SOVEREIGN STATES AND THE CHANGING DEFINITION
OF THE INDIAN RESERVATION

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ALL places differ, whether as natural landscapes or as historically occupied sites. Although best identified by toponyms that sustain the idiographic character of place, natural and man-made phenomena can be grouped together and assigned generic identities—valleys, cities, farms. In fact, it is essential for the progress of science that we make order out of environmental complexity by creating this kind of nomenclature. We should be sure that terms mean what we think they do, especially when we utilize terms not of our making. On occasion colleagues have demonstrated that generic terminologies may be vague or misleading and that current definitions may not be in agreement.¹ If our training in the differentiation of places has been a useful tool in our own research, we should be aware that our methods can also shed light on the meaning of terms for the benefit of others. In this paper I suggest that this is the case with reference to the Indian reservation in the United States.²

THE PROBLEM OF DEFINITION

When loosely identified both by layman and scholar as tribal lands held in trust and protected by federal immunities, Indian reservations present little definitional problem. However, all too often they are treated either as a portion of the public domain or as private property no different in legal or political status from land held by non-Indians. To be sure, some of the confusion in meaning results from the use of the term “reservation” to designate the status, for example, of national forests or parks, which are clearly classified lands of the public domain. The confusion here also may be due to the fact that Indian reservations are closely associated with public land management. But today the idea that these lands are simply tribal, the title to which is held by the government as a trustee, will no longer suffice to explain the position of the tribes and their lands in local, regional, or national politics and economy. For one thing, the rubric “Indian reservation,” unless more clearly defined in its various usages, wrongly connotes a universality of legal status, political organization, and perhaps even economic poverty. Moreover, we should help others avoid the notion that reservations are “concentration camps,” a perception which historian Washburn suspects is prevalent among the lay public.³ Although geographers appreciate the Indian reservation as a unique reality—that is, a landscape differing significantly from its surroundings occupied by non-Indians—few of our studies to date have


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helped to clarify the meaning of the rubric beyond its most simplistic definition as cited above. Because we rarely analyze how Indian reservations interact with or function in states or their local civil divisions, we have overlooked the fact that the changing definition of reservation depends on its location within the state and local jurisdiction of which it is a part.

Although most Indian reservations lie within the bounds of a single state and even a single county, a few of them are multiply gerrymandered by both states and local governments (Fig. 1A). For these and other reasons scholars are often as unsure of the political-geographical location of the Indian reservation as they are unclear about its current definition as a place. The configuration of tribal holdings relative to that of adjacent non-Indian lands may also effect some confusion; generally, tribal lands possess contiguous albeit irregular patterns, but often with individual holdings both in trust and in fee as well as with state and county lands interspersed or clustered among them. Many of these lands form unincorporated county areas or separate municipalities that lie within or adjacent to reservations. Characteristically, they are perceived as the locus of county government even when county boundaries extend into reservation areas (as, for example, the Cheyenne River Indian Reservation in Fig. 1B). While the Palm Springs Indian Reservation (Fig. 1C) is a striking example of municipal interaction resulting from the establishment of a railroad land grant on sections alternate to those held in trust for the Indians, it is far more common to find towns fully inside reservations (such as McLaughlin on the Standing Rock Indian Reservation in South Dakota, or Salamanca on the Allegany Indian Reservation in New York). Whether inside or outside reservations, such communities normally see themselves as autonomous and subject only to state and local governments. On the other hand, reservations lie within but are not part of states and local civil divisions. However, few scholars would erroneously ascribe to this land unit characteristics of a state or sovereign nation. What is contrasted is the difference between territory and its government; the reservation is part of the territory of a state but is most often independent of that government.

