JURISDICTION OVER INDIANS AND INDIAN RESERVATIONS

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Before we can intelligently discuss the problem of jurisdiction over Indians and Indian reservations, we must know something about the status of an Indian tribe and how a reservation comes into being and of what land it consists. At the outset, we must realize that we must always consider Indian affairs in their historical perspective and understand that as both the education and acculturation of the Indians progressed and the power of the federal government grew, concepts about Indians did not remain static but constantly changed. Outside respect for tribal authority varied from tribe to tribe and increased or decreased depending largely on current events and the climate of the times.

Chief Justice John Marshall in 1831 in his classic statement described Indian tribes as "domestic dependent nations"[1] and Felix Cohen, former Department of Interior Solicitor in charge of Indian Affairs, wrote that so long as the "complete and independent sovereignty" of an Indian tribe was recognized, its jurisdiction was that of any sovereign power.[2] By 1880, the Supreme Court no longer viewed Indian reservations as "distinct nations" as a reservation was considered in many cases a part of the surrounding state or territory.[3] It was held in 1939 that although they were no longer considered "foreign" nations, they were recognized as "separate political communities" authorized to administer their own internal affairs.[4] In 1944, the Commissioner of Indian Affairs likened an Indian tribe to a "municipal corporation."[5] As late as 1955, it was held that the founding fathers regarded Indian tribes as "political sovereigns" as they had dealt with them by treaty, and that the Constitution recognized that they possessed inherent powers of self-government although these might be regulated, limited or entirely terminated at will by Congress.[6] In 1959 it was held that Indian tribes

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[1] Cherokee Nation v. Georgia, 30 U.S. (5 Pet.) 1 (1831).

[2] COHEN, HANDBOOK OF FEDERAL INDIAN LAW 146 (1942).

[3] Kake Village v. Egan, 369 U.S. 60, 72 (1962).

[4] United States v. City of Salamanca, 27 F. Supp. 541, 544 (W.D. N.Y. 1939).

[5] Statement by Commissioner of Indian Affairs John Collier, October 28, 1944. See also letter from Department of the Interior Solicitor to Housing and Home Finance Agency General Counsel, August 21, 1961, concerning housing.

[6] Iron Crow v. Ogallala Sioux Tribe, 129 F. Supp. 15, 19-20 (W.D. S.D. 1955).

were not states but had a "status higher than that of States. They are subordinate and dependent nations possessed of all powers as such only to the extent that they have been expressly required to surrender them by the superior sovereign, the United States."[7] The National Labor Relations Board noted in 1960 that "Indian tribes are deemed to have many of the attributes of a nation [and] although their external sovereignty has been extinguished, their internal sovereignty is preserved, except where limited by treaty or Act of Congress."[8] In contrast to these statements, one student of Indian affairs felt that with the abandonment of the Indian treaty-making power, there came the "recognition of the deterioration of tribal status from a position of substantial autonomy to one of nearly complete subservience."[9] We propose now merely to consider an Indian tribe as an organized band, pueblo or other self-governing community of aboriginals of the United States recognized as a "distinct political society" by the federal government and being under its jurisdiction.

Indian reservations were created by Treaty Stipulations, Congressional Acts and Executive Orders.[10] A reservation in the nature of an Executive Order Reservation may be established without a formal Executive Order if a course of administrative action is shown which had for its purpose the inducing of an Indian tribe to settle in a given area, and if the area has thereafter been referred to and dealt with as an Indian reservation by the Executive Branch of the Federal Government.[11] The Solicitor for the Bureau has even held that lands newly purchased for Indians pursuant to the Indian Reorganization Act[12] but not declared a reservation were in the same category as a reservation.[13] Nevertheless, we must be careful not to push any liberal definition too far and we should take account of the meaning of particular statutes. For example, with reference to the Federal Power Act[14] the Supreme Court held that although it was the common understanding that Tuscarora lands were part of a "reservation," in fact they were not because Congress intended that term to embrace only "lands and interest in lands owned by the United States."[15] The courts have also decided that

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[7] Native American Church v. Navajo Tribal Council, 272 F.2d 131, 134 (10th Cir. 1959). *Cf. Ex parte* Morgan, 20 Fed. 298, 305 (D.C. W.D. Ark. 1883). See also Arizona v. California, 373 U.S. 546 (1963).

[8] Texas-Zinc Minerals Corp. v. Steelworkers Union, 126 N.L.R.B. 603 (1960).

[9] Oliver, *Legal Status of American Indian Tribes*, 38 ORE. L. REV. 193 (1959). See also REV. STAT. § 2079 (1875), 25 U.S.C. § 71 (1958).

[10] Spalding v. Chandler, 160 U.S. 394, 403 (1896); *In re* Wilson, 140 U.S. 575, 577 (1891); 34 OPS. ATT'Y GEN. 171, 176 (1924); U.S. DEP'T OF INTERIOR, FEDERAL INDIAN LAW 614 (1958).

[11] 18 OPS. ATT'Y GEN. 141, 146 (1885).

[12] § 7, 48 Stat. 986 (1934), 25 U.S.C.A. § 467 (1958).

[13] 57 Interior Dec. 295, 297 (1941).

[14] § 201(2), 49 Stat. 838 (1935), 16 U.S.C.A. § 796 (1958).

[15] Federal Power Comm'n v. Tuscarora Indian Nation, 362 U.S. 99, 111 (1960).

there was no distinction between an Indian "colony" and "Indian Country"[16] which Congress defined in 1948 to include (a) all land within the limits of any reservation including patented land and rights of way; (b) all dependent Indian communities within the United States; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including the rights of way through them.[17] The Code of Federal Regulations[18] also defines "reservation" to include all territory within reservation boundaries, including fee patented lands, roads, waters, bridges and lands used for agency purposes. Courts have not only held that allotted lands are reservation lands if they are within the exterior boundaries of the reservation but also townsites and cities if they are similarly situated, as well as federal and state highways running through the reservation.[19] While some courts have thus conceded that allotments of lands in severalty would not exclude the lands from the reservation, yet others maintain that if *all* the land were allotted *and* the tribe had ceded to the United States *all* its interest therein, the reservation itself might perhaps be considered extinguished[20] and therefore tribal jurisdiction would cease.

While it is essential to know the exact boundary of an Indian reservation to determine the extent of tribal territorial control, it is just as necessary to know whether the reservation may legally be considered to be within the domain of the United States or within the state or states of its location so that they too may exercise some control over it, and to discover the extent of their jurisdiction.

