SOVEREIGNTY UNDER ARREST? PUBLIC LAW 280 AND ITS DISCONTENTS

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Law enforcement in Indian Country has been characterized as a "maze of injustice"—one in which offenders too easily escape and victims are too easily lost (Amnesty International, 2007). Tribal, state, and federal governments have recently sought to amend this through the passage of the Tribal Law and Order Act (TLOA) in 2010 and the expansion of cross-deputization agreements. Positioning itself amid these developments, this study seeks to determine the administrative impact of Public Law 280 (P.L. 280), which creates a concurrent jurisdictional regime between states and tribes. Taking a mixed-methodological approach, the law's effect on the sovereignty and resource capacity of tribal justice systems is first analyzed using existing data for 162 American Indian reservations. Through a series of logistic regressions, hypotheses are tested to determine whether a statistically significant difference emerges between policy treatments under P.L. 280. This quantitative analysis is then grounded in a case study of the Confederated Tribes of the Umatilla Indian Reservation, who are unique for their 1981 retrocession of criminal jurisdiction in the mandatory P.L. 280 state of Oregon. Both content analysis of archival records and semi-structured interviews with tribal, state, and federal public officials shed light on experiences of the criminal justice system before, during, and after P.L. 280. This research contributes to the overarching objectives of TLOA, which seek to locate best practices and administrative models in reducing crime and victimization on reservations.

Keywords: Public Law 280, crime, jurisdiction, Umatilla, retrocession, Oregon

Sovereignty under Arrest? Public Law 280 and its Discontents

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I understand that my essay will become part of the permanent collection of Oregon State University Libraries. My signature below authorizes release of my essay to any upon request.

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Sarah N. Cline, Author

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ABBREVIATIONS

P.L. 280	Public Law 280
BIA	Bureau of Indian Affairs
VAWA	Violence Against Women Act
TLOA	Tribal Law and Order Act
ICRA	Indian Civil Rights Act
CTUIR	Confederated Tribes of Umatilla Indian Reservation
LCIS	Legislative Commission on Indian Services
IRA	Indian Reorganization Act
SB 412	Senate Bill 412

DEDICATION

I dedicate this work to the Confederated Tribes of the Umatilla Indian Reservation. May it serve well as a small piece of their message to those beyond the Tribe and as a footprint for their future leaders.

Sovereignty under Arrest? Public Law 280 and its Discontents

"How do you correct P.L. 280? Get rid of it. It's a termination policy designed to get rid of us. *Let us be us:* tribal people. It's a racist policy and ending it will cure a lot of ills."

—Representative, Confederated Tribes of the Umatilla Indian Reservation

I. Introduction

Buried deep in the chapters of the recent bestseller *The Round House,* a crime novel set on a North Dakota reservation, this message rings true: "If there was one law that could be repealed or amended for Indians to this day, that would be Public Law 280" (Erdrich, 2012, p. 142). While the passage of Public Law 280 (18 U.S.C. 1162; 25 U.S.C. 1360; hereinafter P.L. 280) in 1953 may be lost to the memory of most Americans in the 21st century, its effects linger with profound implications for *First* Americans—specifically, for the more than 350 tribes and Native villages on whom the legislation was mandatorily imposed (Goldberg, 1975; Jiménez & Song, 1998; Garrison, 2004; Melton & Gardner, 2004; Goldberg & Singleton, 2005, 2007; Goldberg & Champagne, 2006; National Congress of American Indians (NCAI), 2010; Champagne & Goldberg, 2012). As "one of the clearest examples of the federal government usurping the sovereign judicial powers of tribes," P.L. 280 transferred federal criminal and civil jurisdiction in Indian Country to the six "mandatory" states of Oregon, Minnesota, Alaska[1], California, Nebraska, and Wisconsin—without the consent of the affected Tribal Nations (Anderson & Parker, 2008, p. 643). Only three tribes[2] effectively lobbied for exemption from the law, arguing their "tribal law and order programs were functioning satisfactorily" (House Reports on H.R. 1063 and 9821, 83rd Congress). The opportunity for other states to follow suit, assuming "optional" P.L. 280 powers, was built into the law. "While this law appeared innocuous enough to the general public, its 'real-world' effect would be to summarily sweep aside all binding contracts between Congress and the Indians and to declare null and void all constitutionally protected agreements" (VanDevelder, 2004, p. 163). The subsequent analysis brings P.L. 280 to trial; it stands accused of arresting tribal sovereignty.

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[1] Upon statehood in 1958.

[2] The Menominee Tribe in Wisconsin, Red Lake Chippewa Tribe in Minnesota, and the Confederated Tribes of Warm Springs in Oregon.