Further beclouding the meaning of Indian reservation is the character of land administration. The Bureau of Indian Affairs (BIA) administers the reservation mostly as a field service area, part of an elaborate bureaucracy within the Department of the Interior. Yet, by dint of constitutional provisions and treaties, statutes, and executive orders, Indian reservations must be distinguished as other than administrative units or field service areas. Although reservations are administered on behalf of the tribes, the tribes possess autonomy over their lands, harking back to aboriginal status as independent nations and reinforced by treaties or later legislation, such as the Indian Reorganization Act of 1934.\(^4\) In the decades following the abrogation of the treaty-making practice (1871), the states have tended to defer to the federal government in tribal land matters, perhaps owing mostly to the federal administrative role rather than to intrinsic state or local understanding or to acceptance of tribal “internal sovereignty.” But the administrative structure is a facade that obscures the fundamental role of tribal government over its own territory. The fact that many administrators in the past have viewed the persistence of treaty provisions as anachronistic, and have therefore assumed considerable bureaucratic authority over various

tribes, has not abetted the cause of tribal government or given the states a better picture of tribal autonomy on reservations.

**Persistent Intergovernmental Conflicts**

If it were only necessary to recognize the Indian reservation as an ethnic place, a tribal homeland that is the locus of Indian identity in a cultural sense, few problems—interpersonal or intergovernmental—would persist and the question of definition would become moot. It is specifically because the reservation has many ill-defined variables, differing from state to state and even within a state, that clarification of its definition seems essential in a very practical way: to resolve conflicts and avert litigation that is costly, polemic, and often confusing rather than enlightening to the litigants. In the past twenty years or more, states and local governments, acting through public officials or the general citizenry, have provoked conflicts over various activities on reservations, including land utilization. Most problems arise, obviously enough, at the local level—county or municipal—within or adjacent to reservations and reflect differing interpretations of the integrity of the reservation boundary.

Most conflicts emanate from the poor perception of the multiple reserves so characteristic of Indian lands past and present (Fig. 2). It is one thing to readily comprehend the existing reservation; it is quite another to recognize a surviving reserved status for certain lands within a former diminished or terminated reservation, for which the external boundaries may not be extinguished de jure despite the homesteading or other means of acquisition of these lands by non-Indians, creating de facto termination of a large block of the reservation. What further complicates matters is that inside either existing or former reservation boundaries lie individual holdings (allotments) in trust and all too often non-Indian holdings in fee. Local governments presume their jurisdiction because of the existence of non-Indian land and tend to disregard the trust status of Indian allotments because of diminished external boundaries.

These problems relate as much to off-reservation movement of resident Indians who interact with whites in nearby towns as to the on-reservation flow of non-Indian entrepreneurs intent on the development of tribal resources that will attract non-Indian spending. Conflicts become acute whenever non-Indian neighbors find it difficult to perceive or are unwilling to accept a reservation as a separate geographical entity immune from local regulatory or general powers, especially tax exemption. Local officials do not help this situation when they attempt again and again to intervene in tribal resource developments, as has occurred in both California and New Mexico. Here, and elsewhere, misconceptions may arise because a sheriff or a public safety officer enters a reservation, makes arrests, or orders a given land use to desist by authority of a county ordinance or state law. At the Palm Springs Indian Reservation and at the Tesuque and Cochiti pueblos in New Mexico local building and safety, and planning, agencies have sought to intervene in order to regulate or squelch real estate developments considered well within the purview of tribal authority.

Even more confusing is the lack of comprehension of Indian rights to hunt and fish within geographically defined areas based on treaty provisions at the time tribes

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*An excellent analysis of more recent cases appears in Monroe E. Price: Law and the American Indian (Bobbs-Merrill, Indianapolis, 1973), pp. 183-351.
ceded title to the aboriginal territory. Because non-Indians now hold such lands and perhaps have for several generations, they find it anachronistic in terms of our property concepts that such treaty rights persist. States have also intervened in the allocation of water rights, failing thereby to uphold the judicial legitimacy of the Winters Doctrine, which asserts that when reservations were acknowledged in treaties

![DIAGRAM: INDIAN LAND CONFIGURATIONS](image)

