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Symposium

Indian Law at A Crossroads

697 IS PUBLIC LAW 280 FIT FOR THE TWENTY-FIRST CENTURY? SOME DATA AT LAST*Carole Goldberg, Duane Champagne** [FN1]

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I. Introduction

With the passage of Public Law 280 in 1953, Congress for the first time injected state criminal jurisdiction into Indian country on a large scale. [FN1] Public Law 280 structures law enforcement and criminal justice for 23% of the reservation-based tribal population and 52% of all tribes in the lower forty-eight states, and potentially affects all 239 Alaska Natives and their tribes or villages. [FN2]

***698** Although Public Law 280 was enacted just over fifty years ago, very little systematic, empirical research has been conducted to determine its effectiveness or its reception among the communities it addresses. [FN3] Indeed, tribes affected by Public Law 280 are routinely excluded from studies and government reports focusing on Indian country law enforcement and criminal justice. [FN4] Yet anecdotal evidence from congressional hearings, government reports, and tribal organizations suggests discontent with this law within Indian country and among some state and local law enforcement and criminal justice officials. [FN5] Themes evident in the statements of tribal officials include:

- 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 ***699** state authorities when they do attend to Indian country crimes;
- Confusion about which government is responsible and should be contacted when criminal activity has occurred or presents a threat.

The statement of National Congress of American Indians (NCAI) President Wendell Chino in 1974 is characteristic of many tribal reactions: “On those reservations where states have assumed jurisdiction under the provisions of Public Law 280, lawlessness and crimes have substantially increased and [the reservations] have become known as no man’s land.” [FN6]

Tribal concerns about Public Law 280 parallel some criticisms leveled at the statute by state and local law enforcement agencies. Typically these charges focus on the absence of federal funding for state law enforcement services within Indian country or on difficulties in carrying out state law enforcement obligations because of uncertainty about the scope

of state jurisdiction and officers' unfamiliarity with tribal communities. [FN7]

Amid federal concerns about rising crime rates in Indian country [FN8] and rising victimization rates among Indians, [FN9] the National Institute of Justice funded our research to advance understanding of this law and its impact, from the point of view of tribal members as well as state and local officials. The study also aims to develop recommendations for policy changes that would improve law enforcement and criminal justice on the reservations affected by Public Law 280. This Article presents some of the early findings of our research, which is still ongoing. A full report will be provided to the National Institute of Justice in 2006.

II. The Terms and Reach of Public Law 280

Before Congress adopted Public Law 280 in 1953, the arrangement of criminal jurisdiction in Indian country [FN10] was complex, but relatively uniform across reservations. Except for a few scattered reservations in the Midwest [FN11] and the reservations in New York state, [FN12] Indian country criminal jurisdiction was largely a matter for the federal government and the tribes themselves, with states limited to jurisdiction over crimes between non-Indians and victimless crimes by non-Indians. [FN13] Indeed, as early as 1832 the Supreme Court had pronounced that states lack criminal jurisdiction over criminal matters involving Indians within reservations unless Congress authorized such state authority, [FN14] and before 1953, Congress had taken no such action for reservations as a whole. [FN15]

In the pre-Public Law 280 era, the federal government's criminal jurisdiction fell into three main categories: (1) a wide range of federal and state-defined offenses, major and minor, committed by an Indian against a non-Indian, or vice versa; (2) specified major offenses committed by one Indian against another; and (3) designated crimes focused on the federal trust responsibility, including liquor control and hunting and fishing on tribal lands, whether committed by an Indian or non-Indian. [FN16] Tribal jurisdiction encompassed all criminal activity, and was exclusive as to less serious crimes committed by one Indian against another or crimes by Indians that were victimless. [FN17] Only later did federal law restrict tribal criminal jurisdiction by limiting the punishments that could be imposed and denying tribal criminal authority over non-Indians. [FN18]

Under this legal regime, the substantial exclusion of state criminal jurisdiction reflected constitutional and treaty-based principles establishing a special government-to-government trust relationship between the United States and the tribes. [FN19] These principles, in turn, reflected the reality that states' interests in governing power and resource control have often conflicted bitterly with tribes' claims to governance and territory. [FN20] Tribes have feared that state jurisdiction would prevent them from defining norms and administering justice in accordance with evolving tribal traditions, and would expose tribal members to indifferent or hostile law enforcement institutions. [FN21]

Disregarding those concerns, Public Law 280 authorized state criminal jurisdiction over Indians and non-Indians on reservations in six named states with significant numbers of federally recognized tribes: Alaska (added in 1958 when it became a state), California, Minnesota, Nebraska, Oregon, and Wisconsin. [FN22] A few tribes in these states were specifically excluded, as a result of their strong and effective lobbying. [FN23] The act also allowed all other states to opt for similar jurisdiction, and several did so. [FN24] At the same time, it withdrew the first two categories of federal criminal jurisdiction listed above—crimes between Indians and non-Indians, and major crimes involving only Indians. [FN25] Public Law 280 did not eliminate or limit tribal criminal jurisdiction, although the Department of the Interior often used it as a justification for denying funding support to tribes in the affected states for law enforcement and criminal justice. [FN26]

For tribes in those affected states, Public Law 280 meant that state or county law enforcement replaced the Bureau of

Indian Affairs police, and state criminal trials largely replaced those carried out by the federal government. Perhaps even more important than this change of criminal jurisdiction “partners” from federal to state, however, was the fact that the reach of non-tribal law enforcement and criminal justice on reservations grew longer. Before Public Law 280—and for non-Public Law 280 tribes to this day—the more commonplace minor crimes committed by Indians, such as driving under the influence and misdemeanor assaults on other Indians, are exclusively the responsibility of the tribes. [FN27] With the adoption of Public Law 280, such offenses could be penalized under state as well as tribal criminal law. [FN28]

Congress engineered this significant shift and expansion of outside law *702 enforcement responsibility on reservations for a variety of reasons. [FN29] Reducing the size of the federal budget was one of President Eisenhower's major priorities. [FN30] The Bureau of Indian Affairs (BIA) was seen as a good candidate for budget cuts because the ideology of the time favored assimilation and formal equality. [FN31] Transferring reservation populations from federal to state jurisdiction would foster cultural integration of Native people as individuals and eliminate special treatment. [FN32] Policymakers and legislators further justified Public Law 280 by pointing to what they called “lawlessness” on reservations in certain states, citing the need for a more pervasive police presence via state jurisdiction. [FN33] While additional federal law enforcement activity or support for strengthening tribal law enforcement might have accomplished the same goal, either of these alternative responses would have been more costly for the federal government.

Public Law 280 represents a particular set of solutions to two significant problems in law enforcement and criminal justice policy: what political body should direct the conduct of law enforcement and criminal justice (the control/accountability question), and what resources should be available to support those systems (the resource question). On the control/accountability question, Public Law 280 opted for greater control at the state and local government level, and less control at the tribal and federal level. The near elimination of exclusive tribal authority over a range of less serious offenses by tribal members is the most obvious manifestation of reduced tribal control. But the switch from BIA law enforcement to state law enforcement also meant that tribes traded a federal police force that included many Indian officers (due to the BIA's Indian preference laws), [FN34] for county police forces operating under local sheriffs and with fewer Indian officers. Shifting to state jurisdiction often opened the possibility for greater electoral control over law enforcement and criminal justice officials, as federal police and United States Attorneys are appointed, while local sheriffs, district attorneys, and even judges are typically elected officials. Effective political control at the county level has often eluded tribal communities, however, at least until the advent of tribal gaming for tribes in some Public Law 280 states opened the possibility of considerable campaign contributions. [FN35] Occasionally Indians *703 comprise the majority of county populations in Public Law 280 states; more often, however, Indians are a minority in their county electorates, leaving them without effective political control over their sheriffs, district attorneys, and judges. The switch to state jurisdiction also meant a decline in potential tribal control over law enforcement because tribes under Public Law 280 could not take advantage of the 1975 Indian Self-Determination Act to contract with the BIA for the administration of their own law enforcement services. [FN36]

Had tribes expressed a preference for the state jurisdiction system, it could be argued that the shift to increased outside authority at the state level was an indirect expression of tribal control. One of the striking features of Public Law 280, however, is the fact that affected tribes did not consent to its adoption and implementation. [FN37] In some instances, the introduction of state jurisdiction actually violated specific treaty promises. [FN38] Although President Eisenhower expressed “grave doubts” about the absence of a tribal consent provision when he signed the measure into law, his misgivings did not impel him to veto the legislation. [FN39] However, fifteen years later, in 1968, Congress amended Public Law 280 to require that any future assertion of state jurisdiction under its terms may *704 occur only after a positive vote by the affected tribe. [FN40] State jurisdiction already in place was left undisturbed regardless of tribal preferences. Interestingly, not a single tribe has consented to state jurisdiction since that time. [FN41]

On the resource question, Public Law 280 did not supply an easy answer. A notable feature of the law is the absence of any federal funding support for the states' new law enforcement and criminal justice duties. Indeed, one could describe Public Law 280 as an early version of an unfunded federal mandate. While this failure to authorize or appropriate federal funds for Public Law 280 states is understandable given Congress's goal of reducing the federal budget, it left local governments in a difficult situation. Because reservation trust lands are exempt from state and local property taxes, and tribal members living and earning income on reservations are exempt from state taxes, [FN42] some of the most important sources of funding for local law enforcement and criminal justice on reservations were unavailable. Moreover, as noted above, the Department of the Interior largely failed to include tribes in Public Law 280 states in its growing support for tribal police and courts during the 1970s and 1980s, leaving Public Law 280 states unable to rely on tribal agencies to shoulder the financial responsibility.