Emerging during the Termination and Relocation Era (1945-1960) of federal Indian policymaking, P.L. 280 is proposed as a measure to reduce costs associated with the Bureau of Indian Affairs (BIA), to assimilate tribal members as citizens of their states, and to address growing fears of crime and lawlessness on reservations (Goldberg, 1975; Jiménez & Song, 1998; Garrison, 2004; Goldberg & Singleton, 2005, 2007; Goldberg & Champagne, 2006). Yet P.L. 280 is denounced "as a *source* of lawlessness," not a remedy—citing issues of state underinvestment in reservation justice systems, discriminatory law enforcement, and mistrust (Goldberg-Ambrose, 1997, p. 1406). Concrete evidence of dissatisfaction with the law comes after 1968, when an amendment in the Indian Civil Rights Act (25 U.S.C. §1360) allowed P.L. 280 states to return (retrocede) jurisdiction to the federal government. Since then, 31 tribes have prevailed upon states to retrocede, despite significant legal hurdles, and no tribe has consented to the imposition of state jurisdiction (Goldberg & Champagne, 2006, p. 707; Goldberg, 2009; Champagne & Goldberg, 2012).

In their article "Concurrent Tribal and State Jurisdiction under Public Law 280," Jiménez and Song (1998) reference the *Second Treatise of Government* of John Locke in defining sovereignty as the "ability to maintain law and order and secure a 'comfortable, safe, and peaceable living' among its citizens" (p. 1628). For centuries, Tribal Nations have attempted to secure these provisions, yet "uneven political, legal, and financial support impedes the ability of many tribal justice systems to function in full parity with state and federal systems" (Jiménez & Song, 1998, p. 1629). Indian Country law and order is instead characterized by a "jurisdictional maze" between tribal, state, and federal authorities—a fragmentation of power that perpetuates "legal vacuums" and unresolved crime (Cardani, 2009, p. 114).

Illustrating this reality, the U.S. Department of Justice, prosecutor of the most serious crimes in Indian Country, has been found to file criminal charges in roughly half of all homicide cases reported and decline the investigation of nearly two-thirds of sexual assault charges on reservations due to a "lack of admissible evidence" (Williams, 2012b)[3]. These trends have occurred despite average violent crime rates among American

[3] On May 30, 2013, the Justice Department released a report to Congress claiming that it had increased prosecutions in Indian Country by 54 percent since 2009, increasing cases filed from 1,091 to 1,677. Once more, the most common reason for declination (52 percent of cases in 2012) was insufficient evidence (U.S. Department of Justice, 2013).

Indians (101 per 1,000 persons age 12 or older) being about 2½ times the national rate (41 per 1,000 persons), with residents of some reservations facing more than 20 times the national rate of violence (Perry, 2004, p. 4; U.S. Department of Justice, 2011). As was highlighted in the Amnesty International (2007) "Maze of Injustice" report and recently reiterated with the Violence Against Woman Act (VAWA) reauthorization, American Indians are more than twice as likely to be raped or sexually assaulted than the general population (5 vs. 2 per 1,000 persons) (Perry, 2004, p. 5; Amnesty International, 2007; National Congress of American Indians (NCAI), 2010; U.S. Department of Justice, 2010, 2011; Bureau of Justice Statistics, 2011). With non-Indians committing 70 percent of these violent crimes, and tribal criminal jurisdiction extending almost exclusively to Indian offenses[4], victims are frequently left without recourse (Greenfeld & Smith, 1999; Perry, 2004; Amnesty International, 2007; Luna-Firebaugh, 2009). The "public safety crisis in Indian Country" is unambiguous; all three components of reservation criminal justice—policing, courts, and corrections—are structurally and legally incapacitated in their efforts to protect tribal citizens (U.S. Department of Justice, 1997). The present analysis shall demonstrate how P.L. 280 reservations have suffered an even greater systemic disadvantage in the administration of justice.

Assessments of disparate outcomes between P.L. 280 and non-P.L. 280 reservations have primarily focused on resource disparities created by the law. While "P.L. 280 did not eliminate or limit tribal criminal jurisdiction, the Department of the Interior often used it as justification for denying funding support to tribes in the affected states for law enforcement and criminal justice" (Champagne & Goldberg, 2012, p. 7). And although the mandatory states were presumed capable of fulfilling new administrative commitments under P.L. 280, the reality was that they "often did not have funding to provide for public safety" and faced significant challenges in maintaining law and order when the disconnects between non-tribal law enforcement and tribal communities were so broad (Leonhard, 2012, p. 719). Over the decades and across states, research has largely indicated two primary *modi operandi* under P.L. 280: the abuse or absence of state law enforcement (Goldberg, 1975; Goldberg & Champagne, 1996;

[4] As per *Oliphant v. Suquamish Tribe* 435 U.S. § 191 of 1978, however Title IX in VAWA (S.1925 of 2013) restores concurrent tribal criminal jurisdiction over crimes of domestic violence, dating violence, and violations of protection orders committed by a non-Indian with "sufficient ties to the Indian tribe" against a tribal member.