**Fig. 2**—A schematic representation of Indian land configurations.

or established by later laws or executive orders, an implicit reserve of water was made. Such waters, said to be fugitive within any given watershed, make a water reserve that is geographically difficult to delineate.7

**LAW AND THE GEOGRAPHICAL RESERVATION**

From the foregoing it should be apparent that the contemporary Indian reservation is only one part of a larger political-geographical complex. Termed “Indian

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Country," this entity, as the Indian legalist Felix Cohen noted, "at any particular time must be viewed with reference to the existing body of federal and tribal law." Although seemingly contradictory in its definition, Indian Country normally has included "all dependent Indian communities . . . whether within original or subsequently acquired territory . . . and whether within or without the limits of a state." Perhaps only the federal government has been able to keep apace of the changing definition of Indian Country. In its earlier context the definition reflected mostly treaty provisions and statutory declarations of its specific geography in any given territory or state. In the past several decades Indian Country has undergone even more modification as a result of case law. The definition of Indian Country, and therefore of the Indian reservation, historically concerned changing frontiers; today that definition must focus on fairly stable boundaries. For example, it was simple enough more than a century ago to regard Indian reservations as extraterritorial, for they met the then-utilized definition of land "being beyond or without the limits of a territory or particular jurisdiction." Regardless of changing boundaries, the tribes were said to occupy areas or places extraterritorial to the newly formed territories or states; one indication of this distinction was the creation of territorial governors who also served as superintendents of Indian affairs. Today "extraterritorial" has a greatly modified meaning in international law; it now means the "exercise by a state of its jurisdiction beyond its boundaries over its nationals, who, for the time being, may be sojourning in the territory of another state." The Indian reservation is obviously not a national enclave within a foreign country, for it lies within one of our own states.

No longer possessing the status of sovereigns, the tribes can only be described as semi-autonomous and their lands as a tertium quid, neither a civil division in American political institutions nor an administrative district or unit in our field service traditions. Despite laws and practices that place reservations clearly in their home states and entitle Indians to equal federal, state, and local services, rejection of such obligations has often stemmed from the fact that Indians enjoy a landed status unparalleled among other sectors of the populace. The distinction between the status of Indians and that of the rest of the population is based on historic links to the federal government and on prevailing laws that focus on tribal immunities from state and local jurisdiction.

As is generally known, federal supremacy in Indian affairs stems from constitutional provisions and from early statutes. Many reservations are residual tribal holdings after the ratification of treaties of cession; in other words, the tribes reserved

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8 Felix S. Cohen: Handbook of Federal Indian Law (U.S. Govt. Printing Office, Washington, D.C., 1941), p. 5. I have freely expanded this quasi-legal term since it already has partial definition in Indian affairs; no other term approximates the meaning and areal extent that Indian Country does in its original and current usage. Compare Price, op. cit. [see footnote 5 above], pp. 32-33, who suggests that Indian Country is a fairly precise term but that its "geographic metes and bounds" are not clear.
some land for themselves. In other instances, especially in the Far West, reservations resulted from congressional acts or executive orders, either of which reestablished Indian trust lands out of the public domain. This is another basis for the confusion over the definition of the reservation. Generally, the trusteeship function and the immunities ascribed to the Indian reservation extend alike to treaty, statutory, and executive order reservations. In a way, the legal emphasis is less on the land than on the tribe as a resident community; that is, the legal position of the tribe must be singled out in ascertaining the relationship between the fiduciary, the Indians, and whatever immunities exist or persist within Indian Country at any given time. Cohen stated it best: "The political conception of the tribe is thus the origin of whatever is distinctive about the legal position of the Indian in the law of the United States." That is to say, the existence of a reservation provides the base and the locus for the functioning of the tribe as a political or jural entity within its own bounds, but this should not be construed to mean that the reservation is a distinct and separate political unit equivalent to a state, a county, or even a municipality. The immunities pertain to the tribe, to the jural place of the tribe—that is, the reservation—and to the tenants-in-common, but not necessarily to individual Indians, even within Indian Country. Put another way, individual Indians are citizens, but tribes are political entities occupying a unique political space. There is no counterpart for our comparison.