We have attempted to measure the prevalence of tribal law enforcement agencies in Public Law 280 states, where such agencies have begun appearing since the 1980s. [FN43] According to the Bureau of Justice Statistics (BJS), there were 171 tribal law enforcement agencies in operation in 2000. [FN44] Of the top twenty agencies ranked by number of sworn personnel, only three were in Public Law 280 states. [FN45] Two of these tribal agencies were in Florida, an optional state. The third tribe was in Washington, another optional state, and was subject only to partial state jurisdiction under Public Law 280. [FN46] A more complete account of the presence of tribal law enforcement agencies where Public Law 280 *705 applies can be gleaned from the census of tribal law enforcement agencies conducted by BJS in 2002. [FN47] With 92% of tribes in the lower forty-eight states responding, this report listed 165 tribes with at least one sworn officer, including fifty-four from Public Law 280 jurisdictions and twenty-five from the mandatory Public Law 280 states. [FN48] Focusing on the lower forty-eight states, we can arrive at a figure for the representation of tribes currently subject to state jurisdiction in mandatory Public Law 280 states among tribal police departments nationwide. The Public Law 280 tribes in mandatory states apart from Alaska account for 37% of all tribes in the survey, yet they represent only 15% of all tribal police departments. [FN49] Putting it another way, only 21.5% of Public Law 280 tribes in mandatory states outside Alaska have police departments. In contrast, 70% of all remaining tribes in the lower forty-eight states, including those in the optional Public Law 280 states, have tribal police departments. The Public Law 280 tribes in optional states, with 78% having tribal police departments, [FN50] are more like the non-Public Law 280 tribes in terms of having tribal law enforcement agencies, because most of the tribes in the optional states are not fully subject to state criminal jurisdiction. [FN51] In Alaska, only 18.5% of all tribes or Native villages have tribal police departments, but the limited nature of their criminal jurisdiction is likely a factor in this lower level of development. [FN52]

To keep these figures and comparisons in perspective, however, it is important to note that more than one-half of all California reservations, as well as a few in Oregon, Nebraska, and Minnesota, have total populations under 100, making them unlikely candidates for police agencies. Some of these tribes do nonetheless operate police departments because their *706 gaming facilities draw in large numbers of outside customers. [FN53] And others might be able to mount police departments in collaboration with nearby tribes. Even excluding all reservations with populations under 100 from the calculations, however, tribes in mandatory Public Law 280 states are still underrepresented among tribal police forces. Tribes subject to mandatory Public Law 280 jurisdiction, apart from Alaska, constitute 32% of tribes with reservation populations over 100, but these tribes still mount only 15% of all tribal police departments for reservations with populations over 100. Stated another way, 28% of all Public Law 280 tribes with reservation populations greater than 100 in mandatory states other than Alaska have tribal police departments. By comparison, 79% of all other tribes in the lower forty-eight states with reservation populations greater than 100 have tribal police departments.

Criminal justice capability among Public Law 280 tribes has grown more slowly than law enforcement, but is on the rise as well. As of 2002, based on responses to a Department of Justice survey and other sources, one reservation in Alaska had a tribal court, as did all ten Wisconsin Public Law 280 tribes, all seven Oregon Public Law 280 tribes, all

nine Minnesota Public Law 280 tribes, both Nebraska Public Law 280 tribes, and seven of 107 tribes in California, along with several other California tribes that had formed an intertribal court. [FN54] Very few of these courts hear adult criminal matters; [FN55] and when they do, it is common for the courts to impose only monetary penalties or restitution, because these tribes rarely have detention facilities. [FN56] Traffic, hunting and fishing, liquor control, environmental control, and juvenile jurisdiction are more common, as in the case of the Hoopa Valley Tribe of California; [FN57] however, even these kinds of measures are not universal. Sometimes courts of Public Law 280 tribes in mandatory states, such as the Coos, Lower Umpqua, and Siuslaw Tribe of Oregon, are authorized to exercise civil penalty jurisdiction when *707 enforcing the types of ordinances or codes listed above, and the consequences of violation are very similar to the pecuniary consequences for a criminal violation. [FN58]

Congress did provide some relief for states' resource problems in the 1968 amendments to the act, fifteen years after the passage of Public Law 280. [FN59] Under those amendments, a state (but not a tribe) could initiate the return, or retrocession, of its jurisdiction back to the federal government. [FN60] This return could be full or partial, as to geography or offenses; and the federal government could choose whether or not to accept the state's offer. [FN61] Since that time, retrocession has taken place in more than twenty-five tribes in both the mandatory Public Law 280 states and the optional states. [FN62] In at least some situations we have studied, resource concerns were significant factors in the state's decision to retrocede jurisdiction.

III. The Study

A. Areas of Investigation and Methodology

A major component of this study has been an investigation of the quality, availability, and sensitivity of law enforcement and criminal justice in Indian country, based upon both qualitative and quantitative data. Those data were elicited from interviews with tribal members and officials ("reservation residents"), county/state or federal law enforcement personnel ("law enforcement"), and county/state or federal criminal justice personnel ("criminal justice"). The reservation residents included tribal government leaders, tribal members with a special interest in and commitment to criminal justice issues, elders, any tribal police officers who were not enforcing tribal criminal law, tribal social service employees, and if there was a tribal court, tribal judges, prosecutors, and probation officers. Law enforcement personnel typically included the local sheriff or head of the BIA police department as well as individual officers and investigators. Tribal police were included here if they were enforcing tribal criminal law. For Public Law 280 jurisdictions, we also included *708 state highway patrol officers where relevant. Criminal justice personnel who were interviewed included county judges, the local district attorney or United States Attorney, as well as probation and parole officers, juvenile justice officials, and public defenders. Three-person research teams conducted the week-long site visits at seventeen different reservations; their interviews were taped, transcribed, and coded for analysis using Hyperresearch software. Among the questions asked in the qualitative portion of the interviews were: "What are the most serious problem areas in law and order in the community?", "Is the availability of law enforcement satisfactory?", and "Does law enforcement respect the community's culture?" In addition, we asked interviewees to provide responses to some of the same questions using a rating scale of 1 to 5, and elicited numeric rankings of the most prevalent crimes on the reservation as well as the crimes that received the greatest attention from the responsible law enforcement authorities. [FN63]

The seventeen reservations we selected for the study fell into the following categories:

- Mandatory Public Law 280 tribes (10)

- Optional Public Law 280 tribes (1)
- Retroceded tribes (2)
- Excluded tribes (initially excluded from mandatory states) (1)
- Pure non-Public Law 280 tribes (never included under Public Law 280) (2)
- “Straddler” tribe (a reservation that straddles a Public Law 280 state and a non Public Law 280 state) (1)

Selection of the reservations was determined by our research hypotheses, as well as our ability to secure consent from the tribal governments.

One of our research hypotheses was that levels of reservation residents' satisfaction with law enforcement and criminal justice, and ratings for the effectiveness of those systems, would be higher for non-Public Law 280 tribes than for Public Law 280 tribes. We derived that hypothesis from a body of literature on Indian country law enforcement that associates greater success and approval with greater accountability to tribal communities and more adequate resources. [FN64] Given that Public Law 280 arguably reduces both accountability and resources, we wanted to *709 compare the results under non-Public Law 280 conditions (including initially excluded tribes in mandatory Public Law 280 states, retroceded tribes, straddler tribes, and tribes never affected by Public Law 280) with the results in both mandatory and optional Public Law 280 conditions. Although we attempted to break out each of the different non-Public Law 280 conditions for separate comparison, the samples were too small to allow for that.

Another research hypothesis that we developed, based on the same body of literature, was that we would find higher levels of community satisfaction and greater effectiveness of law enforcement and criminal justice on reservations where tribes have taken over more functions in Public Law 280 states (either through cooperative agreements with county law enforcement and prosecutors, or unilateral assertion of concurrent tribal jurisdiction), thereby increasing accountability to the local community. We also hypothesized that we would find higher levels of community satisfaction and greater effectiveness where Indian nations in Public Law 280 states have been able to assemble resources for tribal police and criminal courts. Thus we coded and analyzed interviews according to whether the reservation research site was one with a tribal police department and/or court system, whether there were cooperative agreements between tribal and county officials, and whether the tribe had gaming or other economic development revenue to support tribal law enforcement and criminal justice. [FN65]

Most interviews were conducted one-on-one, although sometimes we interviewed groups of reservation residents at elders' lunches. The demographic composition of the interviewees is reflected in the following tables.

