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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.[1] 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.[2] 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.[3] 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.[4] 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).[5]

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)].[6] 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)].[7] 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.[8]

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

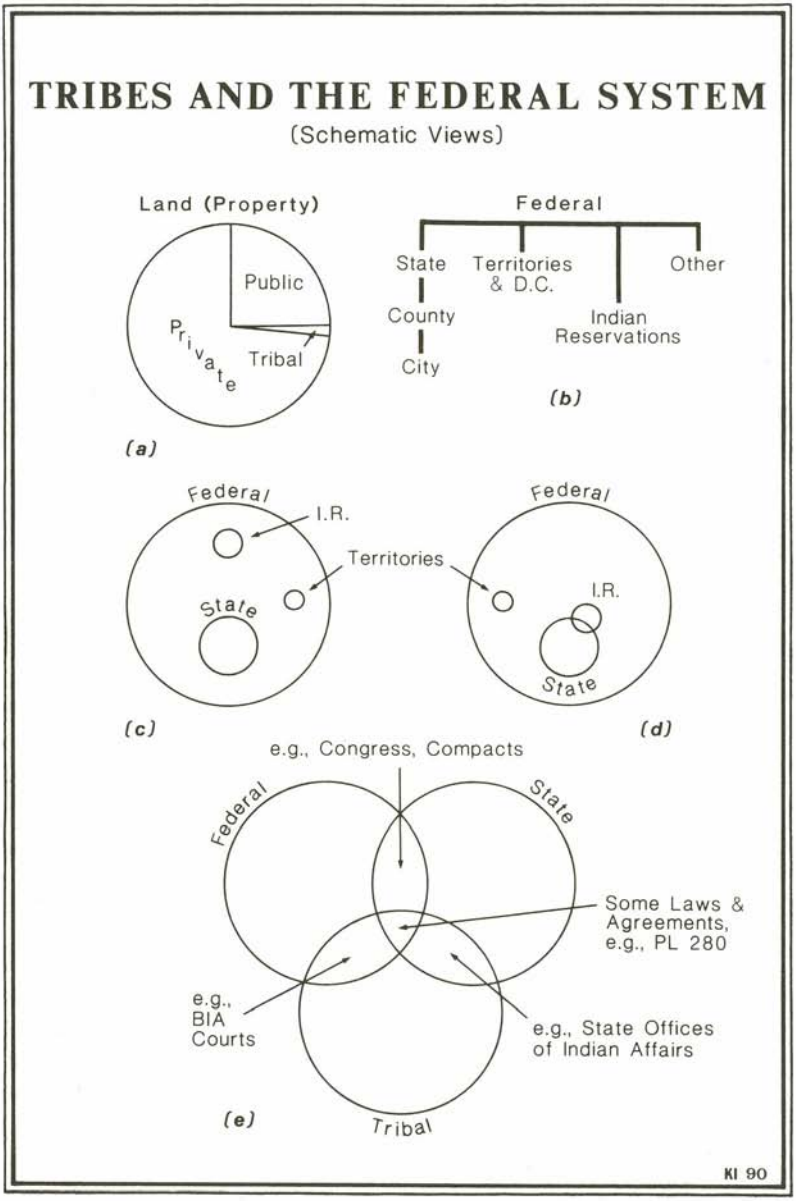

FIGURE 1. Tribes and the Federal System. Because of the special tribal/federal relationship, Indian reservations fall into a legal/political category of their own. (Diagram by Kwan Ihn)

Country than do those states with smaller Indian numbers (e.g., Michigan, Nebraska).[9] 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).[10]

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?"[11] 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 Pommerscheim 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."[12]

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.[13]

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,[14] 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).[15]

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.[16] "Notwithstanding the issuance of any patent" may be an initial source of confusion,

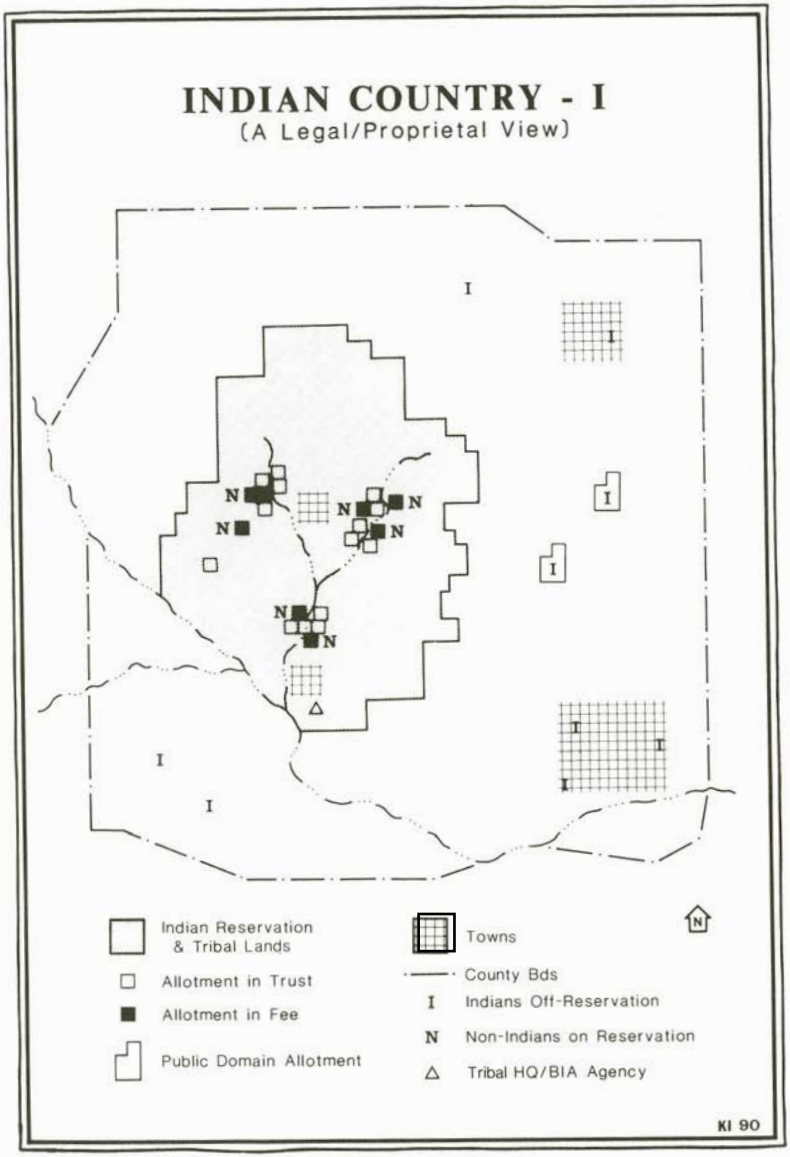

FIGURE 2. Indian Country—I. The legal/proprietal view reveals the typical distribution of reservation lands, including both trust and fee allotments as well as the adjacent non-Indian rural and urban lands of the county/counties that surround the reservation. (Map by Kwan Ihn)

suggesting to some observers that alienated parcels held by non-Indians belong to the political reservation—and, hence, are subject to tribal jurisdiction—and to others that these lands merely lie within the geographic sphere of Indian Country and are not necessarily a legal or political part of the reservation. However, events and issues resulting from the unfortunate collision of the Indian's perception of his autonomous space and the non-Indian's identity with local civil jurisdiction form the bases for redefining Indian Country.

Other definitions of Indian Country allude to the legal complexity of the term and, in part, focus on its historic, not legal, origins:

> *Indian Country* is a romantic phrase that evokes nostalgia for the Old West as depicted in the movies. Indian Country once meant exactly that, the country of Indians, a place where Indians lived and where the trade and intercourse acts controlled. It was a geographical definition with clear-cut jurisdictional overtones. It could be marked on a map with some accuracy. . . . Today, except when used for questions of federal criminal jurisdiction, Indian Country is about as provisional as "Marlboro country," that is, it is an image, or a state of mind, or a sociological phenomenon to many. Indian country is an incredibly complex jurisdictional issue disguised in a colorful phrase.[17]

Other legal scholars put it this way:

> [T]he concept of Indian Country has been elevated by federal law above other ideas because it transcends mere geographical connotations and represents that sphere of influence in which Indian traditions and federal laws passed specifically to deal with the political relationship of the United States to American Indians have primacy. The term originated in the popular designations of the lands beyond the frontier, as the unknown populated by tribes and bands of Indians who rejected contact with "civilized" populations. *That the idea moved from a popular conception to a highly technical legal term is testimony to the ability of the law to incorporate customs within its intellectual framework* (emphasis added).[18]

At various times in the past, tracts of Indian land remained outside the general interpretation of Indian Country. Deloria and Lytle remind us that allotments lying outside reservation borders (i.e., within national forests or on the public domain) did not fall under the general definition until it was necessary to ascertain the legal status of Pueblo Indian lands in 1913. The court argued then that Indian Country should embrace any lands occupied by "distinctly Indian communities" and "recognized and treated by the Government as 'dependent communities' entitled to [federal] protection." Eventually the definition came to embrace any trust lands, which would include those state-recognized entities (e.g., the Eastern Cherokee of North Carolina) and any new lands granted or purchased for the tribes.[19] As such, the definition has broadened not only because of changing legal considerations, but also because of geographical factors that do not easily subordinate to issues of subject matter in law.