Three locationally oriented factors have influenced changes in the immunity wall that has been built around Indian Country. Of them, one pertains especially to this discussion, that is, a transfer of functions over resident reservation Indians; for example, health, education, welfare, law and order. The other two factors—when Indians migrate off reservation and when Congress terminates a reservation—remove Indians from the immune jural place. The urbanization of Indians places them within local jurisdictions beyond the force of tribal law; here Indian landownership, like that for all other citizens, is subject to local taxation, zoning, or other powers. Similarly, when a reservation is terminated from federal trusteeship, and subsequent to a transitional period of adjustment to new legal conditions, local jurisdiction goes into effect. This has occurred for the Klamath (Oregon), for several smaller reservations in California, Nevada, and elsewhere, and for the Menominee (Wisconsin), which uniquely was converted into a county subject to state government. Only when certain functions transfer from the federal to state or local governments do we encounter the jurisdictonal conflicts that have emanated especially from misconceptions of the political distinctiveness of the reservation. The crux of the matter weighs heavily on just what function transfers to the state and just how states or local governments perceive their new authority.

Paving the way for the view that the states have considerably more authority to intervene in Indian land matters has been the historic fact of dual political philosophies over Indian Country. Federal law, as Graves and others noted, has virtually

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preempted the Indian field, yet the federal government never exclusively occupies a legal field. For example, in the matter of governmental jurisdiction over federal lands within the states, the government has established or allowed to occur through time a system of jurisdictions differing in terms of purposes for the establishment of, for example, military reserves, national forests, or national parks. Hence we can talk of exclusive, concurrent, partial, or proprietary jurisdictions. By degree, these jurisdictions move from consummate federal authority for all purposes in a given area to no more authority than that held by equivalent governmental owners of land, that is, states or counties. In Indian affairs some such variations in jurisdiction have evolved since colonial times. Several eastern states as well as Texas have long maintained the trusteeship of Indian lands within their boundaries; currently, the constitutional foundation for such trusteeship is now challenged in the states of New York and Maine. One might interpret the present situation in many eastern states, but also in several states in the West, to represent a halfway house, in which Indian Country, as we shall see, is now subject to concurrent or partial rather than exclusive jurisdiction; that is, the states have been given a voice in some aspects of Indian affairs.

**Departures from the Basic Definition**

Long ago, certainly more than a century, the federal government began to whittle away at the immunities expressed in constitutional provisions, treaties, and statutes. Westward expansion—especially land speculation, railroad construction, the cattle boom, and the establishment of market towns based on the evolution of agricultural hinterlands—contributed to changing land policies that began to open up Indian Country and lead to de facto circumstances that would no longer permit the absolute political separation of Indian lands from those held by adjacent non-Indians. At first, those states carved out of the public domain were obliged to “agree and declare that we forever disclaim all right and title... to all lands lying within said limits owned or held by any Indian or Indian tribe; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain under the absolute jurisdiction and control of the Congress.” These disclaimer clauses have governed at least a dozen states subsequent to statehood, and they are still in force. Although many eastern states did enter the Union holding the trusteeship over tribal lands within their borders, and although others entered without any Indian lands whatsoever, the public land states did not attain statehood “on an equality with the original states” insofar as jurisdiction over Indians was involved. To this extent preemption of Indian affairs remained a federal prerogative as Americans moved west. Only Texas joined the nation keeping its public domain and rejecting a federal request for a grant of land for a reservation.