Category	Number	Percent (%)
Non PL 280 Pure	41	11.6
PL 280 Excluded	15	4.2
Retroceded	50	14.1
PL 280 Mandatory	233	65.8
PL 280 Optional	15	4.2
Total	354	100.0

Table 1. Respondents by Tribal Category

Respondent type	Number	Percent (%)
Reservation Resident	227	64.1
Law Enforcement	49	13.8
Criminal Justice	78	22.0
Total	354	100.0

Table 2. Respondents by Classification

Respondent Type	Reservation Resident		Law Enforcement		Criminal Justice	
Category	Number	Percent (%)	Number	Percent (%)	Number	Percent (%)
Non PL 280 Pure	23	10.1	6	12.2	12	15.4
PL 280 Excluded	8	3.5	2	4.1	5	6.4
Retroceded	33	14.5	10	20.4	7	9.0
PL 280 Mandatory	154	67.8	27	55.1	52	66.7
PL 280 Optional	9	4.0	4	8.2	2	2.6
Total	227	100.0	49	100.0	78	100.0

Table 3. Respondents by Tribal Category and Classification

Gender	Number	Percent (%)
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Male	234	66.9
Female	116	33.1
Total	350	100.0

Table 4. Respondents by Gender

***710** As the tables indicate, 70% of the interviewees came from tribes subject to state jurisdiction under Public Law 280, with 96% of those coming from the mandatory states. The remaining 30% were divided between the pure, excluded, and retroceded non-Public Law 280 tribes, with most of those (47%) coming from non-Public Law 280 retroceded tribes, and the fewest (14%) coming from the one non-Public Law 280 excluded tribe included in the study. Nearly two-thirds of all the interviewees (64%) fell into the reservation resident category, with another 14% classified as state, local, tribal, and federal law enforcement officers, ***711** and the remaining 22% classified as state, local, tribal, and federal criminal justice personnel. Two-thirds (67%) of the interviewees were male, reflecting the greater representation of males in tribal, state, local, and federal law enforcement. The median number of interviewees per site was 21, with a range from 14 to 30.

B. Selected Findings

Striking patterns have emerged in our data analysis. [\[FN66\]](#) Two important ones are:

- Reservation residents on Public Law 280 reservations are significantly less satisfied with the availability and quality of law enforcement than reservation residents on non-Public Law 280 reservations.
- Law enforcement personnel serving Public Law 280 reservations have a significantly more favorable view of their performance than the reservation residents, while law enforcement personnel serving non-Public Law 280 reservations have a view of their performance that more closely coincides with that of the reservation residents.

1. Availability of Law Enforcement

Figure 1 depicts what percentage of reservation residents indicated satisfaction with the availability of law enforcement in their communities. The total number of respondents was 202 from the Public Law 280 jurisdictions and 98 from the non-Public Law 280 jurisdictions. “Availability” refers to the presence of police through patrols as well as the police response to calls for assistance. A one-way ANOVA (analysis of variance) of police availability yields a statically significant result. As Figure 1 portrays, reservation residents in Public Law 280 and non-Public Law 280 jurisdictions tend to believe that tribal police are much more available than state, country, and federal police. Although further analysis is required to determine the reason for these differences, we speculate that tribal police in Public Law 280 states may be filling a vacuum because of the lack of county response. Interestingly, in Public Law 280 jurisdictions the reservation residents tend to focus more on poor community relations or lack of accountability as the cause for poor service from the county. In non-Public Law 280 jurisdictions, the reservation residents tend to emphasize lack of resources as the reason for unavailability of police.

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***712** Figure 1.

Reservation Resident Satisfaction with Availability of Police $F = 3.02$, $df = 3,286$, $N = 290$, $p < 0.03$

Reservation residents' quantitative ratings of the availability of law enforcement reinforce our analysis of the qualitative data. On a scale of 1 to 5, with 5 being best, reservation residents rated county police at 2.9 in Public Law 280 jurisdictions. In the non-Public Law 280 jurisdictions, the rating was a statistically significant 3.5. Public Law 280 reservation residents thus rate police availability significantly lower than non-Public Law 280 reservation residents. [FN67] The total number of respondents for these ratings was 212.

Two additional figures break down the concept of “availability” into its two component parts—timely response to calls for assistance and benefits from police patrols. Figure 2 compares how reservation residents experience the timeliness of tribal, state, and federal police response, with tribal police measured separately for Public Law 280 and non-Public Law 280 jurisdictions.

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***713** Figure 2.

Do Police Respond in a Timely Manner?

$F = 13.47$, $df = 3,313$, $N = 317$, $p < 0.0001$

A one-way ANOVA of these data yields significant differences in timeliness of police response among the four types of police departments. Reservation residents in Public Law 280 jurisdictions thought that tribal police responded in a timely manner at a rate about twice that of state or county police, 82.9% to 44.8%. [FN68] Public Law 280 reservation residents report that state or county police are significantly less responsive to calls than tribal police in non-Public Law 280 jurisdictions, as rated by non-Public Law 280 reservation residents. [FN69] Furthermore, Public Law 280 state police are viewed by reservation residents to be less responsive to calls than federal police in non-Public Law 280 jurisdictions. [FN70] Reservation residents in Public Law 280 jurisdictions say that state police are significantly less timely in answering calls for service than are Public Law 280 tribal police, non-Public Law 280 tribal police, and federal police. State or county police appear to have much greater difficulty responding in a timely manner to calls from reservation residents. On non-Public Law 280 reservations, federal and tribal police are rated about the same in terms of timeliness of response to calls from reservation residents.

Figure 3 compares the responses of reservation residents to a question inquiring whether the reservation benefits from police patrols, such as by ***714** crime deterrence and detection, traffic control, or quicker response time to calls for assistance. A one-way ANOVA indicates that there are significant differences among reservation residents about the existence of benefits from police patrols. State or county police in Public Law 280 jurisdictions are described as providing significantly fewer benefits from patrolling than non-Public Law 280 federal police and non-Public Law 280 tribal police. [FN71] About one-third of Public Law 280 reservation residents believe that state or county police patrols deliver solid patrol service benefits, while three-fourths of non-Public Law 280 reservation residents believe that tribal and BIA police deliver solid community benefits with patrolling. Indeed, the reservation resident respondents from Public Law 280 jurisdictions report that when state or county police do patrol, they come at the wrong times or at times that are too predictable to deter criminal activity or intercept criminals. The reservation residents complain that state or county police on patrol tend to use that time to harass tribal members and deliver warrants. Reservation residents definitely wish for greater patrols from more accountable police officers, for purposes of crime control, particularly control of drug manu-

facturing and sale. Only 54% of state or county police report that they are providing twenty-four-hour patrols on reservations subject to Public Law 280.

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Figure 3.

Does the Reservation Benefit from Police Patrols?

$F = 14.11$, $df = 2,149$, $N = 152$, $p < 0.0001$ <PN>715

*715 2. Quality of Law Enforcement

Turning from the availability of law enforcement to its quality, we again find interesting disparities between Public Law 280 and non-Public Law 280 jurisdictions. Here the differences arise with respect to the extent of agreement between reservation residents and law enforcement personnel. These differences are illustrated by responses to our question regarding the thoroughness of crime investigation. Figure 4 presents the quantitative rating data supplied by interviewees.

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Figure 4.

Thoroughness of Crime Investigation

$N = 259$ (total all categories) [FN72]

As Figure 4 indicates, the difference between Public Law 280 jurisdictions and non-Public Law 280 jurisdictions is not significant, meaning that the involvement of state and county versus federal and tribal police does not significantly affect the thoroughness of crime investigations. *716 However, the differences between the evaluations of reservation residents and law enforcement personnel are significant, [FN73] with law enforcement personnel giving significantly higher marks to police for effective and complete management of crime investigations than reservation residents. Police believe they are doing a better job investigating crimes than do reservation residents. Most important, the ANOVA analysis contains a statistically significant two-way interaction effect. [FN74] The interaction effect suggests an interpretation where jurisdiction and respondent type interact in their effect on assessments of thoroughness of crime investigations. In other words, the differences in thoroughness of crime investigation ratings between law enforcement personnel and reservation residents are significantly enhanced in Public Law 280 jurisdictions, but not in non-Public Law 280 jurisdictions. This finding suggests that reservation residents are not simply difficult to please when it comes to law enforcement services. In the non-Public Law 280 jurisdictions, their relatively negative assessments are matched by those of the law enforcement personnel themselves.

Figure 5, reflecting the qualitative data relating to thoroughness of crime investigation, confirms the relatively negative ratings that reservation residents give to county and state law enforcement in Public Law 280 jurisdictions, while demonstrating that tribal police in such jurisdictions are viewed as conducting much more thorough investigations despite their generally lower levels of funding. Reservation residents were asked whether different policing agencies delivered thorough investigations of crime. Testing for differences with a one-way ANOVA yields significant differences among the evaluations of police investigations. There are significant differences in how reservation residents evaluate the thoroughness of crime investigations among federal, tribal, and state and county police in Public Law 280 and non-Public Law 280 jurisdictions. Further analysis among the evaluation percentages yields three significant differences. Reserva-

tion residents in Public Law 280 jurisdictions believe that tribal police thoroughly investigate crimes significantly more often than reservation residents in non-Public Law 280 jurisdictions. [FN75] Within Public Law 280 jurisdictions, reservation residents say that tribal police are significantly more thorough at crime investigations than state or county police. [FN76] A significantly higher proportion of Public Law 280 reservation residents say that tribal police are thorough investigators than non-Public Law 280 reservation residents say about federal police. [FN77] All significant results are with the relatively high evaluation that tribal police receive in *717 Public Law 280 jurisdictions, while other comparisons are not significant, or are relatively similar. Public Law 280 reservation residents have high opinions of the investigative skills of tribal police—significantly higher than federal, state, and tribal police in other jurisdictions. Why tribal police in Public Law 280 jurisdictions should be viewed as so much more effective in investigating crime than tribal police in non-Public Law 280 jurisdictions is not clear. It is possible, for example, that in the non-Public Law 280 jurisdictions, serious investigative work is normally undertaken by BIA police or turned over to the FBI, leaving tribal police with fewer opportunities to demonstrate their effectiveness.