With respect to the *land* of an Indian reservation, it has never been doubted that, being actually within the geographical limits of the United States, the federal government has jurisdiction over it.[21] It has also been held to be "within the political and governmental boundary of

[16] United States v. McGowan, 302 U.S. 535, 539 (1938).

[17] 62 Stat. 757 (1948), 18 U.S.C. § 1151 (1958). See also Application of Andy, 49 Wash.2d 449, 302 P.2d 963, 965 (1956).

[18] 25 C.F.R. § 11.2(c) (1958).

[19] Seymour v. Superintendent, 368 U.S. 351 (1961) (Federal townsite); Application of Denetclaw, 83 Ariz. 299, 320 P.2d 697 (1958) (State highway); State *ex rel.* Bokas v. District Court, 128 Mont. 37, 270 P.2d 396 (1954) (city); State *ex rel.* Irvine v. District Court, 125 Mont. 398, 239 P.2d 272 (1951) (city); State v. Begay, 63 N.M. 409, 320 P.2d 1017 (1958), *cert. denied*, 357 U.S. 918 (1958). See also Nicodemus v. Washington Water Power Co., 264 F.2d 614 (9th Cir. 1959); United States v. Minnesota, 113 F.2d 770 (8th Cir. 1940); *Ex parte* Konaha, 43 F. Supp. 747 (E.D. Wis. 1942); State v. Big Sheep, 75 Mont. 219, 243 Pac. 1067 (1926); People *ex rel.* Schuyler v. Livingstone, 123 Misc. 605, 205 N.Y. Supp. 888 (1924). See also Application of Andy, 49 Wash. 2d 449, 302 P.2d 963, 965 (1956); E. & H. Motors, Inc. v. George and Shippentower, Memorandum Opinion No. 43917, Washington State Superior Court, Aug. 5, 1960.

[20] United States v. Oklahoma Gas & Elec. Co., 318 U.S. 206, 217 (1943); Tooisgah v. United States, 186 F.2d 93, 97 (10th Cir. 1950); Application of DeMarrias, 77 S.D. 294, 91 N.W.2d 480, 483 (1958).

[21] United States v. McGowan, 302 U.S. 535, 539 (1938); United States v. Kagama, 118 U.S. 375, 384 (1886); Mackey v. Coxe, 59 U.S. 100, 103 (1855).

the state" and consequently under the sovereignty of the state and the control of its laws.[22] The courts have clearly affirmed that "the state retains sovereignty over the territory [of a reservation] although its laws cannot conflict with Federal enactments passed to protect and guard its Indian wards."[23] They have again and again stated that "for many purposes a state has civil and criminal jurisdiction over *land* within its limits belonging to the United States but this jurisdiction does not extend to any matter that is not consistent with full power in the United States to protect its lands, to control their use and to prescribe in what manner others may acquire rights in them."[24]

With respect to the *Indians* on the land within the exterior boundaries of an Indian reservation, federal statutes have reserved many matters for federal jurisdiction alone, as in the case of the ten major crimes of murder, manslaughter, rape, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, larceny and incest.[25]

As the courts have well said:

> Jurisdiction of the federal government over the Indian and tribes rests, not upon the ownership of and sovereignty of certain tracts of land, but upon the fact that, as wards of the general government, they are subjects of federal authority within the state when the mentioned offense is committed. . . .[26]

The right of the state to deal with Indians for particular purposes has also been recognized.[27] In 1906 Congress legislated that when lands held in trust for Indians were finally conveyed to them by patent in fee, the allottees should be subject to the civil and criminal laws of the state of their residence.[28] This statute did not extend the state's jurisdiction to such an allottee's property,[29] nor to tribal members not having received patents in fee because of acts committed on patent in fee lands within the exterior boundaries of a reservation, nor to matters reserved by statute to federal jurisdiction alone.[30] In actual practice, the state has

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[22] Begay v. Miller, 70 Ariz. 380, 222 P.2d 624, 629 (1950).

[23] Surplus Trading Co. v. Cook, 281 U.S. 647, 650-51 (1930); 57 Interior Dec. 295, 296 (1941).

[24] United States v. Minnesota, 95 F.2d 468, 471 (8th Cir. 1938).

[25] 62 Stat. 757 (1948), 18 U.S.C. § 1152 (1958). 70 Stat. 792 (1956), 18 U.S.C. § 1163 (1958) concerns embezzlement and theft from a tribal organization, but does not expressly reserve exclusive Federal jurisdiction.

[26] State *ex rel.* Irvine v. District Court, 125 Mont. 398, 239 P.2d 272, 276, 283 (1951). See also REV. STAT. § 463 (1875), 25 U.S.C.A. § 2 (1958).

[27] United States v. City of Salamanca, 27 F. Supp. 541, 546 (W.D. N.Y. 1939).

[28] 34 Stat. 182 (1906), 25 U.S.C.A. § 349 (1958). See Goudy v. Meath, 203 U.S. 146 (1906); People v. Pratt, 26 Cal. App. 2d 618, 80 P.2d 87, 88 (1938); State v. Bush, 195 Minn. 413, 263 N.W. 300, 303 (1935); State v. Big Sheep, 75 Mont. 219, 243 Pac. 1067, 1071 (1926); 58 Interior Dec. 455, 457 (1943).

[29] 58 Interior Dec. 455, 457 (1943).

[30] 61 Interior Dec. 298, 303 (1954).

not too often tried to assume jurisdiction over Indians under this statute. However, Congress went still further in 1953 when it granted jurisdiction over criminal offenses committed by or against Indians in Indian "country" to California, Minnesota (except the Red Lake Reservation), Oregon (except the Warm Springs Reservation), and Wisconsin, and in 1958 to Alaska. In the same statute, there is also granted to these states jurisdiction over civil causes of action between Indians or to which Indians are parties. Furthermore, Congress there consented to any state assuming jurisdiction of criminal offenses or civil causes of action by duly passing legislation to that effect without the necessity of first getting tribal consent thereto.[31]

If Congress has not enacted special legislation for Indians on a reservation or subjected them to the exclusive jurisdiction of the state, Indians continue to be governed by their own tribal laws and customs.[32] The 1906 federal statute did not dissolve tribal relationships.[33] Neither did the 1953 statute do this as it makes express reference to tribal laws, and provides that *any* tribal ordinance or custom shall be given full force and effect unless it is inconsistent with any applicable law of the state.[34] Tribal civil law is usually supreme in matters concerning the personal and domestic relations of Indians such as guardianship, inheritance and testamentary disposition and would therefore not be nullified by a conflicting state statute except in a state which had by legislative action duly assumed jurisdiction pursuant to the 1953 federal statute.[35] On the other hand, with regard to tribal criminal law, governing offenses committed by one Indian against another on the reservation, Department of Interior regulations, as well as some tribal law and order codes themselves, provide that with respect to any offenses enumerated therein over which federal or state courts also have jurisdiction, the Court of Indian Offenses shall have concurrent but not exclusive jurisdiction and shall *deliver over* Indian offenders when such other courts are willing to exercise jurisdiction over them.[36]

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[31] 62 Stat. 757 (1948), 18 U.S.C. § 1152 (1958); 67 Stat. 589 (1953), 28 U.S.C. § 1360 (1958). See also Iron Crow v. Ogallala Sioux Tribe, 129 F. Supp. 15, 24 (W.D. S.D. 1955).