The allotment of land in severalty, begun fragmentally more than fifty years before, became general policy in the Dawes Act of 1887 and in subsequent legislation governing numerous tribes. By distributing farm-sized units to all Indians pro rata...
and by declaring in most but not all cases remaining Indian lands superfluous and thereby open to non-Indian homesteading, reservation boundaries were allegedly diminished even though tribes sustained their legal status under federal law. Portions of former reservations became almost solid non-Indian holdings and tended to become the loci of county government; these areas even today are perceived as lying outside reservation bounds. The social and economic destruction wrought by land allotment also eroded the political clout of many tribes, and when the land base was diminished the tribes had little territorial foundation on which to sustain their autonomy. Moreover, most states gained added capacity under the allotment laws: devise of intestate Indian properties was henceforth subject to state law although as long as the land remained in trust the federal government would administer the estate. Once taken in fee, such lands came fully under the jurisdiction of state and local authorities. The change in land status meant that Indians themselves became state citizens and effectively removed from under the immunity umbrella of the tribe. Citizenship did not, however, mean the abrogation of treaties; federal laws still govern Indian lands in Indian Country, and in their absence tribal autonomy remains in force (Fig. 3).

None of the earlier measures leading to changing political geography in Indian Country compares to the policy shift enacted as Public Law 280 in 1953. This legislation empowered the states either to assume civil and criminal jurisdiction by dint of being named in the act or to enact appropriate laws that would transfer this jurisdiction to them. For public land states, for example, the law provided the means by which a state could in effect abrogate the disclaimer clause in its statehood act. Potentially, twenty-five states could have assumed jurisdiction over Indian Country via this act, but only half that number have to date acquired jurisdiction and, in fact, only six states have assumed overall jurisdiction within their borders. Much of the force of P.L. 280 has been diminished since the passage of the Civil Rights Act in 1968; nonetheless, considerable damage has been done because state and local governments have misconstrued the intent of this jurisdictional law. Despite newer legislation and retrocession of P.L. 280 by some states that had previously adopted it, the legal debate over the purposes of the law continues, mainly because of outstanding litigation. The law clearly articulates the restrictions on any abridgement of Indian lands, that is, immunities against taxation, alienation, or encumbrance, but unfortunately the latter condition has not been clearly defined in the law. Although most of the decisions handed down support the position of the tribes, P.L. 280 has opened a Pandora's box of intergovernmental strife. Goldberg described this law as "an attempt at compromise between wholly abandoning the Indians to the states and maintaining them as federally protected wards, subject only to federal or tribal jurisdiction."

Unfortunately, the law may be viewed from two quite opposing positions—those of the federal and state governments.

While it is for legalists to sort out the many interpretations of encumbrance, we should note the implications this confusion has led to over intervention in tribal and

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individual Indian resource matters. Tribes have only recently gained the know-how and the confidence to encourage non-Indian industrial, mining, or commercial enterprises on their lands—a situation that is expected to increase significantly in the next decades. State and local governments see such development by non-Indians as destined for non-Indian utilization and therefore well within the purview of their regulatory powers. This is notable as urbanization expands to the doors of some reservations or where Indian lands are within the economic sphere of major urban centers, such as Tucson and Phoenix, Los Angeles, Santa Fe and Albuquerque, and Seattle. But statewide intervention also exists, as in the example of Arizona's passage of omnibus air and water pollution legislation that expressly extends state environmental jurisdiction to reservations mainly subsequent to the development of

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coal mining at Black Mesa (Navajo-Hopi). Indians and their champions regard these intrusions, however much in the interest of maintaining a balanced environment, as infringements on their autonomy; they assert that the extension of jurisdiction enacted in P.L. 280 was governmental, not territorial. To them, Indian property continues to remain beyond the reach of state and local land use regulations.