I have inferred that statutes and case law over the past decades have much modified the formal definition of Indian Country. Changing legal interpretations of reservations usually set in motion concomitant changes in the meaning of Indian Country. Some legalists note, for example, that in 1948 Congress did "uncouple reservation status from Indian ownership and statutorily define Indian country to include lands held in fee by non-Indians within reservation boundaries." Moreover, Congress "put to rest any argument that Indian lands ceased being federal Indian enclaves when the state . . . was admitted to the Union without a disclaimer of jurisdiction." These disclaimers, either in state constitutions at statehood or in later statutes, have normally precluded state jurisdiction over tribes and reservations.[20] However, case law has considerably opened the door to state and local jurisdictional matters, in part because reservation areas that are predominantly non-Indian in character (e.g., Yakima, Washington and White Earth, Minnesota) otherwise present administrative burdens to local government, just as those areas that are overwhelmingly Indian but include some non-Indian owners and residents have created similar problems for the tribes.[21]

Even if Indian Country continues to be a political entity in flux, its fundamental definition remains unchanged. Its legal measure continues to be based on reservations, allotments both in trust and fee, and the presence of non-Indians within the external bounds of the reservation. Its geographic measure focuses on

bounds that may prove to be boundless and on spatial interaction between tribes and their trust lands and non-Indians, former trust lands, and towns and counties. This definition does not suggest that a tidy delimitation of Indian Country exists beyond that defined in the *U.S. Code*. Logic tells us not to look to the code, nor entirely to law, for a broader geographical explication of Indian Country. As we will see, historical events and environmental issues also play dynamic and, at times, volatile roles in the constant redefinition of Indian Country.

AN ETHNOHISTORICAL VIEW OF INDIAN COUNTRY

Cumulatively, treaties, laws, court decisions, and administrative actions have led to the reconfiguration of tribal territory. Through treaties of land cession, for example, many tribes have retained some original territory anchored in the aboriginal past. Rights derived from treaty recognition of "inherent" sovereignty have included traditional fishing and hunting, access to and exclusive use of sacred sites and places, and other rights related to the utilization of resources now located *outside* the external boundaries of reservations (fig. 3). These rights and the claims to them focus on resources now in the private sector or within federal or other public lands (see fig. 4).[22] For example, in northern California and in the Pacific Northwest, tribal members, within or without trust lands, have pursued traditional fishing based on treaty provisions, only to find themselves in conflict with local or state jurisdictions.[23]

Generally, some resolution of state/tribal conflicts over traditional fishing rights has transpired, but several issues have left all parties in doubt as to the long-term outlook for treaty fishing and hunting rights on lands no longer part of native territory or designated reservations. In many states, the exercise of these traditional rights may be interpreted as contradictory to the objectives of state conservation programs to sustain fish and game or protect aesthetic and scenic resources. While it may not be definitive, the court ruling regarding Quinault hunting of elk in Olympic National Park (Washington) sets the pace for further rejection of treaty rights to hunt or fish on lands formerly part of reservations.[24] In this instance, the tribe sought compensation, because it was argued that such a right was compensable property, but the court did not concur.

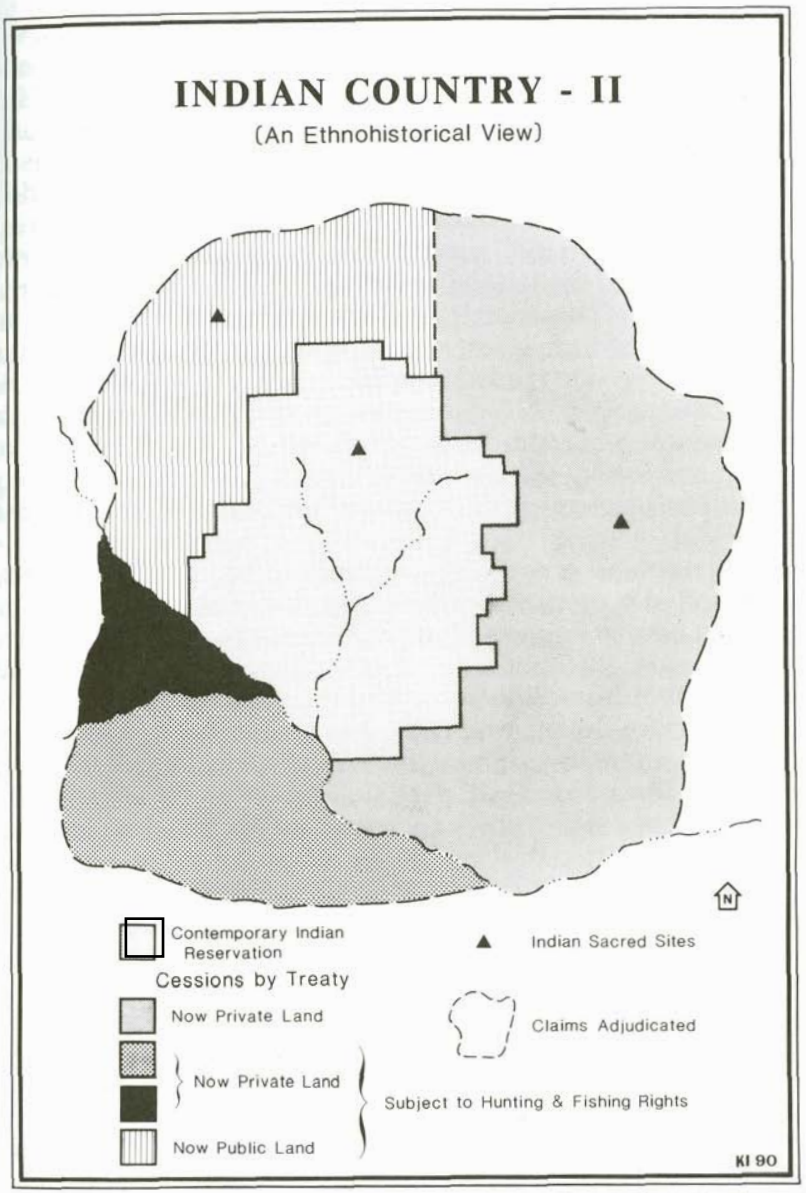

FIGURE 3. Indian Country—II. The ethnohistorical view identifies the "treaty" past, which includes ceded lands still generally subject to traditional fishing and hunting rights, lands recognized as both "original" title and "recognized" title, and sacred sites claimed by tribes. (Map by Kwan Ihn)

Similarly, the United States Supreme Court overturned a decision that had supported the Klamath Indians' claim to hunt and fish on former reservation lands. In this instance, the specifics of the legal history of tribal land led to a contrary conclusion. There had been a dispute over the reservation's boundaries in 1901; an agreement reached thereafter led to the cession of additional land without mention of surviving fishing or hunting rights. The tribe, in fact, was paid for the cession. In 1954, Congress terminated the federal government's trusteeship over the Klamath; the act passed for this purpose did protect hunting and fishing rights on former reservation lands. Ultimately, the Indian Claims Commission made a monetary award to the tribe for the lands ceded in 1901, but did not mention any surviving rights. This case suggests that careful wording to protect traditional hunting and fishing must be written into law, although generally laws and treaties are not construed to be disadvantageous to the tribes.[25]

Treaties of land cession created "recognized title"—in effect, title protected by laws that are yet subject to change by Congress. Such title figures importantly in litigation over the free exercise of traditional rights, but it has also been the foundation of land claims cases.[26] Ironically, successful litigation leading to monetary awards for the plaintiff tribes has meant that acceptance of the money is tantamount to relinquishment of all further claims to the adjudicated lands. In part, this condition explains the rejection of claims awards by some tribes and bands—for example, the Pit River Indians (California), but most notably the Sioux in respect to the Black Hills (South Dakota). The Sioux have won a decisive victory against the United States government over claims to the Black Hills. However, even if Indians reject the monetary award, the courts cannot restore land, and politicians see the Black Hills as a part of irredeemable America.[27] On the other hand, acceptance of claims awards does not necessarily resolve this ethnohistorical problem, for it does not preclude a continuing conflict between Indians and non-Indians in Indian Country. If quieting title by litigation truly brings to an end any claim to property in the past, non-Indians perceive such decisions as final in the sense of lifting a title cloud over lands long owned and occupied by them. But the final—and irrevocable—judgment against the survival of Indian hunting and fishing rights has not yet come about.