[32] Woodin v. Seeley, 141 Misc. 207, 252 N.Y. Supp. 818, 823 (1931).

[33] United States v. City of Salamanca, 27 F. Supp. 541, 546 (W.D. N.Y. 1939); People v. Pratt, 26 Cal. App. 2d 618, 80 P.2d 87 (1938); 61 Interior Dec. 298, 301 (1954); Department of the Interior Solicitor's Opinion M-60616 (April 27, 1939) [hereinafter cited as Sol. Op. M-60616]. Solicitor's opinions cited by number and date only are unpublished but are on file in the Office of the Solicitor, Department of the Interior, Washington, D.C.

[34] Mohawk v. Longfinger, 1 Misc. 2d 509, 149 N.Y.S.2d 36, 37-8 (1955).

[35] Nofire v. United States, 164 U.S. 657 (1897) (marriage); United States v. City of Salamanca, 27 F. Supp. 541 (W.D. N.Y. 1939) (inheritance); United States v. Charles, 23 F. Supp. 346 (W.D. N.Y. 1938) (inheritance); Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012, 1014 (1959) (divorce).

[36] 25 C.F.R. § 11.2(b) (1958); Sol. Op. M-60616.

With respect to *non-Indians* on an Indian reservation, there has not been much question but that the state has some jurisdiction over them. It was very clearly stated that "our State courts have jurisdiction over offenses committed on Indian reservations by persons who are not Indians against other persons who are not Indians,"[37] and "it is trade with the Indians which is removed from State interference and not the trader himself if the trader is a white person and is dealing with other white persons, even though such transactions occur on a reservation."[38]

The courts differ as to whether the state has jurisdiction over crimes committed on a reservation by a non-Indian against an Indian. A sovereign state normally should have this jurisdiction. The courts that deny it do so by contending that the 1885 federal statute, which extends the general laws as to the punishment of crimes committed in any place "within the sole and exclusive jurisdiction of the United States," refers to the "reservation" and covers all persons committing crimes thereon on the theory that it is the sole duty of the federal government to protect its wards.[39] Those courts that affirm state court jurisdiction interpret this statute to define the "laws" extended to the reservation and not to refer to the reservation itself. Certainly if a white man may be punished in a state court for a crime on the reservation against another white man, it seems somewhat illogical to deny jurisdiction just because the party injured is an Indian. This affirmative interpretation is supported by the above mentioned Ten Major Crimes Act which grants to the federal courts exclusive jurisdiction over *Indians* committing these crimes within Indian country, and the subsequent act which subjects to punishment *anyone* who commits the crime of embezzlement or theft from a tribal organization;[40] very likely either the state or federal courts could punish a non-Indian for such embezzlement.

Since these laws which are vested in an Indian tribe are not in general powers delegated by Congress but are inherent powers of a limited sovereignty, a non-Indian should also be punishable for violating

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[37] Williams v. United States, 327 U.S. 711, 714 (1946); Donnelly v. United States, 228 U.S. 243, 271 (1912); Draper v. United States, 164 U.S. 240, 247 (1896); United States v. McBratney, 104 U.S. 621, 624 (1881); State v. Phelps, 19 P.2d 319, 320 (Mont. 1933); State v. Kuntz, 66 N.W.2d 531, 532 (N.D. 1954); 57 Interior Dec. 295, 296 (1941).

[38] 57 Interior Dec. 124, 126 (1940).

[39] Williams v. United States, 327 U.S. 711, 714, 718 (1946); United States v. Chavez, 290 U.S. 357, 365 (1933); United States v. Ramsey, 271 U.S. 467, 469 (1926); United States v. Pelican, 232 U.S. 442, 451 (1914); Donnelly v. United States, 228 U.S. 243, 272 (1912); State v. Kuntz, 66 N.W.2d 531, 532 (N.D. 1954); 62 Stat. 686 (1948), 18 U.S.C. § 13 (1958).

[40] Draper v. United States, 164 U.S. 240, 247 (1896); United States v. McBratney, 104 U. S. 621 (1881); *In re* Carmen, 165 F. Supp. 942, 948 (N.D. Cal. 1958); State v. Youpee, 103 Mont. 86, 61 P.2d 832, 836 (1936); Welty v. United States, 14 Okla. 7, 76 Pac. 121 (1904); Herd v. United States, 13 Okla. 512, 75 Pac. 291 (1904); Goodson v. United States, 7 Okla. 117, 54 Pac. 423, 425 (1898); 62 Stat. 758 (1948), 18 U.S.C. § 1153 (1958); 70 Stat. 792 (1956), 18 U.S.C. § 1163 (1958).

a tribal criminal law on the reservation unless such punishment is prohibited by the federal government.[41] Consequently, the federal regulations specify, and most Indian criminal codes do too, that the powers apply to Indians only. The Bureau Solicitor therefore ruled that a tribe could not even control the conduct of a visiting non-ward Indian, much less non-Indians.[42]

In the early days of our history when the Indians were not considered as civilized as they are today, the white community would have been shocked if Indians attempted to regulate their actions.[43] As a matter of fact, jurisdiction of the Indian court was thought of as primarily personal over Indians only, and Indian judges who rendered judgments against white men were censured for so doing. It has also been the policy of the Bureau of Indian Affairs that Indian courts should not take criminal jurisdiction over non-Indians unless the latter consent thereto. Thus a non-Indian might escape punishment for violation of a tribal Indian law unless the crime also happened to come under the Assimilative Crimes Act hereinafter referred to.[44]

From what has gone above, it must be quite clear that an Indian tribe does not exercise exclusive jurisdiction either over the land or the persons within a reservation and that the state and federal governments also exercise certain jurisdiction. Later on, we shall discuss more in detail the considerations on which the jurisdiction exercised by each may depend. At this juncture, we merely point out that it is possible for an Indian to be punished for a criminal act committed on a reservation by the federal, state and tribal authorities if each has made the specific act a crime. The plea of double jeopardy can not be successfully invoked,[45] because as the Supreme Court said with reference to the state and federal governments:

> We have here two sovereignties deriving power from different sources, capable of dealing with the same subject-matter within the same territory. . . . Each government, in determining what shall be an offense against its peace and dignity, is exercising its own sovereignty, not that of the other.[46]

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[41] *In re* Mayfield, 141 U.S. 107, 116 (1891); Goodson v. United States, *supra* note 40 at 425; COHEN, HANDBOOK OF FEDERAL INDIAN LAW 146 (1942).