At once this seems contradictory to our own experiences with real property and perhaps to our sense of fair play. The rest of the populace must subject itself to the regulatory powers of states and local governments, which have almost consummate powers these days to achieve balance in the use of the environment. It seems even more incongruous that local government should have no power to regulate land utilization on reservations when that development is by and for non-Indians. Actually, the courts are arguing more and more that the immunities which extend to the Indian should not be available to non-Indians. In addition, proponents of local regulation of reservation land use rigorously approve of intervention when it involves new developments of resources but tend to back off when the situation involves perpetuation of old ways as represented, for example, in aboriginal fishing and hunting rights under treaty as long as the methods used are traditional ones. Yet this position has not met with total approval; the state of Washington, for example, had to be defeated in major litigation before it would desist from attempting to regulate Indian traditional fishing. Of course, hostility is less likely to arise when states impose fire prevention laws in the interest of forest conservation than when they seek to exercise local housing codes in an effort to control building construction on reservations. The measure is more often in the degree of hardship Indians will feel by the intervention of state or local jurisdiction. Regulating aboriginal fishing practices in treaty areas imposes arbitrary state interference with Indian life-styles, whereas efforts to prevent forest fires should be construed as mutually beneficial.

Emergence of Tripartite Jurisdiction

Tripartite though unequal jurisdiction functions today in many parts of Indian Country. Its effective operation in tribal land matters varies from state to state and even within a state. At first it might appear that explicit acceptance of tripartite jurisdiction functions most where Indian populations assume greater numerical importance; on closer inspection this is untrue. Local involvement in tribal affairs is as persistent and aggrieved in California (where Indians represent less than 0.5 percent of the population) as it is in New Mexico (where they represent more than 7 percent). The fears and anxieties of whites do seem more real where Indian numbers are significant at the local or county level, as at Palm Springs, California, or in the towns of McLaughlin on the Standing Rock Indian Reservation in South Dakota and in New Town on the Fort Berthold Indian Reservation in North Dakota. Conflicts at Palm Springs have resulted in a standoff in municipal efforts to zone Indian land without full tribal participation. McLaughlin was the focus of judicial attention in 1972 when the state supreme court ruled that the city had no jurisdiction over Indians.

26 Goldberg, op. cit. [see footnote 21 above], pp. 583-592.
28 Goldberg, op. cit. [see footnote 21 above], p. 588.
29 Taylor, op. cit. [see footnote 15 above], pp. 176-177.
and, in fact, that the law leading to the diminution of reservation lands in 1913 did not extinguish the external boundaries of the reservation.\(\text{30}\) Here and in several other examples in the Dakotas official state maps reveal discrepancies between how states will delineate reservations and how they are depicted on federal maps. For example, only parts of the Pine Ridge, Rosebud, and Cheyenne River Indian Reservations appear on the South Dakota state map, and neither Sisseton nor Yankton shows up at all; in North Dakota, New Town is shown outside reservation boundaries on the state map, in contradistinction to the official rendering of reservation limits.\(\text{31}\) Readers will recall that South Dakota has been the scene of an "uneasy peace" between Indians and local citizens in the 1970's.

Even less significant numerically are Indian numbers involved in state trust lands in Maine and New York, yet jurisdictional issues over occupancy and utilization of tribal lands continue. Tribal leaders have asserted that the federal government has defaulted in its responsibilities to protect Maine Indians from unilateral state abridgment of land rights. That state tends to see its tribes as "enclaves of disenfranchised citizens bereft of any special status."\(\text{32}\) In New York the state long ago assumed it had powers over Indian lands in the absence of federal legislative intent; the Seneca Nation, on the other hand, contends that in the absence of federal assertion of its own powers, the tribes can fully exercise their autonomy over tribal lands.\(\text{33}\) In these eastern states, and in several western states now operating under the provisions of P.L. 280, concurrent or partial jurisdiction seems to be a fact of life but one not readily conceded by the tribes.

A UNIQUE AND SEMI-AUTONOMOUS ENCLAVE

Everything points to the Indian reservation as a distinctive place, both as a geographical entity and as a semi-autonomous enclave. Several observers have noted, for example, how unique land tenure configurations and political gerrymandering have created ill-advised, nonecological units that impair successful land utilization.\(\text{34}\) Others have observed certain institutional bases for differentiating Indian settlement morphology as a result of the impact of government, commercial interests, and the missionary church.\(\text{35}\) What is often most obvious is the extensiveness of rural poverty. Despite these apparently geographical differences, the distinctive political situation defined as "internal" sovereignty is far more important. There is no obvious counter-


\(\text{31}\) Such editions of official state maps as "North Dakota" (State Travel Division, Bismarck, 1971) and "South Dakota" (Dept. of Highways, Pierre, 1972).