What about sacred places? If they no longer are the property of tribes by dint of land cessions and other transactions, how do they figure in the meaning of Indian Country today? When such places lie within the public domain, Congress has provided selectively for exclusive Indian use for religious purposes and even has restored ownership. For example, Congress restored Blue Lake and adjacent lands to the Taos Pueblo of New Mexico, making "whole" a restoration of an aboriginal sacred place then housed in a national forest.[28] Similarly, a federal act in 1984 restored a Zuni sacred site—Kolhu/wala:wa—but did not provide for tribal ownership of land between the reservation and the site, although the latter is on the public domain.[29] On the other hand, neither the Navajo nor the Hopi succeeded in court to obtain either restoration of a part of the San Francisco Peaks (Arizona) (photo 1) as a sacred place, or a guarantee of its preservation against the influential forces of the United States Forest Service, bent on the creation of the Arizona Snow Bowl.[30] The passage of the American Indian Religious Freedom Act has given some tribes the stimulus to seek restoration or at least exclusive use of sacred places, but this and other laws have not always provided the ultimate means to clear up the confusion over such sites within Indian Country.[31]

Ethnohistorical identity with territory cannot be minimized as a contemporary ingredient of confrontations and litigation over land tenure or jurisdiction in Indian Country. For this and other reasons, not always well established in case law or codified, any definition must embrace a larger meaning that sustains the past as part of the present and future of tribal life, despite the lack of clear understanding of how former Indian property figures in the occupation and ownership of Indian Country.

A POLITICAL-GEOGRAPHICAL VIEW OF INDIAN COUNTRY

When Indian reservations constituted *extraterritorial* places, and when Indian Country was simply unceded territory beyond a delimited or demarcated line, no one found it critical to refine these bounds. But with the continual establishment of states carved out of territories as the nation moved westward, extraterritoriality eventually came to an end, and reservations came to

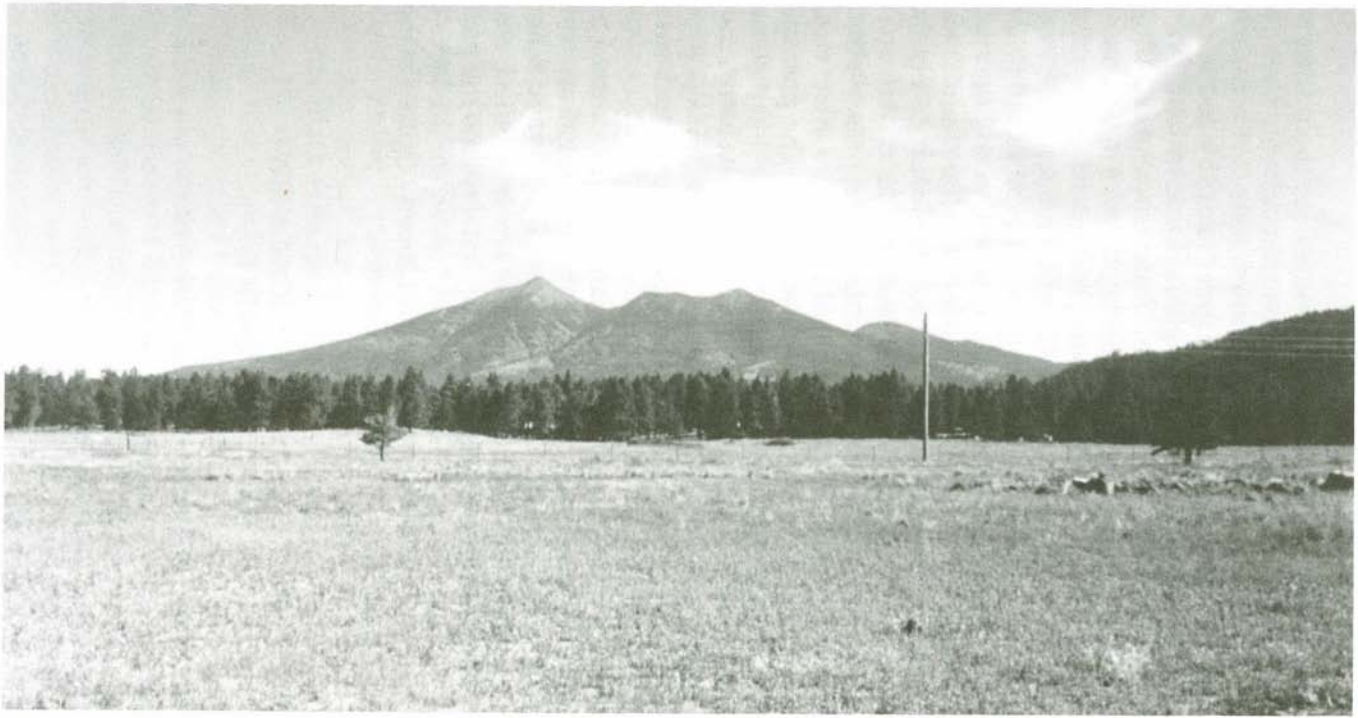

PHOTO 1. The San Francisco Peaks (12,633 ft; 3,852 m), north of Flagstaff, Arizona. These mountains are perceived as sacred by the Hopi, Navajo, Havasupai, and various groups of Southern Utes. Litigation brought by the Hopi and Navajo against the United States Forest Service failed to establish Indian exclusive use of mountain areas for religious purposes. (Photo by author, August 1981)

lie within the borders of states and counties. Had a federal policy of sustaining the extraterritorial status of reservations persisted, counties would not likely have included them. But many reservations ultimately became fragments of larger tribal territory, and Congress would no longer treat tribes as nations or as the equivalent of states.[32]

Moreover, had the administration of Indian affairs not shifted to the policy of land allotment, today we would not encounter such a legal-geographical conundrum. For one thing, once the federal government opened numerous reservations to land sales and homesteading by non-Indians, new questions arose regarding which government—tribal or local—had jurisdiction over non-Indian lands and their owners or residents.[33] In fact, legalists emphasize how jurisdiction represents the key issue in any debate over the broader or narrower interpretation of Indian Country. For example, Getches and his associates have identified several factors that must be considered (three are cited herein):

- the *geographic area* encompassed by tribal and federal jurisdiction
- the persons, Indian and non-Indian, over whom state or tribal jurisdiction extends in Indian country
- the subject matter over which state or tribal jurisdiction extends in Indian country[34]

Various cases have helped to sort out the jurisdictional issue, but they do not necessarily clarify the geographic extent of Indian Country in all situations.

In *Oliphant v. Suquamish Indian Tribe,* for example, the court ruled that tribal courts do not have criminal jurisdiction over non-Indians inside their borders.[35] Subsequently, in *Washington v. Confederated Tribes of the Colville Indian Reservation,* the court upheld the retention of tribal power to tax cigarette sales to non-members.[36] Tribes can tax non-Indians who conduct business on reservations. More and more tribes have sustained the authority to plan and zone as well as tax and impose health, safety, and environmental regulations over lands and enterprises, Indian and non-Indian, within reservations. While these legal actions have tended to strengthen tribal powers, the counterforce has been the implied, if not real, intent of federal legislation permitting certain state criminal laws to apply on reservations. Also, P. L. 280 —the law-and-order statute—created a great deal of legal mischief

by authorizing several states to assume criminal and civil jurisdiction over reservations, but left unclear how broad this mandate was to be. Many scholars note that the states and their local governments misconstrued the law; thus they tripped over themselves in an effort, for example, to zone Indian land use.

