Indian Country: political territory; tripartite government, & environmental jurisdiction

Indian Country has legal meaning that limits its definition to include all forms of trust lands – reservations, allotments, other lands lying outside the boundaries of reservations. But one may assign a broader meaning that embraces the geographical reality of the civil divisions within which one finds trust lands. In this context, Indian Country constitutes a geographic area of tripartite government: federal, state (or its civil divisions such as counties and cities) and tribal. For its legal definition and discussion, see Getches et al 1998 and Deloria & Lytle 1983; for its broader interpretation, see Sutton 1991. The legal definition plays an important role in understanding the conflicting posture of states and their civil divisions, as well as the citizenry at large, in environmental issues relating to tribal lands.


Fig. 7.1 This series of three maps depicts the traditional legal definition of Indian Country and then ultimately the larger geographical Indian Country which is the political geographical reality affecting virtually all daily relations between tribes, individual Indians and families, and non-Indian communities on and off the reservation as well as government personnel at the federal, state and local levels. Map from Sutton (1991). Map used by permission of RUC and AISC.
Fig. 7.2. A post-contact view of Indian Country, when lands were ceded and became part of the public domain, then opened to homesteaders, miners, and others. Many of the current conflicts leading to litigation between tribes and states relate to former tribal territories now part of various public lands held by states or the federal government. See Silvern (2002); map from Sutton (1991). Map used by permission of RUC and AISC.
Fig. 7.3. A modern-day view of Indian Country, involving nearby communities, and the county and state in which trust lands are located. Not all observers agree on defining Indian Country in this way, preferring its more limited legal definition. Cf. Deloria and Lytle (1983). Map from Sutton (1991). Map used by permission of RUC and AIS.
FIG. 7.4 Jurisdiction – A historic example of the application of P. L. 280 (1953), which assigned certain civil and criminal jurisdiction to various states, but later was overturned by provisions of the Indian Civil Rights Act (1968). Some states had sought jurisdiction over taxation, planning, zoning and environmental authority on reservations. See Goldberg-Ambrose (1999); map from Sutton (1975). In limited ways, and not without controversy, aspects of P. L. 280 survive in a number of reservation states. Map copyrighted by Imre Sutton.
FIG. 7.5 A generalized portrayal of jurisdictional issues, normally pitting Indian tribes against states and/or local civil divisions within Indian Country. Many states that include tribal trust lands assume jurisdictions that are contested in litigation but are often not readily resolved. Map from Sutton (2000). Map used by permission of RUC and AISC.
FIG. 7.6 State and Tribal Land Boundaries and Conflicts. See Sutton (1976). In each example, reservation boundaries overlap political units. For the Navajo, the distinctions have been mostly within Arizona, where the state in the past has attempted to isolate the reservation as a unique county from the three counties that run north-south through the reservation. See Phelps (1991). For the Cheyenne River I. S., as with all reservations in SD, the state gained the advantage in not acknowledging counties overwhelmingly non-Indian in population. See Sutton (1991). A more critical relationship has existed between the Agua Caliente Indians and the city of Palm Springs, where at one time the city sought to zone Indian land use. See Sutton (1967). Map from Sutton (1976). Map used by permission of the American Geographical Society, N. Y.
The tribes continue to deal with controversies emanating from local civil division and citizens, but also from states. In some cases, public and private enterprises seek resolution in court of jurisdictional issues involving the authority of tribes—e.g., the functions of utilities and rights-of-way on reservations. Demographics may enter into the conflict and in the Fort Totten case. Here the distribution of lands held by Indians and non-Indians dominated the court’s decision to deny tribal jurisdiction over non-Indians and their lands, despite the fact that more Indians than non-Indians reside on the reservation.

Casinos and Gaming:

These studies include articles about Indian casinos and various maps, as of the Foxwoods casino/resort in Connecticut. There are also maps for North and South Dakota, and Oklahoma. Other studies include evaluations of Indian gaming. Trust land status predicates tribal capacity to develop casinos on reservations. Under the National Indian Gaming Act, 1988 Congress mandated that tribes and states are to negotiate and tribes must meet state gaming regulations. States are asked to enter into agreements in good faith with tribes. In a number of states, joint agreements between state officials and tribal leaders have negotiated favorable agreements that benefit both sides. (E.g., Foxwoods, in CT, returns a portion of certain revenues to the state as well as pays to support a larger security force in and around the casino-resort.) In many western states, one governor signed on, a subsequent one has refused to endorse native gaming and litigation has ensued. In California, the former governor (Gray Davis) supported tribal gaming; he benefited from tribal financial support in election campaigns. Many states seek revenue in some form other than tax.

An intriguing aspect of IGRA is § 2719 which provides a wide range of options for the establishment of casinos on lands not then part of reservations at the time the law was enacted. (See Mason 2000: 217 and the act, 25 USCS). Some tribes and bands have sought to acquire parcels of land at some distance from their reservations; other Indian communities that are seeking recognition also pursue the idea of acquiring land for casinos. Some land choices have not been within aboriginal territory, raising serious questions about their validity. Local Chumash Indians in Ventura County, California, protested the potential acquisition of land within the city of Oxnard by a group of Miwok Indians from upstate, far from their home territory. But the law does not spell out any limiting conditions related to aboriginal territory. In my mind, these proprietary questions suggest the potentiality for litigation and legislative changes.

Few maps depict the current efforts of some gaming tribes to acquire adjacent lands for the expansion of resort development. Moreover, unless one approaches tribes, it may be some time before there are accurate maps showing newly acquired aboriginal acreage that tribes are purchasing with gaming revenue. Carmichael and Peppard (1998) report the efforts of the Foxwoods Casino in Connecticut to expand onto adjacent lands. Because such events are still on-going, often the local newspapers offer better coverage. For example, the Los Angeles Times (Oct. 20, 2003, A1,A13) recently reported “Tribes Buying Back Ancestral Lands.” The discussion focused mostly on tribes (bands) in California. A significant example is the Pechanga Tribe’s acquisition of a parcel between the main reservation and an outlier; today that parcel contains a hotel resort.

Brad A. Bays, (1998)“Tribal-State Cooperation or Contention? The IGRA and Indian Gaming in Oklahoma,” in Casino Gambling in America: Origins, Trends


Fig. 7.8: Indian Nation Gaming, circa 1995. Source: Bays (1998). There are various maps of Indian casinos in publications and online. This distribution does not suggest the classic role of location. Some casinos, of course, thrive more so than others by location, but gamblers tend to seek out casinos even if in rural backcountry. Few tribes have the advantage of urban/suburban locations. Mason, 2000 (p. 217), reported that the Eastern Shawnee Tribe was operating a bingo hall in Seneca, MO, just across the border. What is not revealed here is that two other Oklahoma tribes were seeking options to establish casinos in aboriginal territory – The Delaware of Western Oklahoma in New Jersey, and the Miami Tribe of Oklahoma in Ohio. His map (p. 178) updates to 1998. Map used by permission of Cognizant Communication Corporation.