\(\text{35}\) Ingolf Vogeler and Terry Simmons: Settlement Morphography of South Dakota Reservations, Yearbook Assn. of Pacific Coast Geogr., Vol. 37, 1975, pp. 91–108.
part in our political system: a legally sanctioned island that only indigenous Americans can possess.

Tribal autonomy is widely acknowledged, even though the basis for this status is still questioned and even though absolute tests of its strength are rarely found. Oliver, for example, asserted that "whether tribal autonomy exists because of inherent sovereignty or a courteous regard for the past by the courts, it is a force of some importance to the tribesmen, enough to set them apart from their fellow Americans." Implicit recognition of tribal autonomy by many states suggests that the latter recognize they do not have the authority to automatically assume jurisdiction over Indians. For example, North Dakota bowed to voter preference to reject adoption of P.L. 280 after an Indian-inspired referendum proved successful; and in the past few years retrocession of P.L. 280 has taken place in several states in which tribes have rejected state jurisdiction (such as Nevada, Nebraska, and Montana). Moreover, since the Civil Rights Act grants tribes the right to decide if they want state jurisdiction in Indian Country, few tribes have approached any state. Somewhat uniquely, the Navajo Nation demonstrated how exclusive authority over matters of extradition does represent a measure of tribal autonomy. Here the tribe successfully rejected a request for the extradition of an Indian from Oklahoma, whereupon that state sought compliance through the state of New Mexico. But subsequent litigation upheld the tribal power. Of course, the Navajo have asserted considerable political clout in recent years and have challenged at least one county’s lack of proper representation of tribal members. It is also contended that the Navajos may be headed for statehood.

Another form of recognition of tribal autonomy has been the establishment of state liaison commissions, committees, or advisory boards, many of which include Indian members. As of 1970, more than half of the reservation states had instituted this approach to improving relations with the tribes. But these organizations in no way replace or substitute for Indian involvement in local or state politics. Representation on liaison commissions can play a definite role in coordinating activities that involve both the tribes and state or local government, but the relationship is administrative, not legislative. And, of course, such liaison activities by a state, while clearly recognizing the unique status of the tribes and their lands within state borders, best serve to improve relations between the state and the Indians’ fiduciary, the Bureau of Indian Affairs. The agencies rarely have any authority unless a state so delegates its acquired powers from the federal government to this body.

One might counter these views by noting that Indian participation in state and

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36 Goldberg, op. cit. [see footnote 21 above], pp. 544-551; and State Jurisdiction [see footnote 23 above], 105-107.
37 The court did not render this judgment because New Mexico had failed to pass an enabling act under the provisions of P.L. 280. See Douglas Nash: Tribal Control of Extradition from Reservations, Natural Resources Jour., Vol. 10, 1970, pp. 626-634.
39 Taylor, op. cit. [see footnote 15 above], pp. 40-45 and 94.
local elections would tend to weaken tribal autonomy, or for that matter any involvement off the reservation might be seen as a form of capitulation in favor of state sovereignty. While it is absurd to suggest that reservations have been gerrymandered to the advantage of counties and municipalities, Indians do not become fully involved in county or even precinct elections. As citizens, Indians generally share in equal reapportionment of the electorate, whether they reside on reservations or in non-Indian locations. The existence of a separate geographical area within the state does not bring with it any special political status for voting purposes, although one suspects that political parties do watch how Indian communities vote where their numbers are prominent. Indian involvement in school-district elections represents a fairly recent concern for which some tribes have tried to get out the vote.