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Figure 5.

Thoroughness of Crime Investigation

$F = 7.18, df = 3,311, N = 315, p < 0.0001$

3. Law Enforcement's Overstepping Authority

Another important measure of police effectiveness is the extent to which law enforcement adheres to the proper bounds of its authority. Police who routinely overstep their authority by using excessive force or arresting individuals for offenses over which the state lacks jurisdiction are not providing high-quality police services. Figure 6 presents the responses of reservation residents to the question whether police representing different types of government overstep their authority.

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*718 Figure 6.

Overstepping Authority by Police Force

$F = 6.66, df = 3,301, N = 305, p < 0.0002$

Reservation residents report that tribal, state and county, and federal police do not overstep authority at the same rate. Public Law 280 reservation residents believe that state and county police overstep authority more often than non-Public Law 280 reservation residents view federal police overstepping their authority. [FN78] Also, Public Law 280 reservation residents say that state and county police overstep authority significantly more often than non-Public Law 280 tribal police. [FN79] However, residents of Public Law 280 reservations report that state and county police do not overstep their authority significantly more often than Public Law 280 tribal police. There are no significant differences among Public Law 280 tribal and non-Public Law 280 tribal and federal police; they overstep authority about the same.

4. Quality of Communication Between Law Enforcement and Tribal Communities

The final figures presented here examine yet another aspect of quality of law enforcement—whether law enforcement

personnel communicate well with tribal members and whether law enforcement personnel understand and respect tribal cultures. Again, the differences between Public Law 280 and non-Public Law 280 jurisdictions are striking. Figure 7 depicts the markedly divergent assessments of reservation residents and law enforcement personnel in Public Law 280 jurisdictions regarding police success in communicating with tribal members. As in Figure 4, the main effects of differences between Public Law 280 and non-Public Law 280 jurisdictions are not statistically significant. Differences in jurisdiction do not appear to have a direct effect on how well law enforcement communicates with tribal members. The main ***719** effects for the differences in the ratings between reservation residents and law enforcement are statistically significant. [\[FN80\]](#) Reservation residents rank the level of law enforcement's communication with tribal members significantly lower than law enforcement personnel. The interaction effect between type of respondent (reservation resident or law enforcement) and jurisdiction (Public Law 280 and non-Public Law 280) is statistically significant. [\[FN81\]](#) The strength of the communication between tribal members and police depends on jurisdiction. There is relative consensus about the level of police communication with tribal members in non-Public Law 280 jurisdictions, but disagreement in Public Law 280 jurisdictions. Law enforcement personnel in Public Law 280 jurisdictions believe they are communicating with tribal community members at a much higher level than reservation residents suggest. Again, the differences in assessments between reservation residents and law enforcement personnel in Public Law 280 and non-Public Law 280 jurisdictions suggest that something is in play other than a generally negative view of outside law enforcement by reservation residents.

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Figure 7.

How Well Law Enforcement Communicates with Tribal Members

N = 259

***720** 5. Law Enforcement's Understanding and Respect of Tribal Culture

The differences between Public Law 280 and non-Public Law 280 jurisdictions are significant at all levels on the question whether law enforcement personnel understand tribal culture. The results are presented in Figure 8.

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Figure 8.

Understanding of Indian Culture by Law Enforcement N = 259

Here we have significant main effects as well as interaction effects. The main effect of jurisdiction is significant where Public Law 280 jurisdictions rank police knowledge of reservation cultures lower than non-Public Law 280 jurisdictions. [\[FN82\]](#) Police in Public Law 280 jurisdictions are perceived to have less understanding of reservation cultures than police in non-Public Law 280 jurisdictions. Reservation residents rank police knowledge of reservation cultures significantly lower than police rank their own understanding. [\[FN83\]](#) Police and reservation residents disagree about how well police understand reservation cultures. ***721** Police give themselves significantly higher marks for understanding reservation cultures than reservation residents. The interaction effect between jurisdiction and respondents is also statistically significant. [\[FN84\]](#) Reservation residents in Public Law 280 jurisdictions have significant disagreement with Public Law 280 police about how well law enforcement understands reservation cultures. However, non-Public Law 280 reservation residents and non-Public Law 280 police have relatively high agreement, both giving somewhat above average 3.2 rankings for how well non-Public Law 280 police understand tribal culture.

Our analysis of the qualitative data confirms the quantitative ratings depicted in Figure 8. Figure 9 reveals that there are significant differences between Public Law 280 reservation residents' evaluations of tribal and state police cultural knowledge and non-Public Law 280 reservation residents' evaluations of tribal and federal police knowledge of reservation cultures, as well as significant differences between reservation resident and law enforcement evaluations of state and county police. Tribal police in non-Public Law 280 jurisdictions are evaluated by reservation residents to have significantly greater cultural knowledge than state and county police in Public Law 280 jurisdictions, [FN85] but do not have significantly greater cultural knowledge than federal police in non-Public Law 280 jurisdictions and tribal police in Public Law 280 jurisdictions. The non-Public Law 280 tribal police evaluations by reservation residents are also not significantly different from state and county police self-evaluations. According to reservation residents, tribal police in Public Law 280 jurisdictions have significantly greater cultural knowledge than federal police in non-Public Law 280 jurisdictions [FN86] and Public Law 280 state and county police, [FN87] but are not significantly greater than state and county law enforcement personnel's self-evaluations. Reservation residents in non-Public Law 280 jurisdictions rate federal police knowledge of reservation cultures significantly higher than Public Law 280 reservation residents rate state and county police knowledge. [FN88] According to reservation residents, state and county police in Public Law 280 jurisdictions have significantly less knowledge about reservation cultures than all other federal and tribal police. The evaluations of state and county police by reservation residents in Public Law 280 jurisdictions also disagree significantly with state and county law enforcement personnel's self-evaluation of cultural understanding about reservation communities. [FN89]

*722 Reservation residents in Public Law 280 jurisdictions rank state and county police understanding of tribal cultures as very low, while there is otherwise a relative consensus among reservation residents and law enforcement personnel about the degree of knowledge police have about reservation cultures.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

Figure 9.

Police Understanding of Reservation Cultures $F = 35.15$, $df = 4,330$, $N = 335$, $p < 0.0001$

Our final figure examines the differences in law enforcement personnel's respect for tribal cultures, as reported by reservation residents from different types of jurisdictions. According to Figure 10, a one-way ANOVA yields statistically significant results.

A significantly smaller proportion of Public Law 280 reservation residents say that Public Law 280 state and county police are respectful toward tribal cultures compared with a similar evaluation of federal police [FN90] and tribal police [FN91] by non-Public Law 280 reservation residents. The differences between federal and tribal police in non-Public Law 280 jurisdictions are not statistically significant, with non-Public Law 280 reservation residents saying that tribal and federal police respect tribal cultures to similar degrees. These data suggest that state and county police in Public Law 280 jurisdictions show significantly less respect for tribal cultures than do police in non-Public Law 280 jurisdictions.

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE

*723 Figure 10.

Respect for Tribal Cultures $F = 12.39$, $df = 2,220$, $N = 223$, $p < 0.0001$

IV. Policy Implications

Distilling policy implications from our data requires a full analysis, including all the interview material we have gathered concerning the criminal justice systems operating in Public Law 280 jurisdictions. The data we have reviewed

in this Article are only a small part of what we have collected, and focus entirely on law enforcement. Nonetheless, we are prepared to discuss some policy options in the contingent form. That is, if our hypotheses are borne out by the full array of data, how could policymakers at the tribal, state, and federal level act to improve community satisfaction and police effectiveness in jurisdictions currently subject to Public Law 280?

Our most important working hypothesis has been that greater community control and accountability, together with greater resources, produce greater community satisfaction with law enforcement and criminal justice, as well as greater effectiveness on the part of these institutions. Thus, our preliminary policy recommendations focus on aligning community priorities with those of police and criminal justice systems, and infusing Public Law 280 jurisdictions with additional crime control resources. Our proposed improvements fall into two categories: exit from state and county jurisdiction under Public Law 280 altogether, and ***724** accommodations to the Public Law 280 regime that increase tribal control. The exit option obviously points toward reinstituting the regime of law enforcement and criminal justice that operates in non-Public Law 280 jurisdictions. In making such recommendations, we do not intend an absolute endorsement of criminal jurisdiction in non-Public Law 280 states. [\[FN92\]](#) Our point is simply that under some conditions, the non-Public Law 280 regime may facilitate greater tribal community control and greater financial support for Indian country law enforcement and criminal justice than the Public Law 280 regime. Policymakers concerned about the non-Public Law 280 jurisdictional system should take this assessment into account in considering alternatives for improving Indian country law enforcement and criminal justice. At the very least, expanded state criminal jurisdiction should not be considered a desirable option.