[42] Sol. Op. M-60616; Solicitor's Memorandum to Assistant Secretary of the Interior concerning Rocky Boy Reservation (February 2, 1939), filed chronologically with unpublished Solicitor's Opinions, Office of the Solicitor, Department of the Interior, Washington, D.C.

[43] *Ex parte* Kenyon, 14 Fed. Cas. 353, 355 (No. 7720) (W.D. Ark. 1878). *Cf.* Cornells v. Shannon, 63 Fed. 305, 306 (8th Cir. 1894); Mehlin v. Ice, 56 Fed. 12, 19 (8th Cir. 1893); *Ex parte* Morgan, 20 Fed. 298, 308 (D.C. W.D. Ark. 1883).

[44] 62 Stat. 686 (1948), 18 U.S.C. § 13 (1958); Sol. Op. M-60616.

[45] Abbate v. United States, 359 U.S. 187, 191 (1959); Bartkus v. Illinois, 359 U.S. 121, 129 (1959); Sol. Op. M-60616.

[46] United States v. Lanza, 260 U.S. 377, 382 (1922).

However, we must immediately note here that although a tribal court judgment of dismissal would not necessarily bar federal or state prosecution for an offense, yet by virtue of a federal statute, except for the eleven specifically enumerated major federal crimes, an Indian could not be tried in a federal court for an offense against another Indian in Indian country if he had already been punished under local tribal law, or if jurisdiction over the offense was by treaty secured to the tribe.[47]

Now that we have some understanding of the status of a tribe, the nature and extent of a reservation and realize that federal, state and Indian governmental authorities all have some jurisdiction over the land thereof as well as over persons living thereon, we shall proceed to examine in more detail the holdings of the courts in both civil and criminal cases and endeavor to note the limitations on the jurisdiction of each and when and how the authority of each may be enforced. This may involve some slight repetition of what has gone before but we hope that the ensuing attempt at clarification of this complex subject may make this procedure worthwhile.

I. CIVIL LAW

In matters affecting Indians living within the reservation, when the state has *not* assumed civil jurisdiction pursuant to federal statute,[48] state laws apply only to those Indians holding allotted lands under patents in fee[49] unless the allotments were received through inheritance or devise or any part of the original allotment is retained.[50] State laws do not apply to Indians living on tribal land or on lands within the reservation allotted to them but held in trust for them by the United States.[51] However, when the state has duly assumed jurisdiction pursuant to federal statute, its laws as well as tribal laws apply to Indians on the reservation. In case of any conflict between the two, state law will prevail.[52] Nevertheless, there may be some question whether a state has duly assumed jurisdiction. The mere passage of a state statute asserting civil or criminal jurisdiction may not of itself be sufficient if a constitutional amendment is required to effect the desired result, and if this depends on the vote of the electorate rather than upon the actions of

[47] *Ex parte* Crow Dog, 109 U.S. 556 (1883); United States v. LaPlant, 156 F. Supp. 660, 664 (D. Mont. 1957); Iron Crow v. Ogallala Sioux Tribe, 129 F. Supp. 15, 20 (W.D. S.D. 1955); 62 Stat. 757 (1948), 18 U.S.C. § 1152 (1958); 17 OPS. ATT'Y GEN. 566 (1883). See also Seymour v. Schneckloth, 55 Wash. 2d 109, 346 P.2d 669, 670 (1959).

[48] 67 Stat. 589 (1953), 28 U.S.C. § 1360 (1958).

[49] 24 Stat. 390 (1887), as amended, 34 Stat. 182 (1906), 25 U.S.C.A. § 349 (1958).

[50] 61 Interior Dec. 299 (1954).

[51] Whyte v. District Court, 140 Colo. 334, 346 P.2d 1012 (1959); 58 Interior Dec. 455 (1943).

[52] 67 Stat. 589 (1953), 28 U.S.C. § 1360 (1958).

the state legislature.[53]

When Indians engage in civil transactions while without the reservation, the state law applies to them just as to any other resident of the state whether or not the state has through legislation specifically assumed jurisdiction over the Indians.[54]

II. Criminal Law

A. *On the Reservation* for acts committed by Indians

(1) *When the state has not assumed criminal jurisdiction* pursuant to 18 U.S.C. § 1162 (1958)

(a) *As to the eleven major crimes, defined as such by federal law,* only federal law applies as only federal courts have the authority to mete out punishment for them.[55] Congress has also made applicable to Indians residing in Indian territory the general laws of the United States such as counterfeiting, smuggling and offenses relative to the mails, and violations of special laws for the protection of Indians such as timber depredations, starting fires on Indian lands and liquor laws.[56]

(b) *As to crimes defined as such by state law not punishable by federal statute,* pursuant to the Assimilative Crimes Act, state laws are made effective within Indian reservations but the crimes are offenses only against the United States and again federal courts alone can mete out punishment.[57] This Act supplements but does not modify or repeal existing provisions of the United States Code and a conflicting state definition cannot enlarge the scope of an offense defined by

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[53] State v. Lohnes, 69 N.W.2d 508 (N.D. 1955); *In re* High Pine, 78 S.D. 121, 99 N.W. 2d 38 (1959). *Cf.* State v. Paul, 53 Wash. 2d 789, 337 P.2d 33 (1959).

[54] Bem-Way-Bin-Ness v. Eshelby, 87 Minn. 108, 91 N.W. 291, 293 (1902); 57 Interior Dec. 124, 126 (1940).

[55] See *op. cit. supra* note 25.