Goldberg & Singleton, 2008; Champagne & Goldberg, 2012). However, the *extent* to which P.L 280 reservations are systemically disadvantaged has eschewed rigorous measure. "The fact that no federal or state agencies collect law enforcement and crime data specifically for reservations affected by Public Law 280 doubtless has contributed to this informational void" (Goldberg & Singleton, 2008, p. 18). And despite the handful of retrocession case studies produced, research has rarely operationalized pre- and post-retrocession experiences to isolate the effect of P.L. 280 (Goldberg & Singleton, 2008). It is the intent of the author to fill these gaps in the literature.

This study adopts a mixed-methodological approach in measuring P.L. 280's effect on criminal justice administration in Indian Country. Through a comprehensive review of existing research, both theoretical mechanisms and empirical observations are delineated—establishing a frame for the contributions of this study. Beginning at the macro-level, official evidence representing 162 American Indian reservations is analyzed through regression—highlighting systematic differences in the administration of sovereign justice systems with P.L. 280 as the primary explanatory variable. These results are then grounded in a case study of the Confederated Tribes of the Umatilla Indian Reservation (CTUIR), who are called to bear witness to the realities of law enforcement under P.L. 280 and the means by which they reclaimed sovereignty through retrocession. Both content analyses of archival records and semi-structured interviews with tribal, state, and federal public officials inform their testimony. The present analysis adds empirical knowledge to the charges laid against P.L. 280 and points to directions for future research. Furthermore, it contributes to the overarching policy objectives of Tribal Law and Order Act (TLOA) of 2010 (25 U.S.C. § 2801), which seek to locate best practices and administrative models for reducing crime and victimization on reservations.

II. Background

2.1 A winding trail of legal precedents

The federal government's stance towards Native Nations has traversed many Eras—from Relocation to Assimilation, Termination to Self-Determination. In 1953, federal policies favored the termination of the trust status of Indian reservations and the assimilation of tribal members as citizens of the state. Several motives guided this

approach. At the federal level, there was keen awareness that "expenditures in connection with Indian Affairs had expanded tremendously"—precisely at a time when there was pressure on the Eisenhower Administration to reduce federal spending (Goldberg & Champagne, 2006, p. 704). At the state level, urban sprawl coupled with the discovery of energy resources on trust lands increased incentives to control reservation development—largely at odds with the interests of tribal governments. Finally, at the local level, there was concern for the purported "lawlessness" on Indian reservations and the threat this posed to neighboring communities (Goldberg, 1975; Garrison, 2004). These motives, coupled with historic tensions and "unsettled questions concerning the allocation of power between states and tribes," lend valuable insight into the passage of P.L. 280 (Goldberg, 1975, p. 3). Before we arrive at 1953, however, we must first navigate a winding trail of legal precedents allocating authority in this administrative subsystem.

In a bird's eye view of federal jurisdictional reform in Indian Country over the 19th and early 20th centuries, we witness the incremental extension of federal power over tribal lands. At the foundation of intergovernmental relations are four principles enshrined in federal Indian law: (1) inherent tribal sovereignty[5]; (2) federal plenary power over Indian affairs[6]; (3) states' restricted power over Indians (unless permitted through Congressional action)[7]; and (4) federal government's trust responsibility to Indian Nations as forged in inter-nation treaties (Jiménez & Song, 1998; Canby, 2009; Pevar, 2012). The earliest federal statute contesting the inherent jurisdiction of tribes over their lands was nested in the Trade and Intercourse Act of 1790 (25 U.S. § 177), which stated any crime by a non-Indian against an Indian was punishable by the laws of the state or district in which the offender resided. In swift pursuit of this affront, the primary policy offenders in the pre-Termination Era are as follows:

[5] As per the "Marshall Trilogy", 21 U.S. § 543 of 1823; 30 U.S. § 1 of 1831; 31 U.S. § 515 of 1832.
[6] As per the Indian Commerce Clause of the U.S. Constitution, Article I, Section 8, Clause 3; *U.S. v. Lara* (2004).
[7] As per *Worcester v. Georgia*, 31 U.S. § 515 of 1832.