A. Exit

Under current law, the only way for an Indian nation to exit from state and county jurisdiction under Public Law 280 is to prevail upon the state to retrocede some or all of its jurisdiction back to the federal government. Although more than thirty Indian nations have run this gauntlet and achieved full or partial retrocession, the political obstacles at the state level are formidable, [\[FN93\]](#) and the federal government has been making the process more difficult because it refuses to provide funding for the federal and tribal law enforcement responsibilities that would accompany retrocession. [\[FN94\]](#) Nonetheless, current economic and budgetary conditions within many states, combined with the inflow of gaming revenues for some tribes, have made retrocession a more achievable objective.

Not all of the tribal communities where we conducted interviews expressed an immediate interest in retrocession. Even where enthusiasm ***725** for the idea of retrocession was high, some communities thought they were not yet ready to mount their own police and criminal justice systems; still others were concerned that their small size or internal political conflicts made increased tribal criminal jurisdiction infeasible. Nonetheless, it was apparent to us that some communities would seize or work toward the opportunity for retrocession if the political hurdles at the state level could be removed and if federal funding comparable to that provided in non-Public Law 280 jurisdictions were made available.

Thus we do not recommend the wholesale repeal of Public Law 280. [\[FN95\]](#) Rather, we look to an existing federal model for the return of state jurisdiction to the federal government on a tribe-by-tribe basis, with the tribe rather than the state controlling the process. That model is embedded in the Indian Child Welfare Act of 1978 (ICWA), [\[FN96\]](#) which authorizes tribes to petition the United States Department of the Interior for what is called the “reassumption” of exclusive tribal jurisdiction over Indian child welfare proceedings, where states currently have concurrent jurisdiction under Public Law 280. [\[FN97\]](#) Under this provision of ICWA, the tribe's petition to the Secretary must include “a suitable plan to exercise such jurisdiction,” and the Secretary is authorized to consider a variety of factors, including the size and population base of the tribe, in deciding whether to approve the petition. [\[FN98\]](#) If the Secretary disapproves a reassumption

petition, the Secretary is legally obliged to provide “such technical assistance as may be necessary to enable the tribe to correct any deficiency which the Secretary identified as a cause for disapproval.” [FN99] Were Congress to enact a law of this type for criminal jurisdiction, tribes would need financial as well as technical assistance in order to assume exclusive misdemeanor jurisdiction over crimes between Indians and other concurrent jurisdiction over Indians. The federal government would also need to come forward and assume its trust responsibility, which would include funding for federal criminal jurisdiction and BIA police.

Our research has revealed the substantial benefits that retrocession can bring. One tribe we studied had long suffered from alcohol-related deaths of its members on the main roadway through the reservation. State law required that a marker be placed along the road at the site of such deaths, and this particular road displayed marker after marker. While the county was exercising state jurisdiction under Public Law 280, patrolling on this road was sporadic; when drivers were picked up for driving under the influence they were typically sent to the county jail for a short period and *726 then returned to their vehicles. When the tribe finally persuaded the state to retrocede its jurisdiction, the tribe took over policing and created a tribal criminal court using revenues from gaming and other economic development enterprises. Among other things, the tribal police instituted twenty-four-hour patrols on the reservation road and the tribal criminal court began sending convicted DUI defendants to secure treatment facilities rather than to a jail cell. These new practices reflected the priority the tribe attached to maintaining safe roads and to restoring alcohol-addicted members to a well-functioning and healthy condition. As a consequence, tribal members developed greater confidence in the police, and began reporting offenses at a higher rate. The ultimate result has been a decline in highway deaths, even as the rate of reported criminal activity appears to have risen.

B. Accommodation

Even without retrocession, Indian nations can take measures that will increase their control over criminal matters within their territory, aligning law enforcement and criminal justice more fully with community priorities. Tribal options are constricted by the penalty limitations of the Indian Civil Rights Act (ICRA) [FN100] and the absence of tribal criminal jurisdiction over non-Indians. But these constraints exist for tribes in non-Public Law 280 jurisdictions as well, where the federal government has jurisdiction over the most serious offenses and over offenses committed by non-Indians against Indians. [FN101]

The most drastic way in which Public Law 280 tribes can gain control over law enforcement and criminal justice, at least with respect to Indians, is by enacting criminal codes and exercising their own concurrent criminal jurisdiction. The rewards can be substantial. Most significantly, Indian nations can often achieve the equivalent of exclusive jurisdiction over offenses if they are the first to prosecute. That is because the state laws in many Public Law 280 jurisdictions prohibit subsequent state prosecutions under principles of double jeopardy. [FN102] Unfortunately, federal funding for tribal concurrent jurisdiction initiatives is quite limited in Public Law 280 jurisdictions. Thus, Congress should appropriate money for the exercise of such concurrent jurisdiction. Alternatively, tribes with independent *727 funding sources can supply the law enforcement, prosecutorial, and judicial apparatus.

If Indian nations do not want or are unable to establish their own police and judicial institutions, they can attempt to gain greater control—at least over law enforcement—by contracting with the local county to supply law enforcement services on the reservation. [FN103] Such agreements can assure regular, round-the-clock patrolling, provide for officers to be trained in tribal culture or to practice community-based policing, establish a tribal advisory board to meet regularly with the policing staff, and maintain systems for police accountability for abuse of power or excessive use of force. This alternative has been adopted by several Public Law 280 tribes, most recently the Soboba Band of Luiseno Indians. While

it has the virtue of linking county law enforcement officers more closely to the tribes, it has disadvantages as well. First, contracting for police services does not alter the underlying state criminal justice system. For example, if problems with state criminal jurisdiction include discrimination against tribal members by county juries, prosecutorial priorities that don't match the community's concerns, or culturally inappropriate dispositions, then making the police more accountable to the community will not provide a solution. Second, contracting with county law enforcement doesn't change the training or state requirements applicable to the police officers operating on the reservation. Thus, there are some limits on the extent to which the community can direct the methods and priorities of the police themselves. Third, such contracts essentially pay the county to provide services that the county was already obliged to provide under Public Law 280. Nonetheless, smaller tribes, particularly those with significant revenue from economic development, may prefer to contract for police services rather than use the money to fund their own police departments and criminal courts. Family connections may be so pervasive that it would be controversial to empower anyone within the tribe to exercise law enforcement or criminal justice authority.

A third form of accommodation to Public Law 280 is the establishment of deputization or cross-deputization agreements between tribal and county police. [FN104] Deputization agreements typically authorize tribal police to act in the capacity of county law enforcement officers, enabling them to arrest *728 both Indians and non-Indians for violation of state law. Such agreements normally require that the deputized officers meet state training and certification requirements, and may also grant tribal officers access to state law enforcement telecommunication systems. A major benefit that tribes realize from such agreements is the empowerment of tribal police to arrest non-Indians, albeit for violations of state rather than tribal law. These agreements are also valuable to tribes that have no criminal codes of their own because they are too small, because the tribal culture is unreceptive to enactment of coercive laws, or for any other reason. Tribes may also gain greater patrolling coverage from the tribal police and greater coordination between the two forces with respect to focused crime control initiatives such as drug enforcement. Resource sharing and mutual assistance are other benefits. Cross-deputization agreements incorporate these features and add the reciprocal element of county officers being authorized to arrest on the reservation for violation of tribal law. This authority may be especially helpful for offenses committed by tribal members—such as traffic violations—that are outside the state's jurisdiction under Public Law 280 because they are deemed “regulatory” in nature. [FN105] Both deputization and cross-deputization agreements hold the promise of eliminating jurisdictional uncertainties at the arrest and investigation stages.

Preliminary analysis of our interview data suggests that some of the communities expressing greatest satisfaction with Public Law 280 are those with cross-deputization agreements. The state of Wisconsin has actually fostered such agreements by providing supplemental funding to counties and tribes that have been able to establish such cooperative relations. [FN106] However, cooperative law enforcement agreements are not a panacea for the problems afflicting tribes under Public Law 280. As with the contracts for law enforcement services, they do nothing to address any underlying difficulties tribes experience with the criminal justice system. Furthermore, they put tribes in the position of subsidizing their counties, as the tribes are supplying law enforcement officers who arrest individuals who will pay any resulting fines to the county, not to the tribe. Finally, the cooperative agreements require tribal police to conform to state policing standards, diminishing the tribes' ability to shape police functions in accordance with community standards and priorities. [FN107] Even where *729 cooperative agreements prove, on balance, beneficial to tribes, it may be difficult to sustain them if state funding falters, liability issues strain relations, or mutual fear or mistrust make them politically controversial.

V. Conclusion

Public Law 280 is out of step with the prevailing federal policy of tribal self-determination and has garnered consid-

erable criticism from tribal communities. The law's underlying rationale—that it is necessary to achieve effective law enforcement in tribal communities—has never been subjected to sustained empirical examination even though more than fifty years have passed since its enactment. Theoretical work in the field of Indian country law enforcement suggests that Public Law 280 should be a failure in terms of community satisfaction and effectiveness of crime control because it denies police accountability to the tribal community and complicates the provision of adequate resources to reservation law enforcement and criminal justice. Our qualitative and quantitative data confirm this prediction, consistently showing that state and county police in Public Law 280 jurisdictions either provide less satisfactory service than those in non-Public Law 280 jurisdictions, or have an assessment of their own effectiveness that is more divergent from community assessments than in non-Public Law 280 jurisdictions. Once our data analysis is completed, we can determine whether this pattern is consistent. But, based on these preliminary findings, we have recommended a variety of policy responses that are designed to both improve the accountability of reservation-based police and criminal justice to tribal communities, and achieve an infusion of resources into Indian country crime control efforts.