California and New Mexico are states that repeatedly have forged ahead despite judicial constraints placed on P. L. 280. Because of a unique checkerboard of tribal and municipal lands, the Agua Caliente band of Indians and the city of Palm Springs (California) some years ago almost came to blows over who had authority to zone trust lands. Ultimately, the Bureau of Indian Affairs and the city entered into a mutually acceptable agreement that obliged the latter to consult tribal officials in any future attempt to zone Indian allotments. Here, as in cases in New Mexico (e.g., Tesuque), local authorities have argued that land use developments such as housing and resorts destined for non-Indian ownership or rental should come under their jurisdiction. Not so, say most courts.[37] Courts have also generally rejected local assertions of jurisdiction over gambling on reservations.[38] However, by obliging tribes to collect taxes from non-Indian purchasers, the courts have sought to balance the jurisdictional scale somewhat where tribes have taken advantage of trust protection by not collecting excise taxes on cigarettes or gasoline. This brief recitation of jurisdictional conflicts merely samples a larger arena.

One would hope that litigation, however contrary to the position of the tribes, would once and for all settle many jurisdictional conflicts. Considerable litigation has resulted because both tribes and state/local officials have contested the intent of laws that, while opening up reservations to non-Indian land ownership, have rarely made clear if all or part of the external borders of these reservations have been extinguished. Such laws often have placed Indian landholders outside the bounds of reservations, while leaving many non-Indians inside. For example, in *United States v. Parkinson* (1975),[39] Bennett County, South Dakota became part of the public domain by being severed from the Pine Ridge Indian Reservation. Similarly, in *Rosebud Sioux Tribe v. Kneip* (1977),[40] the United States Supreme Court declared that acts of 1904, 1907, and 1910 disestablished certain parts of the Rosebud Indian Reservation (i.e., Gregory, Mellette, and Tripp counties, South Dakota). One would presume that in these locations—and others subject to similar court interpretation—Indians occupying land in the designated counties reside outside their

reservation and non-Indians living on land within the reservation are subject to tribal jurisdiction. In figure 4, I use a dashed line, to show how the diminishment of reservation boundaries, reinforced by a court decision such as *Rosebud Sioux v. Kneip*, would relocate both Indians and non-Indians outside and inside reservations, respectively. As Pommerscheim suggests, diminishment really directs our question not to who owns the land but to whether the process of acquiring "surplus" lands for non-Indian homesteading did result in reducing the external boundaries of reservations. He concludes that

> the fact of diminishment makes *geography* a pertinent factor in ascertaining tribal court jurisdiction and is a salutary reminder that jurisdictional concerns do not automatically end at a diminished reservation's boundaries (emphasis added).[41]

Questions of jurisdiction over land use planning and zoning, taxation, and management of water rights identify only a few of the issues that such diminishment and legal/political separation have spawned. Again and again, Indian communities assume tribal jurisdiction (fig. 4, TS) over areas diminished by the allotment process; until the courts decide in favor of non-Indian litigants that such areas no longer form part of the political reservation, confrontation will persist between the tribes and the local governments (fig. 4, PP).

On the other hand, local governments have sought to enforce local ordinances over Indian trust lands through the exercise of police powers, especially taxation and zoning, and to abridge or deny suffrage to reservation Indians by dint of the fact that these Indians do not pay taxes to local jurisdictions. While federal preemption (nearly exclusive jurisdiction) prevails so that tribes as well as individual Indians normally remain immune to state and local taxation, non-Indian land use and some forms of development destined for non-Indian consumption may well be subjected to state and local jurisdictions. Less apparent are the implications of the Indians' right to vote in various local elections.

From this confused political milieu, efforts have emerged to frustrate the Indians' participation in local elections, even to the extent of seeking to establish under state law an all-Indian county, as in Arizona, or to create "unorganized" (Indian) counties, as in South Dakota until recently. Indians, of course, became citizens by law in 1924 and do participate in national, state, and

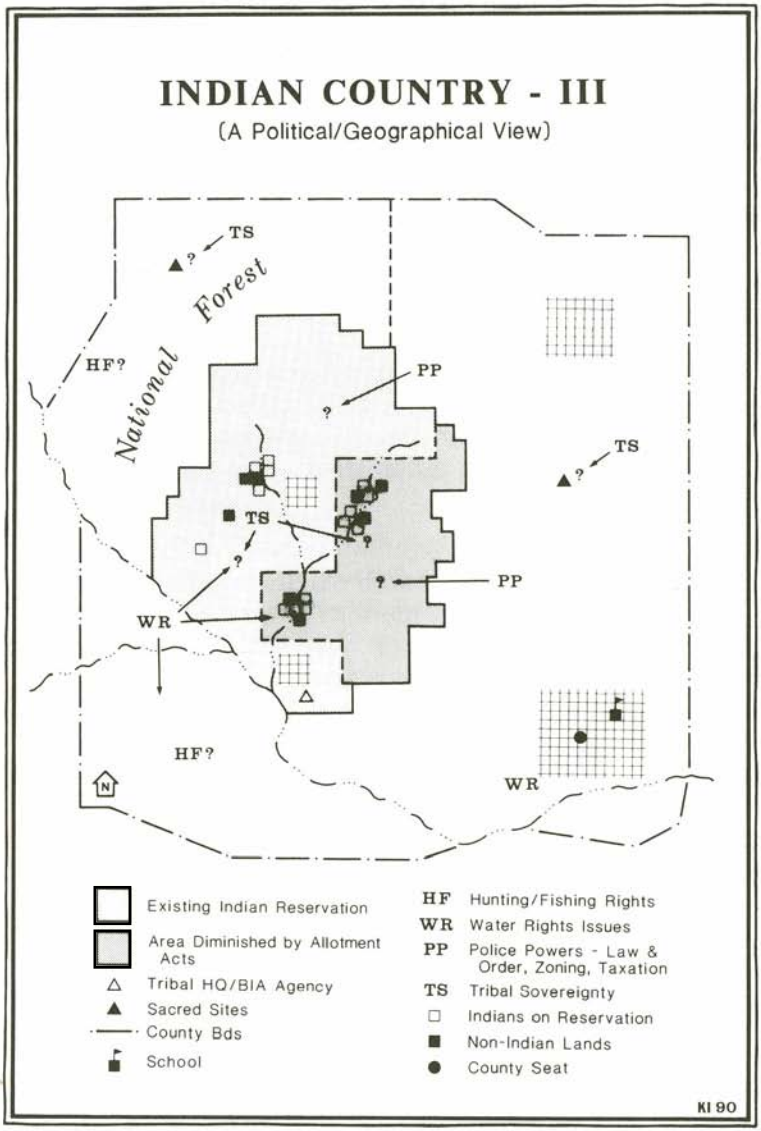

FIGURE 4. Indian Country—III. The political/geographical view expands the legal/proprietal (fig. 2) and the ethnohistorical (fig. 3) by showing areas diminished by land allotment, placing some non-Indian landowners *inside* and some Indian landowners *outside* reservations, and revealing conflicting areas of water rights, police powers, and the like. (Map by Kwan Ihn)

local elections, yet they also continue to remain members of a tribal body politic whether they live on or off the reservation. One suspects that the Indian vote, especially if it were *in bloc*, could upset the political balance in various states and counties that contain reservations. Presumably, Arizona's effort to establish an all-Indian county has had much to do with concern over affecting the outcome of both local and statewide elections. Phelps put it nicely when he spoke of "representation without taxation"[42]—not an idle concern to non-Indians who think in traditional terms about rights and obligations under the Constitution. Moreover, local non-Indian residents and public officials cannot brook the idea that Indians vote in two jurisdictions—tribal and state or local—whereas they do not enjoy such a dual franchise.

