rule, while under the democratic view, a group of people have a right to self-determination if they have been politically disenfranchised. Allen Buchanan argues that under the instrumentalist view, when the basic human rights of a group of people are not protected, they have a claim to self-determination. Anna Stilz objects to Buchanan's claim, because it is too loose of a standard. However, if basic human rights are thought to encompass the cultures, political values, and philosophies of indigenous peoples as Joanne Barker argues, Buchanan's argument proves sufficient for the purposes of this essay. Buchanan *does* set the bar rather low; however, his defense of the instrumentalist view sheds light on the minimal support that PL-280 tribes are receiving from both the federal government and their state governments. According to Buchanan, if the basic human rights of PL-280 tribes were protected by either the federal government or by the tribe's respective state government, then they would *not* have a claim to self-determination. This seems as if it should be a fundamental duty of the ruling sovereign, and yet, it remains unfulfilled as a result of PL-280. Therefore, because the basic human rights of indigenous peoples are denied as a result of PL-280, tribal nations have a moral claim to self-determination under the instrumentalist view.

PL-280 tribes were also denied the opportunity to participate in the political decision making process, as is evinced by both tribes' inability to consent to the transfer of jurisdiction initiated by PL-280 and by the retrocession process. After the 1968 Indian Civil Rights Act,

optional PL-280 tribes were able to grant consent to any attempted assumptions of jurisdiction by the state. The consent condition was not retroactive, and thus, did not apply to tribes who had already had their civil and criminal jurisdiction transferred from the federal government to the state government prior to 1968. These tribes were politically disenfranchised, since they did not participate in the decision making process that resulted in this shift in authority. Therefore, the tribes that were denied the opportunity to consent to PL-280 have a moral claim to self-determination under the democratic view.

Additionally, the democratic view supports a claim to self-determination for PL-280 tribes, because of the nature of the retrocession process. If tribes desire to retrocede civil or criminal jurisdiction back to the federal government (either in part or in whole), then they must ask the state to initiate this process. If the state agrees to the tribe's request, then the retrocession process will commence. However, if the state denies the tribe's request, then they have no other avenue for initiating retrocession. The state is given a considerably greater amount of authority than PL-280 tribes. This is another way in which PL-280 tribes are politically disenfranchised. It follows that this is another reason as to why PL-280 tribes have a moral claim to self-determination under the democratic view.

As I have explained, tribal sovereignty is diminished as a result of PL-280's passage. Therefore, self-determination would be sufficient for restoring their status as sovereign entities. In order to effectively combat the problem of lawlessness, PL-280 tribes ought to be given the right to determine their mechanisms of government as they see fit. An argument for whether self-determination can actually combat the problem of lawlessness on reservations may be an argument that can be found within my paper. However, it is not the central claim that I am

concerned with making. Instead, I contend that based on the factors responsible for the problem of lawlessness, PL-280 tribes have a right to not only redraw political boundaries, but to determine how their governments ought to operate within those boundaries. Moreover, the value of sovereignty for PL-280 tribes is self-determination, since the type of "sovereignty" created by PL-280 leaves tribes politically disenfranchised and subjected to unjust rule that denies their basic human right as indigenous peoples. In conclusion, to claim that PL-280 tribes have a moral claim to self-determination is to claim tha*t they have a moral claim to build their own definition of sovereignty*. Sovereignty is valuable for tribes when the basic human values of indigenous peoples are protected and when their communities are politically enfranchised.

WORKS CITED

Anderson, A.T. “Unique Relationship: Federal Trust Responsibility and the Legal Status of Indians.” 1973. HeinOnline.

Barker, Joanne, editor. *Sovereignty Matters: Locations of Contestation and Possibility in Indigenous Struggles for Self-Determination.* University of Nebraska Press, 2005.

Batzer, MacKenzie T. “Trapped in a Tangled Web; *United States v. Lara*: The Trouble with Tribes and the Sovereignty Debacle.” Chapman Law Review, vol. 8, 2005. HeinOnline.

Baum, Katrina, et al. “National Crime Victimization Survey: Stalking Victimization in the United States.” Bureau of Justice Statistics Special Report. Office of Justice Programs, U.S. Department of Justice, January 2009.

Becker, Tracy, et al. “Traditional American Indian Leadership: A Comparison with U.S. Governance.” American Indian Research and Policy Institute, September 1997.

Bryan v. Itasca County, 426 U.S. 373. Supreme Court of the United States, 1976. Google Scholar.

Champagne, Duane, and Carole Goldberg. *Captured Justice: Native Nations and Public Law 280*. Carolina Academic Press, June 2012.

Cherokee Nation v. State of Georgia, 30 U.S. 1. Supreme Court of the United States, 1831. Google Scholar.

Coyote Band of the Coyote Valley Band of Pomo Indians. Article VII, Section 1n.

Deloria, Vine, and Clifford N. Lytle. *The Nations Within: The Past and Future of American Indian Sovereignty.* Pantheon Books, 1984.

Goldberg, Carole E. *Planting Tail Feathers: Tribal Survival and Public Law 280*. Edited by Timothy Carr Steward, vol. 6, American Indian Studies Center, University of California Los Angeles, 1997.

Jimenez, Vanessa J., and Soo C. Song. "Concurrent Tribal and State Jurisdiction under Public Law 280." American University Law Review, vol. 47, no. 6, August 1998. HeinOnline.

Johnson v. M'Intosh, 21 U.S. 543. Supreme Court of the United States, 1823. Google Scholar.

Kickingbird, Kirke, et al. *Indian Jurisdiction*. Institute for the Development of Indian Law, 1983.

Lucchesi, Annita. "Missing and Murdered Indigenous Women and Girls." Urban Indian Health Institute, 2018.

McClanahan v. Arizona Tax Commission, 411 U.S. 164. Supreme Court of the United States, 1973. Google Scholar.

Maryland Department of Labor. "Maryland Minimum Wage and Overtime Law - Employment Standards Service (ESS)." June 2019.

National Congress of American Indians. "Policy Insights Brief: Statistics on Violence Against Native Women." NCAI Policy Research Center, February 2013.

National Crime Information Center. "Number of Missing Persons in the U.S. by Race 2019." Federal Bureau of Investigation, Department of Justice, 2019.

Sokolow, Gary. *Native Americans and the Law: A Dictionary.* ABC-CLIO, Inc., 2000.

Steele, Michalyn, "Congressional Power and Sovereignty in Indian Affairs." *Utah Law Review*, vol. 2018, no.2, 2018.

Stilz, Anna. “Decolonization and Self-Determination.” *Social Philosophy and Policy*, vol. 32, January 2015.

United States, Congress. Public Law 280. *United States at Large,* Chapter 505. *U.S. Government Publishing Office*.

Wildenthal, Bryan H. *Native American Sovereignty on Trial: A Handbook with Cases, Laws, and Documents*. ABC-CLIO, Inc., 2003.

Worcester v. Georgia, 31 U.S. 515. Supreme Court of the United States, 1831. Google Scholar.