[56] Bailey v. United States, 47 F.2d 702, 704 (9th Cir. 1931). See, *e.g.*, 62 Stat. 703 (1948), 18 U.S.C. § 438 (1958) (Indian contracts for services); 70 Stat. 792 (1956), 18 U.S.C. § 1163 (1958) (embezzlement and theft from tribal organization); 62 Stat. 787 (1948), 18 U.S.C. § 1853 (1958) (trees cut or injured on Indian land); 62 Stat. 788 (1948), 18 U.S.C. § 1855 (1958) (timber set afire on Indian land); 62 Stat. 788 (1948), 18 U.S.C. § 1856 (1958) (fires left unattended and unextinguished on Indian land); Rev. Stat. § 2116 (1875), 25 U.S.C.A. § 177 (1958) (purchases or grants of lands from Indians); Rev. Stat. § 2117 (1875), 25 U.S.C.A. § 179 (1958) (driving stock to feed on Indian lands); Rev. Stat. § 2118 (1875), 25 U.S.C.A. § 180 (1958) (settling on or surveying Indian lands); 36 Stat. 857 (1910), 25 U.S.C.A. § 202 (1958) (inducing conveyances by Indians of trust interests in lands); Rev. Stat. § 2141 (1875), 25 U.S.C.A. § 251 (1958) (setting up distillery); Rev. Stat. § 2133 (1875), 25 U.S.C.A. § 264 (1958) (trading without license).

[57] United States v. Press Publishing Co., 219 U.S. 1, 9 (1910); United States v. Sosseur, 87 F. Supp. 225, 229 (W.D. Wis. 1949); 62 Stat. 686 (1948), 18 U.S.C. § 13 (1958).

Congress.[58]

25 U.S.C.A. § 349 (1963) attempted to assimilate a patent in fee Indian to the status of a non-Indian but perhaps did not fully achieve this objective because when a crime was committed by an Indian to whom a patent in fee had been issued, whether committed on patent in fee land or not, the Indian could be tried in a state court — for he was subject to state law — but he was still a tribal Indian and state officers probably would not arrest him on the reservation although they could when he was off the reservation. However, he could not even then be tried if he held his allotment through inheritance or devise or as long as any part of his original allotment was still held in trust for him by the United States.[59]

(c) *As to crimes defined as such by Indian law,* these appear to be mainly minor crimes because the federal courts have jurisdiction over most major ones.[60] When they are committed by a tribal Indian, whether against another tribal member, a visiting Indian of another tribe or a non-Indian, the tribal courts have jurisdiction because state criminal laws, without federal authorization therefor, do not apply to Indians on a reservation.[61] If the crime was one which was also defined as such by state law, jurisdiction over a patent in fee Indian would be concurrent with that of the state government as above indicated.

When crimes are committed on federal or state highways running through a reservation they are considered as having been committed within the reservation when the title underlying the highway is in the tribe as then the highway, insofar as the actions of Indians are concerned, is not considered within the political control of the state. In such cases, the state has no jurisdiction of crimes committed by Indians thereon when it has not assumed jurisdiction under the federal statute.[62]

When the underlying title is no longer in the tribe (and there seem to be very few cases such as this, if any) but in the state or federal government, it would still seem that the state has no jurisdiction over crimes committed by Indians on highways within the exterior boundaries of a reservation although for traffic violations, in the exercise of its police power, the state might perhaps make arrests as

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[58] Williams v. United States, 327 U.S. 711, 717 (1946).

[59] Application of Denetclaw, 83 Ariz. 299, 320 P.2d 697 (1958); State *ex rel.* Bokas v. District Court, 138 Mont. 37, 270 P.2d 396, 399 (1954); 61 Interior Dec. 299, 302 (1954); 58 Interior Dec. 455, 460 (1943); Sol. Op. M-60616.

[60] Petition of McCord, 151 F. Supp. 132, 134 (D. Alaska 1957).

[61] Nofire v. United States, 164 U.S. 657, 658 (1897); 58 Interior Dec. 455, 460 (1943).

[62] *In re* Fredenberg, 65 F. Supp. 4, 6 (E.D. Wis. 1946); *Ex parte* Konaha, 43 F. Supp. 747, 748 (E.D. Wis. 1942); Application of Denetclaw, 83 Ariz. 299, 320 P.2d 697 (1958); State v. Begay, 63 N.M. 409, 320 P.2d 1017, 1019 (1958).

this would not seem to interfere in any way with tribal self-government.[63]

(2) *When the state has duly assumed criminal jurisdiction* pursuant to 18 U.S.C. § 1162 (1958), it has jurisdiction over all violations of its laws by Indians or non-Indians within a reservation, even over the eleven major crimes to the exclusion of federal jurisdiction.[64] Jurisdiction over other than the eleven major crimes would be concurrent with that of the tribe if the tribe's criminal laws were similar, but pursuant to departmental regulations, the tribe would defer if the state court took jurisdiction.[65]

When treaties with Indian tribes have secured to them certain rights such as hunting, fishing and trapping, the state laws cannot override a tribe's treaty rights. State game laws have been held not to apply within the area of the Indian reservation, regardless of state conservation requirements,[66] and this has been extended by some courts to Indian fishing or hunting in "usual and accustomed places" outside the reservation as provided by treaty. However, this issue has not been definitely decided. In fact, in an important Washington case,[67] one judge wrote in a concurring opinion: "Judicial recognition of the fundamental purpose of the treaty (*i.e.*, the preservation of Indian fishing rights) and judicial recognition of the facts of life relative to conservation and rehabilitation of fish are not inconsistent." In an addenda to the same case, Chief Justice Hill wrote, however:

> Three judges have signed Judge Donworth's opinion and three Judge Rossellini's and there is no majority opinion. It therefore follows that the cases which Judge Donworth's opinion states are overruled are not in fact overruled and nothing is decided except that the order dismissing the charges against the defendant is affirmed.

In the recent United States Supreme Court cases involving Indian fishing rights in Alaska and that state's anti-fish-trap conservation laws, the Court held that where there was a reservation, the regulation of fishing, by statute, was a matter for determination by the Secretary of the Interior,[68] but approved the subjection to state regulation of Indian off-reservation fishing rights even where reserved by federal treaty when state regulation did not impinge on treaty-protected reservation self-

[63] Kake Village v. Egan, 369 U.S. 60, 75 (1962); *Ex parte* Konaha, *supra* note 62 at 748. *Contra*, Application of Denetclaw, *supra* note 62 at 701.

[64] 67 Stat. 588 (1953), 18 U.S.C. § 1162(a) (1958).