If litigation over land claims has subsided somewhat since the era of the Indian Claims Commission (1946–78),[43] litigation over water rights has only just gotten under way. While this is not the place to elaborate on the history of Indian water rights, it is important to note that conflicts over water in Indian Country stem from confusion over the difference between ownership and jurisdiction (i.e., property and polity). Indian land use, especially subsequent to land allotment on western reservations, has depended upon irrigation. Indians and non-Indians all too often share the same watersheds, even the same streams, notably when non-Indians own or lease trust lands as part of agricultural enterprises. Much of this conflict emanates from interpretations of a landmark decision, *Winters v. U.S.* (1908),[44] which established "reserved" water rights for the tribes in order to fulfill the obligations of the allotment policy, that is, to make farmers of Indians. In the past eighty years, a "Winters Doctrine" of reserved water rights has granted the tribes potentially larger water allocations [e.g., in the Colorado River watershed through the decision in *Arizona v. California* (1963)].[45] Controversy has ensued over how to quantify these rights, and states have sought to step in to adjudicate rights among Indian and non-Indian litigants. Westerners generally appreciate the fact that, with increasing population and urbanization, demands for finite water supplies that are now already oversubscribed threaten to bankrupt many communities. Additionally, non-Indian users of water within reservations have expressed concern over the articulation of their water rights vis-à-vis tribal irrigation districts.[46]

Indian/non-Indian interaction in Indian Country includes, of

course, many other factors—some economic, others social—even though political implications continue to prevail. As noted by a well-known anthropologist,[47] some Indian reservations have witnessed the intrusion of control from urban markets, and these interests have subordinated reservation resource utilization to urban-oriented economic activity. Reservations do lie in the hinterland of urban centers, and their resources are often exploited as a result of such factors as low rent, tax allowances, even relaxed environmental standards. This "metropolitan-satellite theory" has not been well tested, yet we can infer to some degree that tribal resources have been swept up in a political-economic process that extends far beyond the perceived borders of Indian Country. It is much easier to observe the economic interaction between urban communities such as Tacoma and the Puyallup Indians (Washington), Salamanca and the Allegany Indians (New York), or Browning and the Blackfeet Indians (Montana), that is, within specific Indian Country. However, LaDuke and Churchill report the far-reaching impact of corporate mining interests and related health hazards in the environs of the "Greater" Sioux Nation, for which a map depicts an Indian County that encloses a fair portion of the 1868 Fort Laramie Treaty boundary north and west of South Dakota.[48] Besides providing a wider parameter to the "geographicalness" of Indian Country, such examples point up the persistence (rejuvenation?) of a colonial approach to the exploitation of tribal resources.

Social mobility may also account for an important variable in understanding the political geography of Indian Country. If we differentiate between *legal* space and *social* space, we will note that Indians may enjoy the unique legal advantages that ownership in and residence on trust land accord them while, at the same time, they freely move about Indian Country for socioeconomic reasons. One study identifies how the Musqueam Indians work and socialize within the larger community of Vancouver yet sustain their lifeways on the reservation.[49] As such, the reservation represents a haven in a political/legal sense, that is, the locus of Indian culture identified with the legal space, but it also makes possible the utilization of social space that corresponds with Indian Country. One suspects that similar patterns may be attributed to the mobility of Indians in other parts of Indian Country, suggesting that the difference between the Indian's perception of *space* and *place*—the former being the physical location where one resides; the latter being the unique milieu in which one lives

—focuses on the reservation as a politically separate entity within Indian Country.[50] This is readily apparent when observing Navajos, for example, who work and shop and visit family and friends in Gallup, New Mexico or in Flagstaff and other cities in northern Arizona or Utah on a daily or weekly basis but reside on the reservation.[51] Of course, the reservation may also constitute the center of the social, but never the legal, space of resident non-Indians, who live and work either on the reservation or in Indian Country.

Reservations are unique geographical places, not only in a natural sense but in terms of the man-made landscape. Differences in the features of settlement and land use distinguish reservations from their surroundings in Indian Country. Getches comments that, from an airplane, "They are places where development stops; roads are narrower and houses fewer. The patchwork of irrigated crops and tilled fields ends at the edge of reservations lacking irrigation systems."[52] My own observations (1961–62) of the Mission Indian locale of Southern California identified

> a persistence of unsurface roads, ill-kept or abandoned houses, dilapidated fences, *un*used, *under*-used, or *ill*-used lands. Landscape expressions are often those of both poverty and neglect.[53]

Vogeler and Simmons, on observing reservations in South Dakota, identify typical Bureau of Indian Affairs (BIA) headquarters settlements, a nucleated feature that includes the most prosperous concentrations of Indians on the reservation. These settlements encompass BIA offices, schools, a clinic or hospital, and segregated residences. Public buildings are usually clustered and fairly uniform in design, and the "similar architecture and layout of BIA headquarter towns is striking, as is their contrast to nearby towns."[54] While Vogeler and Simmons observe that the agricultural resource on the reservations is clearly poorer than on adjacent non-Indian holdings, they note that because the tribes as well as individuals lease lands to whites and some part-Indian ranchers, there is no "consistent" or "sharp" line differentiating land use on or off the reservations.[55] Similar observations might be made throughout Indian Country, for these landscape features identify the reservation as a place of a different genre, fashioned by historic events, laws, and administrative practices, which distinguish the reservation as the quintessential part of the political geography of Indian Country.

Finally, we must not overlook how locational or territorial identity serves as a way to sustain group solidarity. This solidarity accords tribes a sense of separateness as well as permanence in surroundings that too often have undergone considerable physical and institutional/cultural change. Despite the fact that the contemporary trust land unit has been reduced to a fragment of the original territory, or that the tribe was relocated to a new and strange place, the reservation does represent the locus of tribal government and the heart of native culture. The preservation of sovereignty and culture has depended considerably on the wording and intent of treaties, statutes, and case law. However, how Western culture embraces the concepts of political space and sovereignty influences what we expect of tribal behavior behind, so to speak, this wall of protection and immunity. We tend to define this status as *autonomy* and not translate it as *sovereignty*. And although the reservation distinguishes a specific territory, it is not a recognized political unit in our federal system. Tribes, however, continue to be quite vocal about the nature of their sovereignty within their borders, and of course the greater this sovereignty is acknowledged in law or in the courts, the more cohesive will be tribal solidarity. In turn, this viewpoint often constitutes the basis for negative interaction between Indians and non-Indians in Indian Country. Fundamentally, the interpretations of the political status of the reservations by Indians and non-Indians stand too far apart; non-Indians tend to perceive the reservation as more or less a form of real property, a notion that may stem from the view in Western culture that property "has become rigidly and territorially defined."[56] It is not in the experience of local residents of counties and states to recognize a legitimate political/territorial role for the reservation. The general citizenry accepts the reservation as property, indeed, even as *trust* property, designated as such to serve the special purpose of tribal protection. Somewhere among all these variables incident to the political geography of Indian Country there exists a truer picture of this geographical interface in which Indians and non-Indians own and/or occupy lands within and without reservations.

THE INTERFACE OF LAW AND GEOGRAPHY

While law predicates the existence of political jurisdictions where rules and regulations function, law most often emphasizes sub-

ject matter, not geographical place. That is, law is concerned with civil and criminal matters; even with reference to the environment, laws are enacted regarding subject matter, for example, agriculture, real estate, and water. But place is subordinated to subject matter. It is evident from the behavior of local citizens and public officials that they fail to comprehend that Indian reservations are governed by unique subject matter, hence a jurisdiction that supersedes their authority.

Much of the subject matter of Indian affairs relates to the rights and conditions of tribes and individual Indians (e.g., land tenure and autonomy, citizenship, and health). And, of course, tribes identify with reservations. To some extent this creates a circular view, for it returns us to jurisdictions, that is, geography. Much of federal Indian law functions only within the boundaries of trust lands, but in the past twenty years or so, Congress has enacted laws that penetrate that wall of immunity. Because of congressional legislative shifts—also paralleled by certain case law—the meaning of reservation borders remains clouded and confused. In fact, as one scholar notes, "The courts have failed to give the Indian tribes . . . a straight answer on the *boundaries* of Indian sovereignty" (emphasis added). Thus, if legislation and court decisions frustrate a clearer interpretation of reservations and hence Indian Country, how can we expect the general citizenry to comprehend the political (i.e., jurisdictional) meaning accorded tribes and their lands?[57]

Tribal immunities derive generally from laws and court decisions that have either generally acknowledged limited sovereignty or have spelled out the obligations of the federal government to protect the resource base of reservations so that tribes may pursue their own style of self-determination. The courts have argued that the purpose of immunity should be to protect tribal government and territory. However, it is often said that tribal governments possess political, but not *territorial*, sovereignty; it is the federal government as trustee that protects the integrity of the reservation.[58] As long as tribes can flourish in this political milieu, then perhaps my asserted distinctions between the roles of law and geography become moot, and boundaries are less of a factor in ruling on state and local intrusion in Indian Country. As Haslam suggests, the key is not only to determine the location of the event or issue, but also to identify the subject matter and the parties.[59] In terms of conflict resolution in Indian Country, more than one public or tribal official, judge, or attorney has asked, "Who

has jurisdiction—the tribe, the federal government, or the state?''