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[FN1]. Act of Aug. 15, 1953, ch. 505, 67 Stat. 588, 588-60. The criminal provisions of this law, as amended, are codified at 18 U.S.C. § 1162 (2000) (mandatory states) and 25 U.S.C. § 1321 (2000) (optional states). Before the passage of Public Law 280, Congress had enacted laws applying state criminal jurisdiction to some or all of the reservations in a few states. See, e.g., Act of June 30, 1948, ch. 759, 62 Stat. 1161 (criminal jurisdiction to Iowa over the Sac and Fox Reservation); Act of June 8, 1940, ch. 276, 54 Stat. 249 (criminal jurisdiction to Kansas);.

[FN2]. This calculation is based on 2000 census data, and encompasses every reservation which is affected by full or partial state criminal jurisdiction under Public Law 280 or similar statutes. See U.S. Census Bureau, Census 2000 Data for Reservations and other American Indian and Alaska Native Areas, http://factfinder.census.gov/home/aian/sf1_sf3.html (last modified Mar. 3, 2004) (search interface). Twenty-four tribes are affected by statutes that impose state criminal jurisdiction in language similar to Public Law 280 but outside the specific framework of Public Law 280. See, e.g., 25 U.S.C. § 1300g-4(f) (2000) (criminal jurisdiction to Texas over the Ysleta del Sur Pueblo); Act of May 31, 1946, ch. 279, 60 Stat. 229 (criminal jurisdiction to North Dakota over the Devils Lake Reservation). Public Law 280 only applies within “Indian country,” 18 U.S.C. § 1162(a) (2000); 25 U.S.C. § 1321(a) (2000), and the United States Supreme Court has held that the Alaska Native Claims Settlement Act of 1972, 43 U.S.C. §§ 1601-1629h (2000), eliminated much of the Indian country in Alaska when it abolished all but one of the then-existing reservations, *Alaska v. Native Vill. of Venetie*, 522 U.S. 520, 524 (1998). Except for that one reservation—the Metlakatla Indian Community—only scattered Native townsites and trust allotments remain as Indian country in Alaska. See 18 U.S.C. § 1151 (2000). The Bureau of Indian Affairs Realty Office in Juneau, Alaska has over 4,000 restricted lots on record, and many thousands of allotments exist throughout Alaska with thousands of other applications for allotments still pending. See Alaska Land Transfer Acceleration Act of 2003: Hearing on S. 1466 Before the Subcomm. on Public Lands & Forests of the S. Comm. on Energy & Natural Res., 108th Cong. (2003), available at <http://www.blm.gov/nhp/news/legislative/pages/2003/te030806.htm> (statement of Henri Bisson, State Director, Alaska State Office, Bureau of Land Mgmt., U.S. Dep't of the Interior). As a consequence of the elimination of most Indian country in Alaska, Alaska Native village lands are subject to state jurisdiction—not because of Public Law 280, but because they are not considered Indian country at all.

[FN3]. In 1974, University of Washington Professor Ralph Johnson interviewed 250 tribal members from twenty Washington state tribes, as well as federal, state, and local judicial and law enforcement personnel, in order to document perceptions of Washington state Indians concerning state jurisdiction. Johnson found that half of the Indians surveyed felt state, county, and local police treated them poorly or indifferently, and that interviewees were most concerned with juvenile matters followed by violent crimes, traffic laws, narcotics, trespass, and theft. See 1 Nat'l Am. Indian Court Judges Ass'n, *Justice and the American Indian* (1974). However, it is difficult to extrapolate this study to Public Law 280 areas as a whole because Washington state has a distinctive and unusually complex form of criminal jurisdiction on reservations located in that state.

The other significant study, conducted in 1995, similarly focused on the effects of Public Law 280 in an individual state. See Carole Goldberg-Ambrose & Duane Champagne, *A Second Century of Dishonor: Federal Inequities and California Tribes* (1996), available at [http:// www.law.ucla.edu/students/academicprograms/nativenations/secondcentury.pdf](http://www.law.ucla.edu/students/academicprograms/nativenations/secondcentury.pdf) (reporting survey responses from nineteen of California's 107 federally recognized tribes).

[FN4]. See, e.g., Ken Peak, *Policing and Crime in Indian Country*, 10 J. Contemp. Crim. Just. 79, 89 (1994); Executive Committee for Indian Country Law Enforcement Improvements, *Final Report to the Attorney General and the Secretary of the Interior* (Oct. 31, 1997), available at [http:// www.usdoj.gov/otj/icredact.htm](http://www.usdoj.gov/otj/icredact.htm). Both of these studies omit discussion of crime issues in Public Law 280 states.

[FN5]. See, e.g., *Issues of Concern to Southern California Tribes: Hearing Before the S. Select Comm. on Indian Affairs*, 101st Cong. 40, 122 (1989) (airing views of Indian tribal leaders, health experts, and others on tribal legal issues); *Indian Law Enforcement Improvement Act of 1975: Hearing on S. 2010 Before the Subcomm. on Indian Affairs of the Comm. on Interior & Insular Affairs*, 94th Cong. (1975); S. Comm. on Interior & Insular Affairs, *Background Report on Public Law 280: Legislative History*, 94th Cong., 1st Sess. 29-30 (1975) (focusing on efforts to improve law enforcement on Indian reservations by strengthening tribal legal systems); Am. Indian Policy Review Comm'n, *Final Report: Federal, State, and Tribal Jurisdiction* (1976); Carole Goldberg-Ambrose, *Planting Tail Feathers: Tribal Survival and Public Law 280*, at 35-36 (1997) (describing testimony provided during hearings before the Advisory Council on California Indian Policy).

[FN6]. 1 Nat'l Am. Indian Court Judges Ass'n, *supra* note 3, at 28.

[FN7]. See Goldberg-Ambrose, *supra* note 5, at 19-20, 56.

[FN8]. See generally Executive Committee for Indian Country Law Enforcement Improvements, *supra* note 4.

[FN9]. See Lawrence A. Greenfeld & Steven K. Smith, *Bureau of Justice Statistics, American Indians and Crime* (1999), available at [http:// www.ojp.gov/bjs/pub/pdf/aic.pdf](http://www.ojp.gov/bjs/pub/pdf/aic.pdf).

[FN10]. The term "Indian country" includes all lands within reservations, all trust or restricted allotments (whether within or outside reservations), and "dependent Indian communities." 18 U.S.C. § 1151 (2000).

[FN11]. See *supra* note 1.

[FN12]. 25 U.S.C. § 232 (2000).

[FN13]. See Cohen's *Handbook of Federal Indian Law* § 9.03 (Nell Jessup Newton et al. eds., 2005 ed.) [hereinafter *Cohen's Handbook*].

[FN14]. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 560-61 (1832).

[FN15]. See Goldberg-Ambrose, *supra* note 5, at 48-49.

[FN16]. See Vanessa J. Jimenez & Soo C. Song, *Concurrent Tribal and State Jurisdiction under PL-280*, 47 *Am. U. L. Rev.* 1627, 1647-56 (1998).

[FN17]. Cohen's Handbook, *supra* note 13, § 9.04.

[FN18]. See 25 U.S.C. § 1302(7) (2000) (limiting tribal punishments to one year in jail and a \$5,000 fine for each offense); *Oliphant v. Suquamish Indian Tribe*, 435 U.S. 191, 210 (1978) (holding that Indian tribal courts do not possess inherent criminal jurisdiction in cases involving non-Indian parties and may only assume such jurisdiction when specifically authorized to do so by Congress).

[FN19]. See Cohen's Handbook, *supra* note 13, § 6.01.

[FN20]. See generally Thomas Biolsi, *Deadliest Enemies: Law and the Making of Race Relations On and Off Rosebud Reservation* (2001) (discussing the antagonistic relationship between state and tribal governments).

[FN21]. Carole Goldberg-Ambrose, *Public Law 280 and the Problem of Lawlessness in California Indian Country*, 44 *UCLA L. Rev.* 1405, 1438 (1997).

[FN22]. 18 U.S.C. § 1162(a) (2000).

[FN23]. The excluded tribes were Red Lake in Minnesota, Warm Springs in Oregon, and Menominee in Wisconsin. *Id.* Note that while the Menominee tribe was originally excluded, the current codification of Public Law 280 reflects a later change that is recounted in *Menominee Tribe of Indians v. United States*:

As originally enacted Public Law 280 exempted the Menominees from its provisions. The House Reports on Pub. L. 280 (H. R. 1063, 83d Cong., 1st Sess.) and on Pub. L. 661 (H. R. 9821, 83d Cong., 2d Sess.) indicate that the Menominees had specifically asked for exemption from the provisions of the bill that eventually became Pub. L. 280, on the ground that their tribal law and order program was functioning satisfactorily. Subsequently, the tribe reconsidered its position and sponsored H. R. 9821, amending Pub. L. 280 to extend its provisions to the Menominee Reservation. The Department of the Interior recommended favorable action on the proposed amendment, and the amendment was enacted into law on August 24, 1954 (68 Stat. 795), two months after the passage of the Menominee Termination Act. See H. R. Rep. No. 848, 83d Cong., 1st Sess., 6 (1953); H. R. Rep. No. 2322, 83d Cong., 2d Sess. (1954).