Table 1. Federal statutes impacting tribal criminal jurisdiction

Law	*Reference*	*Year*	*Impact*
General Crimes Act	18 U.S.C. § 1152	1817	General federal laws for the punishment of non-Indian crimes are upheld in tribal lands; Indian offenses remain under tribal jurisdiction
Assimilative Crimes Act	18 U.S.C. § 13	1825	Extended coverage through federal enforcement of certain state criminal laws in federal enclaves
Major Crimes Act	18 U.S.C. § 1153	1885	Extended federal jurisdiction over Indians who commit 7 (later amended to 16) major crimes, whether the victim is Indian or non-Indian
Indian Country Crimes Act	18 U.S.C. § 1152	1948	Redefines "Indian Country" and secures federal prosecution authority over interracial crimes

To determine the impetuses for these laws, they are couched in their historical context. The early 19th century was marked by rapid Westward expansion and correspondingly, increased contact between Indian and non-Indian peoples. It was not long, then, before there was a need to clarify the rule of law in situations of interracial (inter-national) crime. In 1817, the General Crimes Act (18 U.S.C. § 1152) asserted that the federal rule of law extended to non-Indian crimes in Indian Country, but did *not* extend to offenses committed by Indians against Indians "or to any case where, by treaty stipulations, the exclusive jurisdiction over such offenses is or may be secured to the Indian tribes respectively." Recognizing oversights in the General Crimes Act allowed certain crimes to go unpunished, the Assimilative Crimes Act of 1825 (18 U.S.C. § 13) was enacted to fill the gaps, allowing "federal authorities the ability to apply the laws and sentencing guidelines of the state in which the enclave is located" when no controlling federal law exists (Ennis, 2009, p. 560). Some states believed this Act extended their jurisdictional reach in Indian Country, but as *Worcester v. Georgia* (31 U.S. § 515) made plain, Tribal Nations are a "distinct community" with self-government "in which the laws of [the state] can have no force." Table 2 delineates pertinent Supreme Court rulings prior to P.L. 280:

Table 2. U.S. Supreme Court decisions addressing criminal jurisdiction on Indian lands

Case	*Reference*	*Year*	*Impact*
Worcester v. Georgia	31 U.S. § 515	1832	State laws have no rule of force in Indian Country
U.S. v. McBratney	104 U.S. § 621	1882	State criminal jurisdiction over crimes between non-Indians maintained in offenses on tribal lands
Ex parte Crow Dog	109 U.S. § 556	1883	Reaffirms tribal self-governance and the absence of state jurisdictional authority on reservations

By the mid-19th century, tribal members have largely relocated to reservation lands as a result of the Indian Removal Act of 1830 (25 U.S.C. § 1988). Within these new territorial confines, jurisdiction was again contested in the U.S. Supreme Court. The *U.S. v. McBratney* ruling (104 U.S. § 621) merely affirmed state jurisdiction over crimes between non-Indians on reservations. *Ex parte Crow Dog* (109 U.S. § 556), however, marks a watershed. In a flurry of federal interventions in the trial of Crow Dog, who murdered a fellow tribal member, the Court of Appeals upheld tribal "self-government, the regulation by themselves of their own domestic affairs, and the maintenance of order and peace among their members." Yet "alarm in Congress over the perceived gap in law enforcement leads to the passage of the Major Crimes Act, which lists certain intra-tribal offenses as falling under federal jurisdiction for prosecution" (King, 1999, p. 1479). In 1885, these offenses included the felony acts of murder, manslaughter, rape, deadly assault, arson, burglary, and larceny against another Indian or non-Indian[8] (18 U.S.C. § 1153). Two years following Major Crimes, Congress passed the General Allotment Act, which parceled up Indian lands and converted them from trust to fee-simple status for non-Indian purchase (24 Stat. 389; 25 U.S.C. § 334). The Indian Country Crimes Act is later passed as a reflection of the changing racial landscape of reservations, extending federal adjudicatory authority over crimes by non-Indians against Indians and of non-major crimes by Indians against non-Indians. Table 3 renders a succinct portrait of the jurisdictional regime that results from these statutes and rulings (Cardani, 2009, p. 15):

[8] The law is later amended to include nine additional crimes. For an examination of the history of the Major Crimes Act amendments, see Silvestro (1977), The Indian Crimes Act of 1976: Another Amendment to the Major Crimes Act—But How Many More to Come?, *South Dakota Law Review 22*, 407.

Table 3. Criminal jurisdiction in Indian Country

Offender	*Victim*	*Jurisdiction*
Indian	Indian	Federal jurisdiction for felonies listed in the Major Crimes Act (18 U.S.C. § 1153); tribal jurisdiction for misdemeanors
Indian	Non-Indian	Federal jurisdiction for Major Crimes felonies and for other felonies and misdemeanors, including assimilative crimes, unless the tribe has already punished the offender; tribal jurisdiction for misdemeanors
Non-Indian	Indian	Federal jurisdiction for felonies and misdemeanors
Indian	Victimless Crime	Primary jurisdiction to the tribes; some cases may also share federal jurisdiction

Taken together, the General Crimes, Assimilative Crimes, and Major Crimes Acts extended exclusive federal adjudicatory powers over all crimes committed on tribal lands by non-Indian perpetrators and Major Crimes perpetrated by Indians. Tribal Nations were nonetheless shielded from repeat attempts of states to subject tribal members and lands to their rule of law. In 1953, this ceased to be true.