[65] 25 C.F.R. § 11.2(b) (1958).

[66] Klamath & Modoc Tribes v. Maison, 139 F. Supp. 634, 637 (D. Ore. 1956); 58 Interior Dec. 455 (1943); 57 Interior Dec. 295 (1941). See also State v. Pearson, Memorandum Opinion No. 61-792C, Oregon District Court, Klamath County, Nov. 30, 1961.

[67] State v. Satiacum, 50 Wash. 2d 513, 314 P.2d 400, 414 (1957).

[68] Metlakatla Indian Community v. Egan, 369 U.S. 45, 59 (1962).

government.[69]

B. *Off the reservation,* the federal government still retains jurisdiction over an Indian who commits an offense against its laws where it has not surrendered jurisdiction to the states.[70] The state also, whether or not it has duly assumed jurisdiction over Indians pursuant to federal statute, has jurisdiction over anyone, Indian or non-Indian, who commits a crime off the reservation but within the boundaries of the state.[71] When he returns to the reservation, the tribe as well could legitimately claim the right to punish an Indian still living in tribal relations for a crime against its laws committed anywhere off the reservation,[72] although it could not make an arrest outside the reservation. However, the present federal law and order regulations restrict the jurisdiction of the Courts of Indian Offenses to offenses by Indians within a reservation.[73]

We must now further consider what courts have jurisdiction to try cases involving Indians or non-Indians for acts arising on or off the reservation. There has been much misunderstanding of this subject because of the failure to realize that jurisdiction over the person, the place and the acts performed must all concur to give any court of limited jurisdiction the right to try a case. Confusion has arisen mainly because too much emphasis seems to have been placed on the subject matter of a controversy and too little on the necessity of acquiring jurisdiction over the person.

It would appear logical that state court process may be served on a non-Indian anywhere in the state, even on an Indian reservation, but may not be served on an Indian within an Indian reservation when the state has not assumed full jurisdiction pursuant to federal statute. State court process may be served anywhere within the state outside of a reservation upon an Indian or non-Indian. Within a reservation, the tribal court may have some jurisdiction over non-Indians but its process cannot be served on anyone outside the reservation .

In 1878, before the admission of Idaho as a state, a sheriff attempted to serve a summons on a *white* man on the Shoshone Indian reservation. In holding such service invalid, the United States Supreme Court said:

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[69] Kake Village v. Egan, 369 U.S. 60, 75 (1962); Tulee v. Washington, 315 U.S. 681, 684 (1942).

[70] United States v. Barnhart, 22 Fed. 285, 289 (C.C.D. Ore. 1884); 62 Stat. 758 (1948), 18 U.S.C. § 1154 (1958) (liquor law).

[71] Tooisgah v. United States, 186 F.2d 93, 99 (10th Cir. 1950); Pablo v. People, 23 Colo. 134, 46 Pac. 636, 637 (1896); State v. Youpee, 103 Mont. 86, 61 P.2d 832, 835 (1936); State v. Phelps, 93 Mont. 277, 19 P.2d 319, 320 (1933); COHEN, HANDBOOK OF FEDERAL INDIAN LAW 146 (1942).

[72] United States v. Earl, 17 Fed. 75, 78 (C.C.D. Ore. 1883); Sol. Op. M-60616.

[73] 25 C.F.R. § 11.2 (1958); Sol. Op. M-60616.

> The *territory reserved,* therefore, was as much beyond the jurisdiction . . . of the Government of Idaho, as if it had been set apart within the limits of another country or of a foreign State. Its lines marked the bounds of that government. The process of one of its courts, consequently, served beyond those lines, could not impose upon the defendant any obligation of obedience. . . . Had the defendant been found in Idaho outside the limits of the Indian reservation, he might during that period have been served with process.
> *There can be no jurisdiction in a court of a Territory to render a personal judgment against anyone upon service made outside its limits.* Personal service within its limits, or the voluntary appearance of the defendant, is essential . . . .[74] (Emphasis added.)

Two years later the Court found that it had been laboring under a misapprehension that the treaty with the Shoshones had excluded the reservation from territorial or state jurisdiction and said that process might be served there so that the Justice of the Peace would have jurisdiction over suits between white men but said that *"the Indians themselves may be exempt from that jurisdiction."*[75] (Emphasis added.)

The case which seems to have caused the most misunderstanding is the recent one of *Williams v. Lee.*[76] There a non-Indian sued in an Arizona court a Navajo reservation Indian for goods sold the Indian on the reservation. In denying jurisdiction to the state court, it was said:

> Navajo courts of Indian Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants. . . . [T]o allow the exercise of state jurisdiction here would undermine the authority of the tribal courts over Reservation affairs and hence would infringe on the right of the Indians to govern themselves. It is immaterial that respondent is not an Indian. He was on the Reservation and the transaction with an Indian took place there.

However, unfortunately, the court did not emphasize the fact that the defendant Indian was served with state court process *within* the reservation. In my opinion this was the determining factor, since both the state and Indian courts might have had jurisdiction over the subject matter of the controversy — a simple case of goods sold and delivered. Since the tribal court could have exercised jurisdiction if its process had duly issued before that of the state court, it is a little difficult to understand why suit instituted in a state court constitutes an infringement on

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[74] Harkness v. Hyde, 98 U.S. 476, 478 (1878).

[75] Langford v. Monteith, 102 U.S. 145, 147 (1880).

[76] 358 U.S. 217, 222-23 (1959); see also Davis, *Criminal Jurisdiction Over Indian Country in Arizona,* 1 ARIZ. L. REV. 62, 78 (1959).

the authority of Indians to govern themselves. No one would suggest that if a New Jersey citizen was duly served with the process of a New York court regarding a transaction which had occurred in New Jersey that this undermined the right of New Jersey citizens to govern themselves.

In 1930, a suit was instituted in a state court by Indians against Indians to establish an interest in an Indian allotment. In sustaining jurisdiction, the case not only established that Indians could sue and be sued in state courts but, seemingly *contra* to *Williams v. Lee,* also decided that the court could pass on matters over which a tribal court might also have had jurisdiction. The court held:

> The Oklahoma court had jurisdiction of the parties and of the subject matter, and having jurisdiction, its decree . . . is valid and binding. . . . A full blood Creek Indian *submitted* herself and her cause to the jurisdiction of that court, [and] she became bound by the decree. . . .[77] (Emphasis added.)