391 U.S. 404, 410 n.11 (1968). At the time Menominee was restored to federal recognition in 1976, the state retroceded its Public Law 280 jurisdiction. See *Menominee Indian Reservation in Wisconsin; Acceptance of Offer to Retrocede Jurisdiction*, 41 *Fed. Reg.* 8516 (Feb. 20, 1976).

[FN24]. 25 U.S.C. § 1321(a) (2000). Today the primary states still exercising optional Public Law 280 criminal jurisdiction are Florida, Idaho (limited subjects), Montana (felonies only on a single reservation), and Washington (limited subjects for all reservations, more extensive jurisdiction for some). For a list of these states and their authorizing laws, see Cohen's Handbook, *supra* note 13, § 6.04[3][a], at 544 n.308.

[FN25]. 18 U.S.C. § 1162(c) (2000); see §§ 1152-53 (governing federal criminal jurisdiction on Indian land).

[FN26]. See Goldberg-Ambrose, *supra* note 21, at 1417-18; Jimenez & Song, *supra* note 16, at 1660-62.

[FN27]. See Cohen's Handbook, *supra* note 13, § 9.04.

[FN28]. Jimenez & Song, *supra* note 16, at 1635.

[FN29]. For a discussion of the legislative history, see Goldberg-Ambrose, *supra* note 5, at 48-51.

[FN30]. David C. Mowery et al., Presidential Management of Budgetary and Fiscal Policymaking, 95 Pol. Sci. Q. 395, 403-04 (1980).

[FN31]. Jimenez & Song, *supra* note 16, at 1660-63.

[FN32]. *Id.* at 1662-63, 1663 n.201.

[FN33]. *Id.* at 1659.

[FN34]. See 25 U.S.C. § 472 (2000) (“Such qualified Indians shall hereafter have the preference to appointment to vacancies in any such positions.”).

[FN35]. See, e.g., Carole Goldberg & Duane Champagne, Ramona Redeemed?: The Rise of Tribal Political Power in California, 17 Wicazo Sa Review 43 (2002), available at http://muse.jhu.edu/journals/wicazo_sa_review/v017/17.1goldberg.pdf (concluding that tribes' pursuit of gaming helped them learn to negotiate politically and increase their political profile, while greater wealth allowed them to finance their own court systems, police, and other civic institutions).

[FN36]. 25 U.S.C. § 450f(a)(1) (2000). Beginning in the mid-1990s, some tribes in Public Law 280 states realized that they could still contract to carry out the limited federal law enforcement functions that remained on their reservations. These functions include enforcement of special federal laws criminalizing liquor, trespass, gaming, and other criminal offenses focused on Indian country. See, e.g., 18 U.S.C. § 1165 (2000) (trespass for purposes of hunting and fishing in violating of tribal law). Although these federal contracts rarely involved funding for the major operating expenses of a tribal police department, they did confer federal peace officer status on the tribal police officers who carried out the contract functions. 25 U.S.C. § 2804(a), (f) (2000); *United States v. Young*, 85 F.3d 334, 335 (8th Cir. 1996). And this federal peace officer status in turn provided the predicate for state peace officer status, something tribal law enforcement officers have often sought in Public Law 280 states, where it is advantageous to be able to arrest offenders, especially non-Indians, for violation of state law. See *Hopland Band of Pomo Indians v. Norton*, 324 F. Supp. 2d 1067, 1070 (N.D. Cal. 2004).

[FN37]. See Goldberg-Ambrose, *supra* note 5, at 51-52.

[FN38]. See Cohen's Handbook, *supra* note 13, § 6.04[1]. For example, Idaho extended partial jurisdiction over reservations in that state pursuant to Public Law 280, even though the Treaty of June 9, 1863 with the Nez Perce Tribe of Idaho specifies that the reservation lands “shall be set apart . . . for the exclusive use and benefit of said tribe as an Indian reservation.” Treaty between the United States of America and the Nez Perce Tribe of Indians, art. 2, June 9, 1863, 14 Stat. 647, 648 [hereinafter Treaty with the Nez Perce Indians]. Such treaty language has been interpreted as precluding state civil and criminal jurisdiction over Indians. See, e.g., *Williams v. Lee*, 358 U.S. 217, 220 (1959). Likewise, after promising in the Treaty of June 9, 1855, that the lands reserved by the Walla Walla, Cayuse, and Umatilla Tribes of Oregon would be for their “exclusive use,” Congress extended state jurisdiction over that reservation via Public Law 280. Treaty with the Nez Perce Indians, *supra*, art. 2, 14 Stat. at 648.

[FN39]. See William A. Brophy & Sophie D. Aberle, *The Indian: America's Unfinished Business* 186 (1966).

[FN40]. Act of Apr. 11, 1968, Pub. L. No. 90-284, §§ 201-02, 82 Stat. 73, 77-78 (codified as amended at 25 U.S.C. §§ 1321-26 (2000)).

[FN41]. See Cohen's Handbook, *supra* note 13, § 6.04[3][a].

[FN42]. *Id.* § 8.03[1]. Public Law 280 contains a provision specifically denying states authority to tax trust lands. 18 U.S.C. § 1162(b) (2000); 28 U.S.C. § 1360(b) (2000). The Supreme Court has also interpreted Public Law 280 as excluding all other state taxing power. *Bryan v. Itasca County*, 426 U.S. 373, 375, 391-93 (1976).

[FN43]. A number of Public Law 280 tribes in mandatory states are currently planning to establish police departments. See, e.g., Yvette McGeshick, The Tribal Law Enforcement Committee, Potawatomi Traveling Times, Apr. 1, 2003, available at http://www.fcpotowatomi.com/april_01_03/communit.html (describing the plans of Wisconsin's Forest County Potawatomi Tribe to establish a tribal police department within the next eighteen to twenty-four months).

[FN44]. Bureau of Justice Statistics, Tribal Law Enforcement, 2000, at 1 (2003), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/tle00.pdf>.

[FN45]. *Id.* at 2 tbl. 4.

[FN46]. *Id.*

[FN47]. Steven W. Perry, Bureau of Justice Statistics, Census of Tribal Justice Agencies in Indian Country, 2002 (2005), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/ctjaic02.pdf>.

[FN48]. *Id.* at iii, 6-12. Although the BJS census lists a higher number and percentage of tribal police departments in Public Law 280 jurisdictions, that number includes several states that retroceded their Public Law 280 jurisdiction (e.g., Nevada) or states whose jurisdictional assumptions were found invalid (e.g., South Dakota). *Id.* at 2; see also Cohen's Handbook, *supra* note 13, § 6.04[3][f-g].

[FN49]. See Perry, *supra* note 47, at 3, 6-12.

[FN50]. These tribes include one in Florida, three in Idaho, one in Montana, and twenty-four in Washington. *Id.* at 8-12. Interestingly, the Washington forces include agencies in the four tribes that still have full Public Law 280 jurisdiction.

[FN51]. In Idaho, Public Law 280 jurisdiction is limited to seven subject areas, unless a tribe consents to full criminal jurisdiction. *Idaho Code Ann. §§ 67-5101 to 5102* (LEXIS through 2005 legislation). In Washington, Public Law 280 jurisdiction is limited to eight subject areas, absent tribal consent to full criminal jurisdiction. *Wash. Rev. Code Ann. §§ 37.12.010, .021, .030, .050* (West, Westlaw through 2005 legislation).

[FN52]. See COPS Funds in Alaska, Alaska Justice Forum, Summer 2002, at 1, 6 tbl. 1, available at <http://justice.uaa.alaska.edu/forum/19/2summer2002/192summer.pdf> (listing recipients of Department of Justice Community Oriented Policing Services (COPS) funds between 1994 and 2002); see also *supra* note 2.

[FN53]. See, e.g., *Hopland Band of Pomo Indians v. Norton*, 324 F. Supp. 2d 1067, 1068 (N.D. Cal. 2004) (describing the origin of the Hopland Band of Pomo Indians Police Department, located in Mendocino County, California).

[FN54]. See Perry, *supra* note 47, at 21-30. This report did not include Alaska, and reported that only eight of ten Wisconsin Public Law 280 tribes had tribal courts. For more current information about Wisconsin, see Wisconsin Judicare, Inc. Indian Law Office, Wisconsin Tribal Courts, <http://www.judicare.org/trcts.html> (last modified Aug. 22, 2005). For information about the Alaska court, see Eric Fry, Council: More Courts for Southeast?, AlaskaLegislature.com, Sept. 11, 2003, <http://www.alaskalegislature.com/stories/091103/secourts.shtml>. For a description of the Intertribal Court of Cali-

fornia, see Intertribal Court of California, <http://www.intertribalcourt.indian.com> (last visited Feb. 22, 2006).

