

# Preface to Indian Country: Geography and Law

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One will look in vain for Indian Country on most maps. Although many observers would readily identify it with tribes in the hinterland, few would recognize the unique polity of this place. As a toponym, or place name, Indian Country seems to belong to the past. Yet, it has prevailed in the literature for more than a century—not only in legal discourse and law, but also in historic reference.<sup>1</sup> Associated in the past with the frontier—essentially beyond the frontier—Indian Country at one time or another was identified with tribes whose territories remained generally intact. From the perspective of territorial government, Indian Country was extraterritorial. The refinement of the concept of Indian Country, more than its better delimitation as a real place, has relied on law, not history, and essentially means lands held in trust.

Although the geographical delimitation of Indian Country beyond the bounds of reservations has remained somewhat elusive, efforts to ascertain such bounds began to take on new meaning as non-Indians squatted on tribal lands or otherwise secured homesteads on land ceded by treaties. Increased encroachment by the white majority, leading to conflicts and hostile negotiations, brought Indians and non-Indians into closer contact by dint of adjacent landholding and day-to-day living. When later laws opened reservations subsequent to the distribution (allotment) of land to individual tribal members, non-Indians became permanent inhabitants of many reservations and, hence, “citizens”

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of Indian Country.<sup>2</sup> In fact, in selected areas of the West (e.g., in California and parts of the Northwest) the number of non-Indians exceeds that of Indians as residents of many reservations.

Actually, when speaking of Indian Country, we should include counties that contain reservations, for here we will encounter many Indians who are residents of lands and towns external to reservations. This broader view of Indian Country focuses attention on a geographical reality in which Indians and non-Indians live adjacent to one another either within the political milieu of a tribal entity—the reservation—or within the bounds of civil governments—towns and counties. Many students of Indian affairs have noted that not only does the reservation's presence affect the demand for various public services, but also this overlapping jurisdiction creates intergovernmental conflicts.<sup>3</sup> From the Indians' perspective, the reservation and the county are separate political jurisdictions demarcated by appropriate boundaries; as local citizens see it, the reservation lies within the territorial (i.e., governmental) borders of the county.

At its core, political geography explores the interrelationships between polity and the geographical environment. Such geographic inquiry seeks to explain how polity affects the spatial arrangement of human settlements and economy and how it ordains human spatial organization.<sup>4</sup> Moreover, this branch of geography explores the unique ways in which polity impacts or fashions the interaction of various political places, such as between sovereigns, the federal government and the states, the states and their cities and counties. Rarely have geographers sought to define, much less explain, the complex political relationships that exist between Indian tribes and the federal and state governments. The polity of reservations mostly involves relations between tribes (i.e., reservations as jural places) and the federal government (i.e., Bureau of Indian Affairs, the Congress), but the polity of Indian Country focuses on relations between tribes and local citizens (counties and cities as well as their states).<sup>5</sup>

By identifying this greater geographical reality as extending to the borders of counties and by factoring in the role of the state, we can undertake greater political geographical analysis of Indian Country. And by emphasizing the issue of jurisdiction, we will recognize how law and litigation provide vital clues to the evolving definition of Indian Country. In the meantime, we must first be sure of what is meant by reservation.

## THE INDIAN RESERVATION IN THE GOVERNMENTAL SYSTEM

Indian reservations are land properties held in trust by the federal government. While we may be inclined to regard them as some kind of special-purpose district or as administrative units, the similarity to land units administered, for example, by public land agencies is superficial. It is because of the existence of tribal governments that reservations become jural places, possessing inherent political jurisdiction within their borders. Yet, to confound the average citizen's comprehension, reservations are neither like, nor equivalent to, counties or states, although on occasion they compare to municipalities. The more than fifty million acres of trust lands thus belong to a class of their own—tribal [fig. 1(a)]—and represent territorial units that are distinct from all others [fig. 1(b)].<sup>6</sup> It is understandable why so much confusion persists over the political and legal status of tribes and their lands. In one instance, we recognize their separateness owing to treaties and statutes [fig. 1(c)], and in another, confusion reigns [fig. 1(d)].<sup>7</sup> As colleagues in this symposium suggest, issues related to taxation of Indian income and property and to the rights of reservation Indians to vote in local elections add measurably to this confused political landscape. And, no doubt, intrusion by state and local governments into the affairs of tribes, whether in the mistaken notion or deliberate guise of law-and-order authority, has led to some federal consent regarding this behavior. Indeed, states such as California encouraged passage of P. L. 280 (1953), which transferred some jurisdiction to several states and their local civil divisions.<sup>8</sup>