2.2 Justification for policy treatment

What allows for the monumental passage of P.L. 280? As previously alluded, three central motives are commonly ascribed to Congress in passing the reform: "(1) to combat lawlessness on tribal reservations and its accompanying threat to Anglos nearby; (2) to lower federal spending related to the federal government's jurisdictional obligation in Indian Country; and (3) to encourage the assimilation of tribes into mainstream society" (Naughton, 2007, p. 496). To the first point, reservation law enforcement by 1953 was fractionated and confusing; "federal enforcement was typically neither well-financed nor vigorous, and tribal courts often lacked the resources and skills to be effective" (Foerster, 1999, p. 1338). The result of the aforementioned federal policies yields what Montana Representative Wesley D'Ewart called the "complete breakdown of law and order on many of the Indian Reservations" (Statement to House Subcommittee on Indian Affairs, 1952; Garrison, 2004, p. 454).

During this period, Congress came of the opinion that the federal government should "get out of the Indian business" and began proponing a simplified administrative subsystem comprised of only state and tribal law enforcement institutions (Butler, 1978,

p. 51). This approach equally served the second goal of reducing federal spending in an age of recession; there was keen awareness that "expenditures in connection with Indian Affairs have expanded tremendously" (Goldberg & Champagne, 2006, p. 704). Furthering Congressional resolution to this end, Secretary of the Interior Douglas McKay argued that federal financial aid to tribes perpetuated the belief that Indians were "of a race group which is set apart from other citizens of the state" (Goldberg, 1975, p. 21). This claim undergirds the third motive of P.L. 280, which related the core belief of the "new wave of criticism" guiding the termination agenda (True et al., 2007, p. 163).

Pressure was mounting from the Assimilation Era (1887-1943); reform was timely and imperative. Yet it was unlikely many, including tribes themselves, could have predicted the federal violation of treaties in the termination of its trust relationship with Indian Nations as a solution. Two key policy entrepreneurs in this new era were Secretary of the Interior Douglas McKay and Republican Senator Arthur Watkins. Secretary McKay was the former Governor of Oregon and spoke for powerful timber and water resource developers in the West. According to Beckham (2006), "there is evidence that McKay wanted his home state to serve as a showcase for the new direction in Indian policy," which perhaps explains why Oregon was mandatorily subject to P.L. 280 in addition to both the Klamath Indian and Western Oregon Indian Termination Acts (25 U.S.C. § 564; 25 U.S.C. § 3691) (p. 438). Equally leading the charge was Senator Watkins, Chair of the Committee on Indian Affairs. Watkins "controlled the legislative machinery and knew how to operate it" (Wilkinson, 2005, p. 67). Having commissioned the *Survey of Conditions of the Indians in the United States* in 1934, he heard testimony of how the extreme mismanagement of the BIA had contributed to the impoverishment of many reservations. In light of such reports, notions of "liberating the Indian" from federal bureaucracy and "terminating the trusteeship restrictions" were more palatable (Robbins, 2002). In this new ideological drift, we witness how "new actors insist on rewriting the rules and on changing the balance of power"; whereas states were formerly excluded from the subsystem, tribes were now "forced to share their power with agencies that gain new legitimacy" under P.L. 280 (True et al., 2007, p. 159).

Several alternatives could have been exercised to alleviate the cost of crime on reservations and move the supply of public safety closer to its equilibrium allocation.

These include the expansion of cross-deputization agreements and/or the provision of technical assistance to strengthen tribal self-determination (Goldberg, 1975; Jiménez & Song, 1998; Johnson, et al., 2002; Bobee, 2008; Goldberg & Singleton, 2008; Fletcher, et al., 2010). However, Termination Era policymakers were not amenable to these solutions.