Logically enough, tribes have a strong voice in the management of internal affairs, yet may lose some capacity when dealing with external matters, in part because non-Indians who own and reside on Indian lands belong to and identify with the larger body politic. The Crow, for example, were denied the right to prohibit nonmembers from hunting and fishing on nonmember lands;[60] the Yakima could restrictively zone against non-Indian entry into and use of lands in a designated *closed* area, but could not so restrict similar uses by non-Indians in designated *open* areas.[61] Some years ago, several states could and did intervene pursuant to P. L. 280 (1953). But Congress, in the Civil Rights Act of 1968, provided that tribes must consent to coming under the provisions of P. L. 280 and granted tribes the power to retrocede from existing authority. This has led to much confusion in Indian Country, for that law-and-order measure seemed to focus on issues of taxation and criminal and some civil jurisdiction, and led many local governments to presume they had authority over planning and zoning. Some real and presumed state and local authority over reservations emanated from the wording and intent of the Organized Crime Control Act (OCCA).[62] Also, subsequent to case law, violation of state law might have become a compelling argument for state and local intrusion on Indian lands. Yet *California v. Cabazon Band of Mission Indians* (1987), a recent case involving gambling on the reservation, demonstrates that, despite P. L. 280, the state cannot impose its will on the Indians. In this instance, the court said that the state's compelling reason—fear of the entry of organized crime—did not supersede the Indians' economic interest.[63]

Such decisions suggest a pendulum, which swings back and forth between geographic and subject matter emphases. In recent years, some cases, however limited in significance, have demonstrated a clearer view of the role of subject matter in Indian Country. For example, because the bald eagle, a migratory bird, is protected nationally under the Eagle Protection Act (E.P.A.),[64] the Indians' use of this bird as part of religious functions has come under attack. In an early case, the Migratory Bird Treaty Act was construed as not applying to tribal Indians on reservations and therefore not abrogating Indian treaty rights to hunt any birds under the law. However, the interests of conservation have created compelling reasons to extend the meaning of eagle protection to all parties, including Indians on trust lands. Thus,

when the Eagle Protection Act was invoked, opposing interpretations arose over a pair of cases heard before the Eighth and Ninth Circuits. While the Eighth Circuit, in *United States v. White*, held that the act did not rescind treaty rights, the Ninth Circuit, in *United States v. Fryberg*, argued that treaty rights not deemed consistent with the E.P.A. were abrogated. Ultimately, the United States Supreme Court ruled that the E.P.A., while not clearly abrogating treaty rights, could supersede them by requiring permits for religious use of the bird. This is not the place to debate the varying roles of wildlife conservation laws. Yet these cases demonstrate that subject matter can ultimately sweep over or nullify boundaries, thus diminishing the separate territorial meaning of reservations. This does not infer, however, that states can readily enter trust lands by this route.[65]

That Congress should clearly delineate *boundaries* of authority is argued by Allen, who identifies the greater geographical reality in which state intervention in the name of environmental management becomes vital.[66] Several states contain a quantum of Indian land, whose configurations encompass parts of towns and non-Indian rural holdings. In a study of Indian land in Washington State, where twenty-two reservations represent some 5 percent of state territory, Allen notes that on the Puyallup Indian Reservation, 99 percent of the land is non-Indian-owned (and more than 96 percent of the residents are non-Indians); 80 percent of the residents of Yakima Indian Reservation and 50 percent at Colville Indian Reservation are non-Indian.[67] The Yakima Indian Reservation encloses the municipality of Toppenish (photo 2), and much of the Puyallup Reservation is nearly enclosed by the city of Tacoma. The numbers of non-Indian residents and their proximity to urban communities often provide justification for assertion of state and local regulations over environmental management on Indian lands.

Washington State has sought a uniform program of hazardous waste management that cannot be achieved, in their view, so long as the Environmental Protection Agency (EPA) administers federal regulations on Indian lands. Hazardous waste sites are subject to the federal Resource Conservation and Recovery Act (RCRA), which encourages states to assume jurisdiction over hazardous waste management, but the law does not specifically embrace Indian lands. In Washington, fear of the spread of contaminants via groundwater draining from reservations is one of many concerns warranting uniform practices and a more rigorous

PHOTO 2. Toppenish, Yakima Indian Reservation, Washington, located within the external boundaries of the reservation. Both the town and the reservation contain far more non-Indian than Indian residents. (Photo by author, July 1984)

program than the federal act establishes. In a suit brought by the state, the court upheld the EPA's jurisdiction over Indian lands—a subject matter decision sustaining the geographic integrity of the reservation.[68] However, hazardous waste demands a holistic environmental approach, and it seems ecologically sensible to establish consistent standards. On the other hand, once again tribal immunity creates a wall that normally only the federal government can penetrate.

This is not the place to expound at length on the legal arguments that sustain or reduce the role of geographical preemption in Indian affairs. However, just how subject matter preemption affects the broader meaning of Indian Country must be addressed. The roots of subject matter preemption lie in the regulation of commercial trade with the tribes derived from the Trade and Intercourse Acts.[69] These laws have their foundation in constitutional provisions that create federal preemption over the tribes and that form the legal basis for Indian exemption from state taxation and regulation.

Wilkinson speaks of the "reach of the traders" statutes, which help to distinguish the role of subject matter preemption in Indian Country. State taxation of liquor sales is often cited; however, even here it is not always clear if states can impose taxes on sales on Indian reservations. In a number of instances in recent years, the courts have acceded to the view that non-Indian purchasers of products (e.g., gasoline or cigarettes) on reservations must pay excise taxes and that the tribes must duly collect them. On matters of resource development, state law is normally preempted. Wilkinson further notes that

> [w]hile the barrier to state jurisdiction of *subject matter preemption* has been employed by the Court to construe many of the major statutory schemes in Indian policy, the second bar, *geographical preemption*, has been used more sparingly due to the Court's preference for relying on statutory subject matter grounds to deny state law (emphasis added).[70]

Thus we find that Indians and non-Indians, as in tax cases involving reservations, may well be treated separately—the former as immune, the latter as subject to state jurisdictions. Since geographical preemption has its basis in treaties, statutes, and agreements, this immunity clearly creates a separate polity on the

landscape. Overall, Wilkinson notes, "Important questions remain to be resolved, especially regarding the final *boundaries* of state taxation, state environmental and commercial regulations, and state and tribal court jurisdiction" (emphasis added).[71]

A CLOSING COMMENT

Lest I make too much of a case for geography, readers should keep in mind that legalists and social scientists interpret some of the same content from much different vantage points. There is a quantum of studies by legal scholars on the subject of tribes, inherent sovereignty, autonomy, jurisdiction, and self-determination. Geographers have not ventured forth into this legal arena. Thus, I make a first and perhaps flawed attempt to suggest a different interpretation of the meaning of Indian Country as a legal/political place; for fuller comprehension, this interpretation probably demands the collective attention of legalists and political geographers. Refinement of such meaning does not necessarily make it more useful in litigation or administration. Nevertheless, whatever light we can shed on Indian Country as a unique place that brings Indians and non-Indians into frequent contact should go far toward helping each party appreciate the other's position. For years I have wondered if such clarification would reduce the amount of law-and-order conflict and thus eliminate much of the litigation that seems to discourage efforts toward consistent political and legal interaction between the parties in Indian Country. I agree with the view that conflict resolution between Indians and non-Indians must occur in the hinterland, not in Washington, D.C.; perhaps the creation of intergovernmental agreements (IGAs) and state Indian commissions or bureaus will eventually reduce some of the conflict and the litigation.[72]

Law creates unique space, and, as is often noted, law also occupies it.[73] Since law has created reservations as distinct geographical entities, law must take into account how geography—both natural and man-made—impacts the definition of these entities. For geography is an equal participant not only in the definition of a reservation, but also in the definition of Indian Country. In my estimation, law and geography are inextricably linked in any further pursuit of *geolegal* clarity, however elusive and frustrating, in Indian affairs.

NOTES

1. Vine Deloria, Jr. and Clifford M. Lytle, *American Indians, American Justice* (Austin: University of Texas Press, 1983); David H. Getches and Charles Wilkinson, *Cases and Materials on Federal Indian Law*, 2d ed. (St. Paul: West, 1986); Charles Wilkinson, *American Indians, Time and the Law: Native Societies in a Modern Constitutional Democracy* (New Haven: Yale University Press, 1987); Imre Sutton, *Indian Land Tenure: Bibliographical Essays and a Guide to the Literature* (New York: Clearwater, 1975). Note that in legal parlance, *country* is usually spelled with a lower case *c*; I have elevated it to a proper toponym.