While Indian lands lie within the external borders of the nation and the various states, they remain unique political entities because of their trust status and their surviving inherent sovereignty. It is the translation of this sovereignty into its everyday meaning, where Indians and non-Indians interact within and adjacent to reservations, that leads to conflicts and begs for a more clearly articulated definition of both reservation and Indian Country. If one has noted from time to time the reports in the press about conflicts between tribes and local citizens, one is aware that differences in political interaction exist in Indian Country depending, for example, on the state and the particular reservation. States with high resident Indian populations (e.g., Arizona, South Dakota) reveal a greater number of interactional problems in Indian

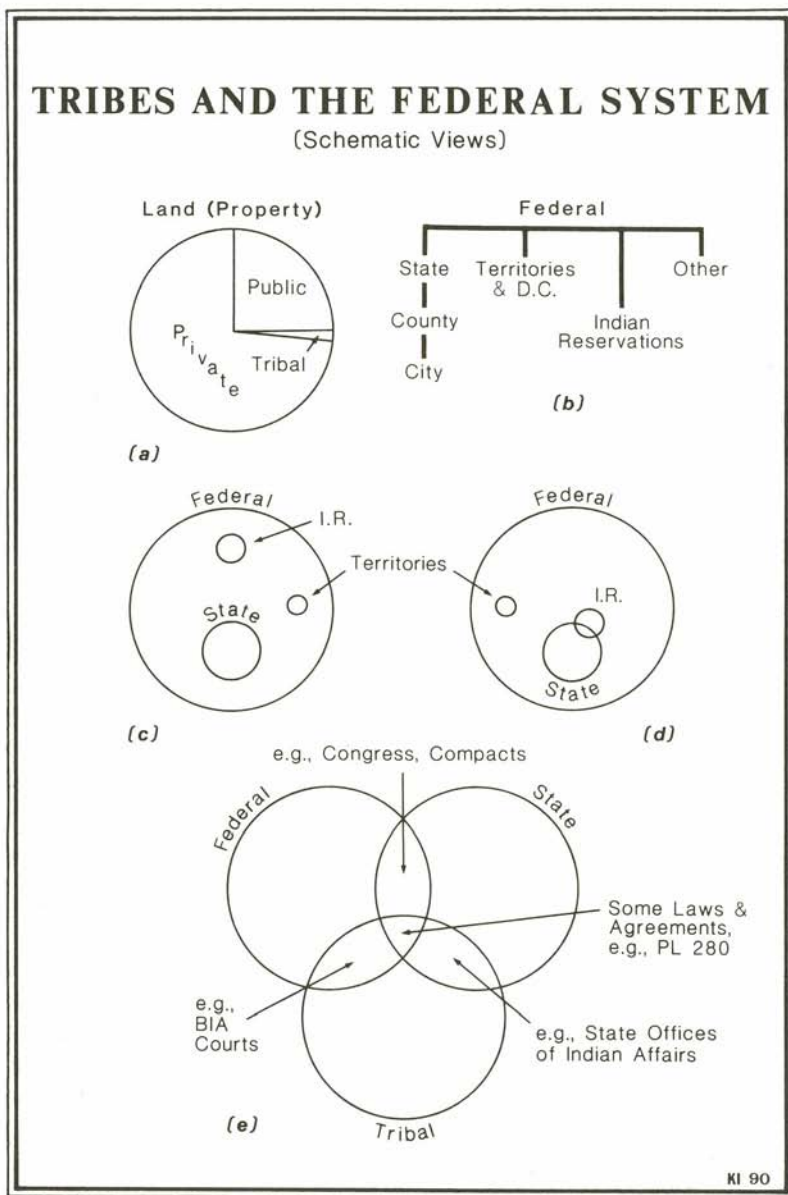


FIGURE 1. Tribes and the Federal System. Because of the special tribal/federal relationship, Indian reservations fall into a legal/political category of their own. (Diagram by Kwan Ihn)