[FN55]. Courts hearing adult criminal matters include the Metlakatla Indian Community in Alaska and the White Earth Band of Chippewa in Minnesota. See Metlakatla Indian Community Law & Order Code tit. 1 (Oct. 17, 2002) (on file with the Connecticut Law Review); White Earth Nation Code, tit. 20, § 8, available at <http://www.whiteearthtribalcourt.com/WEPredatoryOffenderRegistrationCode.pdf>.

[FN56]. See Todd D. Minton, Bureau of Justice Statistics, Jails in Indian Country, 2001, at 2 (2002), available at <http://www.ojp.usdoj.gov/bjs/pub/pdf/jic01.pdf>.

[FN57]. See generally Hoopa Valley Tribe Code, available at <http://www.narf.org/nill/Codes/hoopacode/hoopacodetoc.htm>.

[FN58]. See Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians Tribal Code ch. 3-3 (Nov. 13, 2005) (on file with the Connecticut Law Review).

[FN59]. Act of Apr. 11, 1968, Pub. L. No. 90-284, §§ 401-06, 82 Stat. 78 (codified at 25 U.S.C. §§ 1321-26 (2000)).

[FN60]. 25 U.S.C. § 1323(a) (2000).

[FN61]. Cohen's Handbook, *supra* note 13, § 6.04[3][g].

[FN62]. *Id.* Of the mandatory states, Minnesota (Nett Lake), Nebraska (Omaha and Winnebago reservations), Oregon (Burns Paiute and Umatilla reservations), and Wisconsin (Menominee) have undertaken retrocession. Nevada, an optional state, eventually retroceded jurisdiction over all of the reservations for which it had obtained jurisdiction. Montana retroceded misdemeanor jurisdiction over the one reservation, Salish & Kootenai, where it had previously opted for jurisdiction under Public Law 280. Washington has retroceded partial jurisdiction over seven of its twenty-nine reservations (Chehalis, Colville, Quileute, Quinault, Suquamish, Swinomish, and Tulalip). See *id.* at 579 n.549.

[FN63]. Under our own ethical restraints and UCLA's rules for the protection of human subjects, both the tribes and the individual interviewees were promised confidentiality. Hence, none of the tribes, counties, federal districts, or individual names will be revealed.

[FN64]. See Stewart Wakeling et al., Nat'l Inst. of Justice, Policing on American Indian Reservations 49-50 (2001); Eileen M. Luna, *Law Enforcement Oversight in the American Indian Community*, 4 Geo. Pub. Pol'y Rev. 149, 152 (1999); see also Jimenez & Song, *supra* note 16, at 1638-39 ("With adequate resources, tribal governments are not only the most appropriate institutions to maintain order on reservations, but have demonstrated their capacity to keep the peace and resolve disputes on Indian lands.").

[FN65]. The results of this analysis are not included in this Article, but will be presented in the final report to the National Institute of Justice, to be submitted in 2006.

[FN66]. The figures and graphs below present some of these results. A full report will be provided to the National Institute of Justice in 2006, which will incorporate illustrative quotations from the interviews to accompany the graphic presentations.

[FN67]. $p < 0.001$.

[FN68]. Tukey HSD = 0.27, $p < 0.01$.

[FN69]. Tukey HSD = 0.22, $p < 0.05$.

[FN70]. Tukey HSD = 0.22, $p < 0.05$.

[FN71]. Tukey HSD = 0.31, $p < 0.01$.

[FN72]. N includes 148 Public Law 280 reservation residents, 64 Public Law 280 law enforcement personnel, 29 non-Public Law 280 reservation residents, and 18 non-Public Law 280 law enforcement personnel.

[FN73]. $p < 0.001$.

[FN74]. $p < 0.01$.

[FN75]. Tukey HSD = 0.21, $p < 0.05$.

[FN76]. Tukey HSD = 0.21, $p < 0.05$.

[FN77]. Tukey HSD = 0.26, $p < 0.01$.

[FN78]. Tukey HSD = 0.22, $p < 0.05$.

[FN79]. Tukey HSD = 0.27, $p < 0.01$.

[FN80]. $p < 0.001$.

[FN81]. $p < 0.001$.

[FN82]. $p < 0.001$.

[FN83]. $p < 0.05$.

[FN84]. $p < 0.01$.

[FN85]. Tukey HSD = 0.29, $p < 0.01$.

[FN86]. Tukey HSD = 0.24, $p < 0.05$.

[FN87]. Tukey HSD = 0.29, $p < 0.01$.

[FN88]. Tukey HSD = 0.29, $p < 0.01$.

[FN89]. Tukey HSD = 0.29, $p < 0.01$.

[FN90]. Tukey HSD = 0.21, $p < 0.05$.

[FN91]. Tukey HSD = 0.27, $p < 0.01$.

[FN92]. Other scholars have mounted serious critiques of federal criminal jurisdiction in Indian country. See, e.g., Wakeling et al., *supra* note 64, at 51 (“The ongoing dominance of . . . Federal agencies on policing in Indian Country has

. . . deterred tribes from strategic and long-term planning, discouraged community priority setting, and prevented tribal communities and police departments from aligning their priorities, values and resources.”); Robert B. Porter, [A Proposal to the Hanodaganyas to Decolonize Federal Indian Control Law](#), 31 U. Mich. J.L. Reform 899, 984 (1998) (discussing the consequences associated with “federalizing” tribal prosecutors and boosting federal prosecutions on Indian land); Kevin Washburn, [American Indians, Crime, and the Law](#), 104 Mich. L. Rev. 709, 777 (2006) (arguing that “[b]oth prosecutors and juries . . . fail to meet their constitutionally envisioned responsibilities in federal Indian country cases . . .”).

[FN93]. Bonnie Bozarth, Public Law 280 and the Flathead Experience, J. of the West, Summer 2000, at 46, 48-49 (2000) (describing events in connection with partial retrocession of state jurisdiction over the Salish and Kootenai Reservation in Montana); Milo Colton, [Self-Determination and the American Indian: A Case Study](#), 4 Scholar 1, 24-25 (2001) (describing events in connection with the Winnebago retrocession).

[FN94]. E-mail from Robert Perego, attorney who represented Ely Colony in its successful effort to achieve retrocession of Nevada's Public Law 280 jurisdiction, to Jay Brian Shapiro, research assistant to Professor Goldberg (May 18, 2005, 17:15:49 MDT) (on file with the Connecticut Law Review).

[FN95]. Contra Porter, *supra* note 92, at 955-56 (recommending that Public Law 280 be repealed).

[FN96]. 25 U.S.C. §§ 1901-63 (2000).

[FN97]. 25 U.S.C. § 1918 (2000).

[FN98]. 25 U.S.C. § 1918(a-b) (2000).

[FN99]. 25 U.S.C. § 1918(c) (2000).

[FN100]. 25 U.S.C. § 1302(7) (2000) (limiting tribal criminal punishment to one year's imprisonment and/or a \$5,000 fine per offense).

[FN101]. See 18 U.S.C. § 1152 (2000) (providing that federal criminal law applies in Indian country except for offenses committed by one Indian on the person or property of another Indian); 18 U.S.C. § 1153(a) (2000) (providing for application of federal criminal law for, inter alia, murder, serious assaults, sexual abuse, arson, and robbery, committed by an Indian against another Indian); see also 25 U.S.C. § 2802(b-d) (2000) (creating a Division of Law Enforcement Services within the BIA and empowering it to carry out federal law enforcement in Indian country).

[FN102]. See Cohen's Handbook, *supra* note 13, § 6.04[3][c].

[FN103]. Cf. [State v. Manypenny](#), 662 N.W.2d 183, 188 (Minn. Ct. App. 2003) (holding that such agreements are consistent with Public Law 280).

[FN104]. See Michael L. Barker & Kenneth Mullen, Cross-Deputization in Indian Country, 16 Police Studies 157, 163-64 (1993) (analyzing a data sample); Eileen Luna-Firebaugh & Samuel Walker, Law Enforcement and the American Indian: Challenges and Obstacles to Effective Law Enforcement, in Native Americans and the Criminal Justice System 117, 127-28 (Jeffrey Ian Ross & Larry Gould eds., 2005). For a collection of these agreements, see National Congress of American Indians, Law Enforcement Agreements, [http:// www.ncai.org/Law_Enforcement_Agreements.100.0.html](http://www.ncai.org/Law_Enforcement_Agreements.100.0.html) (last visited Mar. 4, 2006).

[FN105]. See Arthur F. Foerster, [Divisiveness and Delusion: Public Law 280 and the Evasive Criminal/Regulatory Dis-](#)

tion, 46 UCLA L. Rev. 1333, 1345-46 (1999) (discussing *State v. Stone*, 557 N.W.2d 588 (Minn. Ct. App. 1996), which held that tribes may enforce traffic ordinances against its own members). But see *id.* at 1344-45 (discussing *St. Germaine v. Circuit Court for Vilas County*, 938 F.2d 75 (7th Cir. 1991), which held that driving with an expired license was against state public policy and thus was a criminal, not a regulatory, offense).

[FN106]. Wisc. Stat. Ann. § 165.90 (West, Westlaw through 2005 Act 25).

[FN107]. Michael L. Barker, Policing in Indian Country 77-78 (1998); Luna-Firebaugh & Walker, *supra* note 104, at 127-28; cf. Wakeling et al., *supra* note 64, at 45 (leveling a similar criticism at tribal policing contracts with the BIA).
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