2. Imre Sutton, "Sovereign States and the Changing Definition of the Indian Reservation," *Geographical Review* 66:3 (1976): 281–95.

3. James J. Lopach, Margery H. Brown, and Richmond L. Clow, *Tribal Government Today: Politics on Montana Indian Reservations* (Boulder, CO: Westview Press, 1990), 6; just in terms of water rights, see A. D. Tarlock, "One River: Three Sovereigns: Indian and Interstate Water Rights," *Land & Water Law Review* 22:2 (1987): 631–71.

4. Cf. Edward W. Soja, *The Political Geography of Space*, Commission on College Geography, Resource Paper 8 (Washington, DC: The Association of American Geographers, 1971), 10.

5. Sutton, "Sovereign States"; cf. Martin Glassner and Harm de Blij, *Systematic Political Geography* (New York: Wiley and Sons, 1989): 194–99.

6. Sutton, "Sovereign States"; note the cultural bases for distinction: Charles F. Wilkinson, "Shall the Islands Be Preserved?" *American West Magazine* 16:3 (1979): 33–37, 66–69.

7. General sources on treaties, laws, and related subjects include Deloria and Lytle, *American Indians*, 58–79; Getches and Wilkinson, *Cases and Materials*, 337–53; Wilkinson, *American Indians*, 105.

8. 67 *Stat.* 588; for this and other pertinent laws, as well as related decisions and legal interpretations, see Charles F. Wilkinson and Christine L. Miklas, eds., *Indian Tribes as Sovereign Governments* (Oakland, CA: American Indian Lawyer Training Program, 1988), 91–92.

9. South Dakota was the setting for litigation that ultimately decided who has jurisdiction in those counties within Indian Country that contain a predominance of non-Indians. See text and footnotes 40 and 41, below.

10. For cartographic and statistical data, see Francis P. Prucha, *Atlas of American Indian Affairs* (Lincoln: University of Nebraska Press, 1990), map 41 and p. 155.

11. *New York Times*, 6 May 1990, E6; see also "Mohawks, Money and Death," *Time* 14 (1990): 32.

12. Frank Pommerscheim, "The Reservation as Place: A South Dakota Essay," *South Dakota Law Review* 34:2 (1989): 252.

13. On Navajos and the issue of extradition, see Douglas Nash, "Tribal Control of Extradition from Reservations," *Natural Resources Journal* 10 (1970): 626–34. The term *nation* as applied to tribes harks back to treaty-making times and is, of course, coupled with the idea of sovereignty; *dependent nation* derives from Chief Justice John Marshall. The application of *nation* as in the case of the Navajo [see Theodore Wyckoff, "The Navajo Nation Tomorrow—51st State, Commonwealth, Or . . . ?" *American Indian Law Review* 5:2 (1987): 267–97]

might raise the question of whether, as a recognized nation under international law, Indian Country in the Southwest would dissolve or a new mode of Indian Country would prevail. As a commonwealth, Indian Country would remain, but as the fifty-first state, it might disappear.

14. Soja, *Political Geography of Space*, 34–35.

15. 63 *Stat.* 94; Wilkinson, *American Indians*, 90; Deloria and Lytle, *American Indians*, 58–79; Getches and Wilkinson, *Cases and Materials*, 338–40.

16. Getches and Wilkinson, *Cases and Materials*, 340, n. 37; see also chap. 3 of Deloria and Lytle, *American Indians*.

17. Fred L. Ragsdale, Jr., "The Deception of Geography" in *American Indian Policy in the Twentieth Century*, ed. Vine Deloria, Jr. (Norman: University of Oklahoma Press, 1985): 63–82.

18. Deloria and Lytle, *American Indians*, 58.

19. Ibid., 71–72; see also Getches and Wilkinson, *Cases and Materials*, 339.

20. Getches and Wilkinson, *Cases and Materials*, 348; and referring to the *U.S. Code*, see 1151, 340.

21. Getches and Wilkinson, *Cases and Materials*, 350, n. 12.

22. Imre Sutton, ed., *Irredeemable America: The Indians' Estate and Land Claims* (Albuquerque: University of New Mexico Press, 1985); compare fig. 3 with fig. 5.1 in chap. 5, 127; chap. 9.

23. Robert Welkos, "Game Wardens Decry a 'Mockery of Justice,' " *Los Angeles Times*, 24 November 1981, sec. 1; R. N. Matheny, "Salmononomics: In a Clash of Cultures, Indians and Whites Angle for Expensive Fish," *Christian Science Monitor*, 25 September 1981; Fay G. Cohen, *Treaties on Trial: The Continuing Controversy over Northwest Indian Fishing Rights* (Seattle: University of Washington Press, 1986).

24. H. Barry Holt, "Can Indians Hunt in National Parks? Determinable Indian Treaty Rights and *United States v. Hicks*," *Environmental Law* 16 (1986): 207–254.

25. *Oregon Dept. of Fish and Wildlife v. Klamath Indian Tribe*, 105 Sup. Ct. 3420 (1984); see also Michael Mirande, "Tribes, Wildlife, and Compensation," *Natural Resources and Environment* 4:4 (1990): 10–13, 51.

26. Sutton, *Irredeemable America*; on recognized and original title, see also Richard W. Yarborough, "Introduction" [to the index to the map, "Indian Land Areas Judicially Established"] in Indian Claims Commission, *Final Report* (Washington, DC: U.S. Government Printing Office, 1978).

27. See *United States v. Sioux Nation of Indians et al.*, 448 U.S. 371 (1979); Roxanne D. Ortiz, "Land Reform and Indian Survival in the United States," in *Land Reform, American Style*, ed. C. C. Geisler and F. J. Popper (Totowa, NJ: Rowan and Allanheld, 1984): 161–65. M. Annette Jaimes, "The Pit River Indian Claim Dispute in Northern California," *Journal of Ethnic Studies* 14:4 (1987): 47–74.

28. Imre Sutton, "Incident or Event? Land Restoration in the Claims Process," in idem., ed., *Irredeemable America*, 215–18.

29. T. J. Ferguson and E. Richard Hart, *A Zuni Atlas* (Norman: University of Oklahoma Press, 1985): 50–51; see also Sutton, *Irredeemable America*, 229–30.

30. Sutton, *Irredeemable America*, 215–18; Kimla McDonald, "Sacred Land in Environmental Planning," *The Environmental Professional* 9 (1987): 27–32.

31. Wilkinson and Miklas, *Indian Tribes*, 99–100; see, for examples, Robin K.

Rannow, "Religion: The First Amendment and the American Indian Religious Freedom Act," *American Indian Law Review* 10 (1982): 151–66; Wilkinson and Miklas, *Indian Tribes*, 99–100.

32. See Russel L. Barsh and James Y. Henderson, *The Road: Indian Tribes and Political Liberty* (Berkeley and Los Angeles: University of California Press, 1980), chap. 8; Sutton, "Sovereign States." Note the historical dual role: William M. Neil, "Territorial Governor as Indian Superintendent in the Trans-Mississippi West," *Mississippi Valley Historical Review* 43 (September 1956): 213–37.

33. Note Pommerscheim's review of South Dakota, "The Reservation as Place."

34. Getches and Wilkinson, *Cases and Materials*, 338–39; see also Frank Pommerscheim, "The Crucible of Sovereignty: Analyzing Issues of Tribal Jurisdiction," *Arizona Law Review* 31:2 (1989): 329–63.

35. 435 U.S. 191 (1978); note discussion in Lopach et al., *Tribal Government Today*, 25–26; Getches and Wilkinson, *Cases and Materials*, 338–39.

36. 447 U.S. 134 (1980); note Lopach et al., *Tribal Government Today*, 26–27.

37. A recent review of cases is that by Brian J. Campbell, "Tribal Power to Zone Nonmember Land within Reservations: The Uncertain Status of Retained Tribal Power over Nonmembers," *Arizona State Law Journal* 21:3 (1989): 769–92. For review of cases where local jurisdiction has sought to impose zoning, see, for examples, Osborne M. Reynolds, Jr., "Agua Caliente Revisited: Recent Developments as to Zoning of Indian Reservations," *American Indian Law Review* 4:4 (1976): 249–67; Jane E. Scott, "Zoning: Controlling Land Use on the Checkerboard: The Zoning Powers of Indian Tribes after *Montana v. United States*." *American Indian Law Review* 10(1982): 187–209. M. A. Matthews, "Indian Law: 'The Pre-Emption' Doctrine and Colonias de Santa Fe," *Natural Resources Journal* 13 (July 1973): 535–45; and Shirley Keith, "A Rebuttal to 'The Pre-Emption . . . ,' " ibid. 14 (April 1974): 283–92.