Country than do those states with smaller Indian numbers (e.g., Michigan, Nebraska).<sup>9</sup> Reservations that include large percentages of non-Indian landowners and residents (e.g., White Earth, Minnesota and Colville, Washington) as well as significant non-Indian numbers in towns and cities within, partially within, or adjacent to reservations contribute to many legally and politically based conflicts (e.g., the Puyallup tribe and Tacoma, Washington; the Agua Caliente Indians at Palm Springs, California).<sup>10</sup>

While not all conflicts in Indian Country relate to law and order, these receive the greatest attention in the press. For example, during an intertribal confrontation over gambling on the St. Regis (Akwesasne) Indian Reservation in upstate New York, a *New York Times* banner queried, "Whose Law Applies When Lawlessness Rules on Indian Land?"<sup>11</sup> To the general public, the logical response would be the civil authorities, and indeed New York's Governor Mario Cuomo early on could have ordered state troopers onto the reservations under federal law, which gives the state some degree of jurisdiction over resident tribes. Although intervention by local and state authorities may take place, rarely does such action prove fruitful in the long run, and often it is declared illegal. Yet, as in the instance of New York, where the governor finally sent in state troopers to restore order, the public perceives the flow of authority emanating from state and local governments. As Pommersheim notes, "Without an understanding of the legal and cultural roots involved in the formation of reservations, it is impossible to comprehend much of the current social reality and political atmosphere that dominates individual and institutional life in Indian Country."<sup>12</sup>

In effect, local citizens cannot comprehend the separate polity of tribes, and find it difficult to accept the notion of a tripartite government in Indian Country [fig. 1(e)]. Since tribes, unlike many territories and the District of Columbia, do not currently possess representation in Congress, local neighbors may be bewildered by their relatively strong political clout. For example, some years ago the Navajo Nation successfully rejected a request by Oklahoma for the extradition of an Indian from the state of New Mexico; extradition normally is a power reserved for sovereign states.<sup>13</sup>

Political geographers may well identify the reservation as a form of human group territoriality. There exists a sense of spatial identity (homeland) and a sense of exclusiveness (trust status).

In time, of course, exclusiveness became modified by the entry of non-Indians on the land. If group territoriality also possesses physical or residential proximity, a high degree of homogeneity "of social, economic and political attributes" and functional interdependence,<sup>14</sup> these characteristics today are much changed by the opening of reservations to non-Indian owners and residents and by the fact that reservation economy depends more on external assistance and money than on Indian-earned income within the reservation. The changing political geography of the reservation has come about because of the creation of a greater Indian Country, always in flux.

#### A LEGAL/PROPRIETAL VIEW OF INDIAN COUNTRY

A general map of Indian Country—one focusing on property relationships—does not readily reveal any significant basis for conflict (fig. 2). Nor is the source of conflict and confusion to be found readily in the current codified definition of Indian Country:

(a) all land within the limits of any Indian reservation under the jurisdiction of the United States government, *notwithstanding the issuance of any patent*, and, including rights-of-way running through the reservation, (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same (emphasis added).<sup>15</sup>

Originally written into criminal legislation governing the tribes, the current definition of Indian Country does not effectively reflect the course of civil case law over the past half-century. Aside from the prohibition of the sale of liquor to Indians living on reservations or in adjacent non-Indian communities, the most critical interaction has focused on criminal issues involving the authority of the tribes over non-Indians on reservations. In fact, case law has expanded the codified definition so as to include allotments sold out of trust to non-Indians.<sup>16</sup> "Notwithstanding the issuance of any patent" may be an initial source of confusion,































