2.3 Result

Having delineated the origins of P.L. 280, we are now equipped to discuss its force in implementation. As written, the law reallocates judicial authority as follows:

Table 4. Reservation criminal jurisdiction under Public Law 280

Crime by Parties	*Jurisdiction*	*Authority*
Crimes by Indians against Indians	Tribes and/or States	18 U.S.C. § 1162(a) (2000); *Cabazon Band of Mission Indians v. Smith*, 34 F.Supp.2d 1195, 1201 (C.D. Cal. 1998).
Crimes by Indians against non-Indians		
Crimes by non-Indians against Indians	State (exclusive)	18 U.S.C. § 1162(a) (2000); *Oliphant v. Suquamish Indian Tribe,* 435 U.S. 191 (1978).
Crimes by non-Indians against non-Indians		
Victimless crimes by non-Indians		

Unlike the former legal regime, there is not a single crime where primary jurisdiction lies with the tribes. Tribes are confined to concurrent rule with the states in all cases involving Indian defendants. There are limits to state authority, however. As written in the law or as established by federal ruling, local and county police agents may enforce the law on P.L. 280 reservations, but they may only apply *state* law and only when it is criminal/prohibitory, not civil/regulatory[9], in nature. Furthermore, "states may not use their P.L. 280 criminal jurisdiction to alter the status of trust lands or to restrict federally protected hunting and fishing rights" (Goldberg & Singleton, 2008, p. 12).

Because P.L. 280 also authorized any state to assume civil and/or criminal jurisdiction over reservations within its borders, it is important to clarify the scale to which Indian Country is affected. After 1953, 10 additional states adopt partial/optional jurisdiction under P.L. 280. In some instances, these transfers have been retroceded,

[9] As per *Bryan v. Itasca County* 426 U.S. § 373 of 1976; *California v. Cabazon Band of Mission Indians* 480 U.S. § 202 of 1987.

overturned by the courts, or have never been implemented. In several cases, they were only applied to individual tribes. In sum, "P.L. 280 structures law enforcement and criminal justice for 52 percent of all tribes in the lower 48 states and potentially affects all 239 Alaska Natives and their tribes or villages" (Goldberg & Champagne, 2006, p. 697). For greater ease of reference, a historical timeline of P.L. 280, its adoptions and retrocessions, has been compiled (Appendix 1.5; Appendix 1.6). Only 3 of the optional states[10] have constitutional disclaimers limiting their jurisdiction over tribal lands (Melton & Gardner, 2004). Table 5 presents the complete list of states and their P.L. 280 status:

Table 5. Mandatory and optional P.L. 280 states

I. Mandatory (Full) P.L. 280 States (enacted in 1953)				
Alaska	Minnesota	Oregon		
California	Nebraska	Wisconsin		
II. Optional (Partial) P.L. 280 States (adopted between 1953-1968)				
Arizona	Idaho	Montana	North Dakota	Washington
Florida	Iowa	Nevada	South Dakota	Utah[11]

According to the Honorable William C. Canby, Jr. (2004), "Public Law 280 represented a compromise between termination and continuation of the relative immunity of the tribes from state jurisdiction. It was a compromise that satisfied almost no one" (p. 28). For the six mandatory states, P.L. 280 was, in its purest form, an unfunded mandate. Congress tied the hands of states in two ways. First, states were denied federal aid in implementing the law. Second, Congress refused to lift the trust status of Indian lands, meaning states could not tax tribal members for public safety services. "Suddenly required to hire more police, more judges, more prison guards, more probation and parole officers…and to build new police stations, courthouses, and jails, [states] totter under their new financial obligations" (Naughton, 2007, p. 499). In the mandatory state of Nebraska, the government faced such financial hardship that the "Omaha and Winnebago reservations are left without *any* law enforcement once federal officers withdrew" (Goldberg, 1975, p. 10).

[10] Nevada, Idaho, and Iowa

[11] In Utah, where P.L. 280 was adopted after 1968, there were provisions for tribal consent, yet no tribe has consented (Goldberg & Singleton, 2008, p. 28).

Tribal opposition to P.L. 280 was based first on principle, resenting the lack of referendum or consultation as sovereign entities, and second on specific fears concerning the consequences of state jurisdiction. To the first order of opposition, President Eisenhower expressed "grave doubts" about the lack of any provision requiring tribal consent and recommended "that at the earliest possible time…the Act be amended to require such consultation with the tribes prior to…subjecting them to state jurisdiction" (1953; Peters and Woolley, 2012). Yet despite the introduction of 23 separate bills and pleas, P.L. 280 was not amended for 15 years following its enactment and the consent clause lacked retroactivity. Regarding the second concern, many tribes feared the fact that "a state could now summarily take the drastic step of assuming jurisdiction over Indians…without providing any safeguards against discrimination, without setting any standards for the services to be performed" (Goldberg, 1975, p. 2). To counter these fears, the tribes would need their own police and court to exercise concurrent rule. Yet for want of human and economic resources or reliance on federal law enforcement, very few P.L. 280 tribes operated such entities in 1953. According to Goldberg and Singleton (2008), "most policing agencies operated by P.L. 280 tribes date from the 1980s and 1990s, and the full potential of overlapping tribal and state police under P.L. 280 has yet to be realized" (p. 13). Equipped with this historical knowledge, we now direct our gaze to the body of research on P.L. 280—couching it in a theory of tribal sovereignty.