38. Gary Sokolow, "The Future of Gambling in Indian Country," *American Indian Law Review* 15:1 (1990): 151–83.

39. 525 Fed. 120 (1975); see Sutton, "Sovereign States"; also Pommerscheim, *Reservation as Place*.

40. 430 U.S. 584 (1977); see Sutton, "Sovereign States." Until a few years ago, South Dakota was the only state that distinguished those portions of reservations containing predominantly Indian populations as "unorganized" counties. Comparison of Rand McNally and state maps reveals that the prediminishment boundaries of Rosebud and Pine Ridge are shown on the former (enclosing three and most of four counties, respectively) and postdiminishment boundaries on the latter. For years, official state maps showed the diminished reservations. See George T. Kurain, *Geo-Data: The World Almanac Gazeteer* (Detroit: Gale Research Co., 1983), 294–95; Rand McNally, *Commercial Atlas and Marketing Guide*, 118th ed. (Chicago: McNally, 1987), 224–25; South Dakota, "Centennial" [Official State Highway Map] (Chicago: Rand McNally, 1989). Compare Sutton, "Sovereign States," fig. 1, 282. Prucha, "Atlas of American Indian Affairs," p. 260, notes that five reservations in Sioux Country were diminished: Lower Brulé, Pine Ridge, Rosebud, Sisseton-Wahpeton, and Yankton. He observes that in the case of Rosebud, 2,000 tribal members and seven recognized communities ended up outside the reservation.

41. On such lines/bounds, cf. Getches and Wilkinson, *Cases and Materials*, who refer to "Mason-Dixon" lines, 346; see also Pommerscheim, *Reservation as Place*, 259, and "Crucible of Sovereignty," 344.

42. Glenn A. Phelps, "Representation Without Taxation: Citizenship and Suffrage in Indian Country," *American Indian Quarterly* 9(1985): 135–48.

43. Sutton, *Irredeemable America*.

44. 207 U.S. 564 (1908); Mary Wallace, "The Supreme Court and Indian Water Rights," in Deloria, ed., *American Indian Policy*, 197–220; John A. Folk-Williams, *What Indian Water Means to the West* (Santa Fe, NM: Western Network, 1982).

45. 373 U.S. 546 (1963); Daniel McCool, *Command of the Waters: Iron Triangles, Federal Water Development and Indian Water* (Berkeley and Los Angeles: University of California Press, 1987).

46. David H. Getches, "Water Rights on Indian Allotments," *Public Land and Resources Law Digest* 19:1 (1982):114–42. Note that another problem related to water involves dams and reservoirs inundating tribal lands—a further intrusion onto reservations. See Michael L. Lawson, *Dammed Indians* (Norman: University of Oklahoma Press, 1982); see also J. C. Carroll, "Dams and Damage: The Ojibway, the U.S. and the Mississippi Headwaters Reservoirs," *Minnestoa History* 52:1 (1990): 3–15; and Sutton, *Indian Land Tenure*, 166–71 (including map of dams/reservoirs).

47. Joseph G. Jorgensen, "Indians and the Metropolis," in *The American Indian in Urban Society*, ed. J. O. Waddell and O. M. Watson (Boston: Little, Brown, 1971): 67–113; for a much expanded study, see Jorgensen, "A Century of Political Economic Effects on American Indian Society, 1880–1980," *Journal of Ethnic Studies* 6:3 (1978):1–82.

48. Winona LaDuke and Ward Churchill, "Native America: The Political Economy of Radioactive Colonialism," *Journal of Ethnic Studies* 13:3 (1985): 117, 118. See also C. Matthew Snipp, "The Changing Political and Economic Status of the American Indians: From Captive Nations to Internal Colonies," *American Journal of Economics and Sociology* 45:2 (1986): 145–57.

49. Barbara A. Weightman, "Indian Social Space: A Case Study of the Musqueam Band of Vancouver, British Columbia," *Canadian Geographer* 20:2 (1976): 171–86.

50. Joseph G. Jorgensen comments on Indian perception of land and the difference between space and place in "Land Is Cultural, So Is a Commodity: the Locus of Differences among Indians, Cowboys, Sod-busters, and Environmentalists," *Journal of Ethnic Studies* 12:3 (1984): 1–21.

51. Even fiction reflects the reality of Indian Country: see James Welch, *Winter in the Blood* (New York: Harper and Row, 1974).

52. David H. Getches, "A Philosophy of Permanence: The Indians' Legacy for the West," *Journal of the West* 29:3 (1990): 54–68.

53. Imre Sutton, "Land Tenure and Changing Occupance on Indian Reservations in Southern California" (Ph.D. diss., University of California, Los Angeles, 1964), 10.

54. Ingolf Vogeler and Terry Simmons, "Settlement Morphography of South Dakota Indian Reservations," *Yearbook*, Association of Pacific Coast Geographers, 37 (1975): 92.

55. Ibid., 90.

56. Soja, *Political Geography of Space*, 10.

57. Connie K. Haslam, "Indian Sovereignty: Confusion Prevails—*California v. Cabazon Indian Band of Mission Indians*, 107 S. Ct. 1083 (1987)," *Washington Law Review* 63 (1988): 169; see Deloria and Lytle, *American Indians*, table of criminal jurisdiction in Indian Country, 179.

58. Getches and Wilkinson, *Cases and Materials*; and Thomas P. McLish, "Tribal Sovereign Immunity: Searching for Sensible Limits," *Columbia Law Review* 88 (1988): 179–80.

59. Haslam, "Indian Sovereignty," 172–73.

60. Campbell, "Tribal Power," 777.

61. Ibid., 779–81.

62. The Organized Crime Control Act, 18 U.S. C. 1955 (1982).

63. Haslam, "Indian Sovereignty," 178–85; see also Sokolow, "Future of Gambling."

64. 50 *Stat.* 250.

65. Kenneth P. Pitt, "Eagles and Indians: The Law and the Survival of a Species," *Public Land Law Review* 5 (1984): 100–109; Getches and Wilkinson, *Cases and Materials*, 763–71; *U.S. v. Dion*, 14 *Indian Law Reporter* 2107 (1986). See also Tina S. Boradiansky, "Conflicting Values: The Religious Killing of Federally Protected Wildlife," *Natural Resources Journal* 30 (Summer 1990): 729–32. Another legal conflict related to Native American religion, one that further erodes the bounds between geography and subject matter, has to do with federal court decisions that increasingly allow states to override Indian autonomy, the American Indian Religious Freedom Act, and the use of peyote as a sacrament. See Ronald K. Bullis, "Swallowing the Scroll: Legal Implications of the Recent Supreme Court Peyote Cases," *Journal of Psychoactive Drugs* 72:3(1990): 325–32.

66. Leslie Allen, "Who Should Control Hazardous Waste on Native American Lands? Looking Beyond *Washington Dept. of Ecology v. EPA*," *Ecology Law Quarterly* 14 (1987): 69–116.

67. Allen, "Who Should Control"; see, for cartographic and statistical data, Prucha, "Atlas of American Indian Affairs," map 36 and pp. 151–52.

68. 42 U.S. C. 6901–6987 (1982 & Supp. 3 1985). See Allen, "Who Should Control," 69.

69. Wilkinson, *American Indians*, 96.

70. Ibid., 99.

71. Ibid., 106.

72. See lengthy discussion of the Constitution, compacts, and treaty federalism in ch. 23, pp. 270–82 of Barsh and Henderson, *The Road*. Here the authors suggest there are two ways to absorb new subfederal sovereignties. One route is statehood; the other is treaty federalism, which would require consent of the tribes and two-thirds of the Senate. The authors recommend the latter approach (ref. 275) as a means to create equivalent Indian jurisdictions; they suggest standardization of tribal powers in order to conform to the equivalent standardization of state powers (ref. 280).

73. Mark Blacksell, Charles Watkins, and Kim Economides, "Human Geography and Law: A Case of Separate Development in Social Science," *Progress in Human Geography* 10:3 (1986): 381.