Somewhat nullifying the force of tribal autonomy has been the position held by the United States Supreme Court, which has interpreted Indian sovereignty as being nonterritorial in nature and therefore not an exclusive power within reservation borders. Goldberg noted that the court "has defined it [tribal sovereignty] as a collection of those powers necessary for the establishment and maintenance of viable, meaningful, self-government for Indian people." Transmuted into terms we better comprehend, this means self-determination must be viewed functionally rather than territorially. Whatever internal sovereignty exists, does so by dint of the specific function for which reservations have been established—that is, to preserve Indian lifestyles and culture through the perpetuation of trust holdings as a homeland. By no other institutional means can this function be carried out without serious disruption or even cessation of native culture. Several tribes have suffered considerably since trusteeship of their land was terminated. Even the effort to create county government for the Menominee of Wisconsin proved disastrous, for it established an entirely different form of land administration, obligating the fledgling government to provide services and, most important, subordinating the tribe to the state. Fortunately, but perhaps a little late, the federal government righted this wrong by restoring, in 1973, the trusteeship status to the Menominee, now once again a reservation. Surely where a tribe has lost much or all of its tribal holdings and its membership is scattered over numerous land allotments, or where termination has occurred, we can expect diminution of tribal autonomy. The inherent weakness of this autonomy is felt most when asserted by individuals of a tribe rather than by the tribe itself. Only the tribe possesses political clout, and, as Deloria suggests in the case of aboriginal fishing and hunting rights, it is the difference between the corporate tribe and its conglomerate membership.

A Conclusion

In the past several years administration of Indian affairs has undergone impressive changes, especially because of the increased appointment of Indians to high posts in the BIA. Several tribes, many of them in the southwestern states, have assumed leadership in the management of their resources, and the BIA has retreated to a position, as it were, of being present without making its presence felt. Even though the

41 Goldberg, op. cit. [see footnote 21 above], p. 395.
The continuing presence of the bureaucracy means the perpetuation of the tribes as dependent peoples, the shift to tribal management and the employment of Indians in the government suggest the need to redefine the status of the Indian reservation as a place in our political system. Now and then observers point to autonomy as the basic political ingredient, but they provide little substantively to help stabilize its meaning in use. A recently proposed alternative characterization, suggested by an anthropologist, is the sustained enclave that attempts to distinguish the current élan of tribal self-determination of its goals from the older order of the administered community. The concept is appealing because it tries to reflect the increased autonomy over its own affairs that the federal government has been granting many tribes. But it says little about the relationship of the reservation to state and local government. At this juncture the existing language of Indian affairs will continue but perhaps the stereotypical meaning of Indian Country, the reservation, or even the tribe will pass from the scene.

The Euro-American penchant for a tidy house causes us, I suppose, to seek to account in a single scheme for all territorial units within our national borders. We are either segmented into states, counties (or parishes), or townships, municipalities, or special authorities, or we are a part of a myriad other political and electoral units. Nowhere in the scheme can we comfortably fit the Indian reservation. Scholars perhaps do acknowledge that tribal land tenure is a specie of land property acceptable in the American property system of today. In fact, some environmentalists point with pride to the communal nature of Indian land tenure as an ecologically sound basis for the management of nature. But we have yet to find the proper designation for the reservation as a third member in a tripartite governmental system of federal-state-tribe. For the time being we must continue the judicial debate and question the whims of our government. The nation is not likely to move toward greater tribal autonomy, as urged by Deloria, nor are the tribes and their friends about to retreat from the gains made mostly via case law.

However variably comprehended among the states, the Indian reservation remains a semi-autonomous enclave, mostly immune to state jurisdiction except where the federal government has granted general powers to the states; tribal government is jurally distinct within its borders and has consummate powers to regulate and to manage its own resources. If this political-geographical status is unique, perhaps it is because no other modern nation has sought political equilibrium with its indigenous peoples or has given them the recourse of law and the courts to redress inequities.

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