III. Literature Review

3.1 Theory

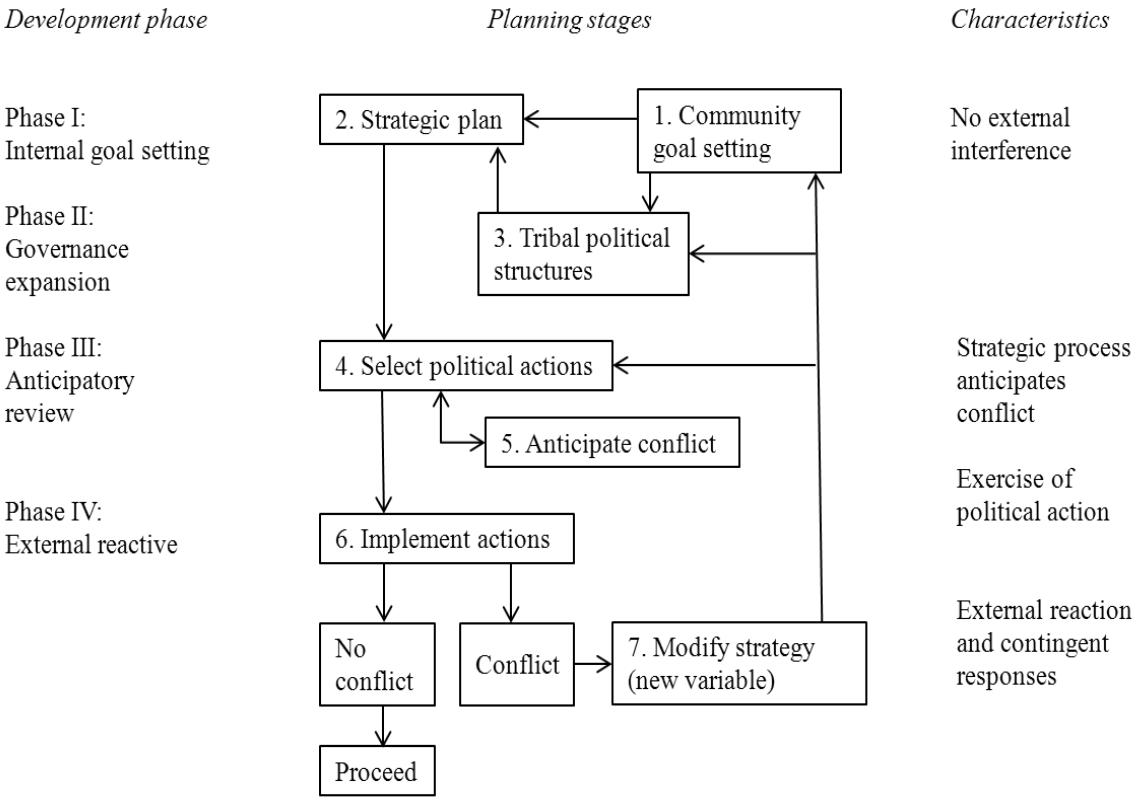
Questions of sovereignty are at the heart of this analysis. On the one hand, sovereignty, which is presently understood as a tribe's ability to act independently and have authority over its lands, resources, and people, can be exercised through horizontal models of governance characterized by cooperation with non-tribal entities. Alternatively, sovereignty can be understood as equivalent to centralized tribal authority. With respect to P.L. 280, tribes have expressed interest in expanding both constructions.

Zaferatos' (2004) Theory of Tribal Community Development sheds light on the mechanisms for tribal expansions of sovereignty—be they cooperative or not. While it bears some theoretical similarity to network approaches to social and political change,

Zaferatos' theory is derived from an amalgam of community planning, sociological, and political science-based analyses of stakeholder interactions. In particular, the theory illustrates methods communities will need to employ in "the defense of sovereignty, the maintenance of social cohesiveness, and the control of territorial resources" (p. 90).