In 1949, the Solicitor also ruled:

> [P]ersons selling to or buying from Indians on Indian reservations are not subject to State laws which regulate or tax such transactions. However, it should be emphasized that it is trade with the Indians which is removed from State interference and *not the trader himself,* if the trader is a white person and is dealing with other white persons, even though such transactions occur on a reservation.[78] (Emphasis added.)

Later in 1955 in a case where the state had assumed full civil jurisdiction, the New York court said:

> [T]he County Court of Cattaraugus County has jurisdiction to adjudicate in a civil action claims involving Indian Reservation lands within the county, and between tribal Indians of the Seneca Nation, regardless of when the transactions upon which the claim is based transpired.[79]

And again in 1957 reservation Indians sued each other in a North Dakota court for damages arising from an automobile accident on a state highway within the Standing Rock Reservation and the court declared:

> We do not believe that the Enabling Act . . . reserved to the United States jurisdiction in civil actions between Indians on Indian reservations within the State not involving Indian lands. . . . 'Indians may sue or be sued in state courts. . . . In bringing

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[77] Mars v. McDougal, 40 F.2d 247, 249 (10th Cir. 1930). See also Your Food Stores v. Village of Espanol, 68 N.M. 327, 361 P.2d 950 (1961).

[78] 57 Interior Dec. 124, 125 (1940).

[79] Mohawk v. Longfinger, 1 Misc. 2d 509, 149 N.Y.S.2d 36, 38 (1955).

> a suit in a state court, an Indian is subject to the same laws relating to the prosecution of suits which govern any citizen of the state. . . .' [27 AM. JUR. INDIANS § 21 (1940)][80]

No question was raised in these cases as in *Williams v. Lee* about undermining the authority of the tribal court over reservation affairs.

There never has been much question but that an Indian could sue a non-Indian in a state court.[81] As to the jurisdiction of tribal courts over non-Indians, we have seen that before the turn of the century, the tendency was to deny jurisdiction over non-Indians in criminal cases and to some extent in civil cases although when the non-Indian entered a general appearance in the case, pleaded to the merits and went to trial, the judgment of the court was valid as he had submitted to the court's jurisdiction.[82] Now we have *Williams v. Lee* enunciating the doctrine that Indian courts exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants but it does not say anything about jurisdiction when a non-Indian is defendant. However, a federal court did say:

> Congress left to the Indian Tribal Courts jurisdiction over all crimes not taken by the federal government itself. . . . [N]ot only do the Indian Tribal Courts have inherent jurisdiction over all matters not taken over by the federal government, but . . . federal legislative action and rules promulgated thereunder support the authority of the Tribal Courts.[83]

It should thus be evident that federal, state and tribal courts may all have jurisdiction over the same subject matter. The government apparently adopts this attitude because its regulations provide that the Court of Indian Offenses may have concurrent jurisdiction in certain cases with state and federal courts.[84] However, jurisdiction over the person might not be obtained if process is served in an area over which there is no political sovereignty over the person receiving the process. Thus while a state court might duly serve process on a non-Indian within an Indian reservation, it could not serve it there on an Indian unless the state had assumed full jurisdiction over the reservation pursuant to federal statute.

We have considered in some detail what laws apply to Indians and in what courts they may sue or be sued. Therefore, we must now

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[80] Vermillion v. Spotted Elk, 85 N.W.2d 432, 436 (N.D. 1957).

[81] United States v. Candelaria, 271 U.S. 432, 443 (1926); Felix v. Patrick, 145 U.S. 317, 332 (1892); Harrison v. Laveen, 67 Ariz. 337, 196 P.2d 456 (1948).

[82] Cornells v. Shannon, 63 Fed. 305, 306 (8th Cir. 1894); Mehlin v. Ice, 56 Fed. 12, 20 (8th Cir. 1893).

[83] Iron Crow v. Oglala Sioux Tribe, 231 F.2d 89, 98 (8th Cir. 1956).

[84] 25 C.F.R. § 11.2(b) (1958).

consider whether federal and state courts may enforce their decrees within the Indian reservation. Since the federal government has plenary powers with respect to Indians and Indian tribes, there has never been any question but that the executive arm of the federal government can enforce federal court decrees and that federal officers may enter reservations in order to perform their official duties.[85]

With reference to state courts, just as there has been questioned the right of the state to serve process on an Indian within the reservation, so the right of the state to enforce court judgments and decrees against an Indian on a reservation has been doubted, even though the Indian has been duly served with process and entered an appearance in the case.

A Washington state court held that a crop mortgage made by a Yakima Indian on his trust allotted land was a valid lien but "whether the mortgagees can enter upon severance or enter to foreclose is a question we cannot answer upon the record before us. It may be that the government in aid of its avowed policy to protect the Indian from the 'greed and avarice' of the white man could prevent an entry by departmental order."[86] On the other hand, a federal court held such a mortgage null and void, saying:

> If the lien is valid, it carries with it all the incidents of a valid lien, including . . . the right to send an officer upon the allotment armed with process to seize and sell the crops without the consent and even over the protest of the government and its agents. That this cannot be done does not, in my opinion, admit of question.[87]

As a matter of fact, a tax sale of Indian tribal land would seem to be a "sale," even though involuntary, and would be invalid under the provisions of 25 U.S.C.A. § 177 (1963), which provides that "no purchase, grant, lease, or other conveyance of lands . . . from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution." Actually if a state were allowed to sell tribal land for non-payment of taxes without federal authority so to do, it would theoretically at least have the power, in this manner, practically to terminate a reservation.

The issue seems to have been decided more clearly in North Dakota where the court allowed Indians to sue in a state court in a tort case,

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[85] United States v. McGowan, 302 U.S. 535, 539 (1938); United States v. Kagama, 118 U.S. 375, 384 (1886); Mackey v. Coxe, 59 U.S. 100, 103 (1855).

[86] Rider v. LaClair, 77 Wash. 488, 138 Pac. 3, 5 (1914).

[87] United States v. First Nat'l Bank, 282 Fed. 330, 332 (E.D. Wash. 1922).

saying: "[T]he fact that their lands are not liable to levy and sale under a judgment is not grounds for refusing a judgment against them."[88] A seemingly *contra* case allowed Oklahoma to enforce collection of a delinquent state ad valorem tax against restricted Indian land but in that case Congress had passed a law allowing the state to tax the Indian land and this was construed to include the power to collect the tax.[89]

Similarly, pursuant to 25 U.S.C.A. § 483a (1963), individual owners of lands restricted against alienation or held in trust for them by the United States are authorized, subject to Secretarial approval, to execute mortgages or deeds of trust thereto. The land is expressly made subject to foreclosure and sale in accordance with the laws of the state where the land is located. Since, for this purpose, the statute provides that the Indian owner is considered as vested with fee simple title, that the United States is *not* a necessary party to any such proceeding and that any conveyance thereunder would divest the United States of title to the land, this statute may perhaps be interpreted as authorizing state foreclosure and sale within the reservation in such cases. Such state action, however, would be pursuant to federal statutory authority and would not invalidate the general principle that ordinarily judgments obtained in a state court may not be enforced on an Indian reservation without tribal consent thereto.

It was decided very early in our history that without permission of tribal officials or federal statutory authority, state officials may not ordinarily enter upon Indian reservations to enforce state law.[90] Consequently, it might be said that judgments against Indians in state courts would be meaningless unless the state has power to enforce them. But is this any different than the inability of a Nevada court to enforce its decree through Nevada officials in California? The state does have power to enforce its decrees against Indians within the state outside of the Indian reservation. Yet a state's power within territory concededly under its jurisdiction is not absolute, as it has been held that a state could not enforce within the state a tax lien against property owned by the United States, and tax sales thereof would be void. The lien would be valid but the immunity of the United States would protect it against enforcement.[91]

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[88] Vermillion v. Spotted Elk, 85 N.W.2d 432, 436 (N.D. 1957). See also Mullen v. Simmons, 234 U.S. 192, 199 (1914); 24 Stat. 388 (1887), as amended, 34 Stat. 327 (1906), 25 U.S.C. § 354 (1963).

[89] United States v. Hester, 137 F.2d 145, 147 (10th Cir. 1943).

[90] Worcester v. Georgia, 31 U.S. (6 Pet.) 350 (1832). For an exception when the state is exercising its police power but is not interfering with the tribal government, see Kake Village v. Egan, 369 U.S. 60, 75 (1962); Tulee v. Washington, 315 U.S. 681, 684 (1942). See also 70 Stat. 62 (1956), 25 U.S.C. § 483a (1963).

[91] United States v. Alabama, 313 U.S. 274, 281 (1941).

25 U.S.C.A. § 231 (1963) allows the Secretary of the Interior to permit state agents and employees to enter upon tribal lands, reservations or allotments therein to inspect health and educational conditions and to enforce sanitation and quarantine regulations and penalties of state compulsory school attendance against Indian children and their parents. Even this is not permitted where a tribe has a duly constituted governing body unless it consents thereto.[92] This statute thus seems to be a clear indication of Congressional intent that other types of state officials are prohibited from entering upon Indian reservations to enforce state laws without tribal consent or federal statutory authority so to do. Further proof of this may be found in the Code of Federal Regulations which provides for the surrender of Indian criminals to federal or state authorities but does not grant such authorities permission to make arrests within the reservation.[93]

If a state court without federal authorization may not enforce its decrees within an Indian reservation, nor an Indian court its decrees outside the reservation, can suit be brought in one court based on a judgment of the other? What effect will be given to the decrees of each in the other's courts? It is too well established to admit of any argument that the decrees of federal and state courts properly rendered are duly recognized in each other's courts. They are recognized in Indian courts too. The only real problem is the recognition of the judgments of an Indian court since its procedures and standards are Indian and often quite different than those of state and federal courts. As yet no hard and fast rule appears to have been adopted. An Indian court decree is not entitled to recognition on the basis of the "full faith and credit" provision of Section 1 of Article IV of the United States Constitution as that applies only to "States"[94] and even if a tribe has been denominated "more than a State"[95] it has not been deemed a state for this purpose. Neither is an Indian court a constitutional court within the purview of Section 1 of Article III of the United States Constitution. The Court of Indian Offenses is not such a federal court even though it was established pursuant to federal regulations.[96] It is a tribal court only and has been called a mere educational and disciplinary instrumentality.[97] Nevertheless, Secretarial regulations pro-

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[92] 45 Stat. 1185 (1929), as amended, 60 Stat. 962 (1946).

[93] 25 C.F.R. § 11.2(b) (1958). See State v. Bush, 195 Minn. 413, 263 N.W. 300, 304 (1935).

[94] Begay v. Miller, 70 Ariz. 380, 222 P.2d 624, 628 (1950).

[95] Native American Church v. Navajo Tribal Council, 272 F.2d 131, 134 (10th Cir. 1959). *Cf. Ex parte* Morgan, 20 Fed. 298, 305 (D.C.W.D. Ark. 1883).

[96] 25 C.F.R. § 11.1 (1958). See United States v. Clapox, 35 Fed. 575, 577 (D. Ore. 1888); Application of Denetclaw, 83 Ariz. 299, 320 P.2d 697, 701 (1958).

[97] *Ibid.*

vide for it to have concurrent jurisdiction with state and federal courts[98] and it has been held that tribal court decrees were entitled to the same faith and credit as United States territorial courts.[99] Divorce decrees of Indian courts have several times been duly recognized by state courts on the basis of a sort of comity.[100]

If the states assume more and more jurisdiction over Indian affairs, as seems likely, the Indian courts seem destined to lose jurisdiction correspondingly except over purely tribal affairs. Consequently, recognition of their judgments or decrees does not loom as a subject of too vital importance. There have been few decisions in this field but since we recognize the validity of tribal laws,[101] it would seem logical and practical that we recognize the validity of Indian court judgments and decrees based thereon, at least insofar as Indian personal and domestic relations are concerned.[102]

Just as Theseus held onto the silken thread to come safely through the labyrinth, so must we hold onto the idea enunciated over eighty years ago of the concurrence of jurisdiction over the person, place and subject matter to come successfully through the maze of jurisdictional problems involving Indians.[103]

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[98] 25 C.F.R. § 11.2(b) (1958).

[99] Cornells v. Shannon, 63 Fed. 305, 306 (8th Cir. 1894); Mehlin v. Ice, 56 Fed. 12, 19 (8th Cir. 1893).

[100] Begay v. Miller, 70 Ariz. 380, 222 P.2d 624, 628 (1950).

[101] 67 Stat. 589 (1953), 28 U.S.C. § 1360 (1958).

[102] Iron Crow v. Ogallala Sioux Tribe, 129 F. Supp. 15, 21 (W.D. S.D. 1955).

[103] *Ex parte* Kenyon, 14 Fed. Cas. 353, 354 (No. 7720) (W.D. Ark. 1878).