Tribes are necessarily strategic and adaptive in determining approaches to meet these ends. Strategically, a tribe must decide whether to respond to the encroachment of non-tribal interests through confrontation or cooperative mediation. If the response is confrontational, litigation generally results. If the response is cooperative, then an important "condition for the successful mediation of conflict is that a 'level-playing field' be established" among tribal and non-tribal entities (Zaferatos, 2004, p. 92). As external players (in the context of P.L. 280, state governments and their respective law enforcement and justice agencies) react to a tribe's strategy, the tribe adapts as needed to continue pursuit of its desired ends. These ideas, reflecting choice of approach, outcome, and adaptation, are illustrated in the following model:

Figure 1. Tribal community development planning model



In Phase I above, tribes identify their goals and take account of their resources and capacity. Phase II marks the development of new political structures. By Phase III, tribes decide their course of action and begin anticipating external resistance. In building contingency plans, the "alternative actions may include modifications to the tribal program, strengthening of self-governance powers, confrontational tactics, or approaches aimed at resolving pending disputes through negotiation" (Zaferatos, 2004, p. 97). In Phase IV, the actions are implemented and four possible outcomes result: either the actions are successful *or* they encounter conflict and require a contingency plan, the revision of strategy, or the growth and evaluation of tribal political capacity. Having elaborated Zaferatos' Theory of Tribal Community Development, its central model and concepts are now applied to tribal experiences of (and reactions to) the imposition of state jurisdiction as evidenced in the literature. From the theory, we predict that efforts to retrocede P.L. 280 jurisdiction will be stymied where tribal relations with the state are uneven and fraught with conflict, and retrocession and/or cooperative policing agreements are more likely once a level playing field among governments exists.

3.2 Introducing the literature

Surveying the body of research on P.L. 280, which is comprised primarily of a limited number of qualitative studies and descriptive legal reviews, we find proof that the current jurisdictional regime does not enhance reservation public safety (Jiménez & Song, 1998; Wakeling et al., 2001; Johnson et al, 2002; Melton & Gardner, 2004; Goldberg & Singleton, 2005, 2008; Rosen, 2007; Cardani, 2009; Gould, 2009; Champagne & Goldberg, 2012). This is, in part, owing to disparities in the number and resource capacity of tribal justice systems in P.L. 280 states as compared with their non-P.L. 280 counterparts (Goldberg & Champagne, 1996, 2006, 2012; Johnson 2002; Melton & Gardner, 2004; Goldberg & Singleton, 2005, 2008; Walker & Luna-Firebaugh, 2006; Luna-Firebaugh, 2007). Beyond the legal reviews that broadly address the historical development and modern implications of P.L. 280 ((Goldberg, 1975; Jiménez & Song, 1998; Foerster, 1999; Garrison, 2004; Droske, 2007; Naughton, 2007; Ennis, 2009; Leonhard, 2012), the most compelling empirical evidence brought against the policy emerges from more than a decades' worth of qualitative research. As such, our

review of the literature begins with micro- and macro-level qualitative studies of P.L. 280's impact on tribal resources and sovereignty and, in keeping with Zaferatos' Theory, the strategies employed in their defense.

3.3 Qualitative research

3.3.1 Micro-level case and comparative studies

There are relatively few published studies that focus on individual tribal experiences of P.L. 280. One frequently cited article traces the retrocession of the Confederated Tribes of the Salish and Kootenai of the Flathead Reservation in the optional P.L. 280 state of Montana. Uniquely, when Montana extended concurrent jurisdiction in 1963, there was a clause requiring tribal consent[12]. The original grounds for tribal consent were somewhat vague; "some tribal members have said that consent was given because of concern for law enforcement…that the matter of law and order [was] festering like cancer and getting progressively worse" (Bozarth, 2000, p. 47). However, within a few years' time, the Tribes withdrew their consent with the desire to "exercise *full* civil and criminal jurisdiction over one's own people"—language that harkens Etzoni's construction of a self-sufficient community (p. 52). The Tribes thereby began their decades-long struggle for retrocession, which culminated in 1993. This descriptive study calls upon the texts of legislative hearings, newspaper articles, and other secondary data sources to construct its historical narrative. Having limits to its generalizability, this case study is better employed in comparative analyses.

In 2004, Ashley and Hubbard present the Salish and Kootenai case study alongside those of the Campo Band of Kumeyyay Indians of California and the Puyallup Tribe of Washington in an effort to locate best practices for state-tribal relations. Their report suggests, in agreement with Zaferatos' conditions for a 'level-playing field,' that cooperative power-sharing is most satisfactory when non-tribal (state, county) entities recognize the sovereignty of reservation governments under P.L. 280.

Champagne and Goldberg (2012) equally employ the Salish and Kootenai retrocession in *Captured Justice: Native Nations and Public Law 280,* complementing it with others from the Omaha and Winnebago Tribes of Nebraska, the Shoshone-Bannock

[12] Most states resisted this legal formality until the 1968 ICRA amendment mandated it for all future extensions of state jurisdiction under P.L. 280.

of Idaho, the Ely Shoshone of Nevada, and the Tulalip of Washington. Six primary motives for retrocession were distilled from the data: "poor services, prejudicial treatment, police brutality, sovereignty, cultural insensitivity, and high crime" (Goldberg & Singleton, 2008, p. 442). By a sizeable margin, prejudicial treatment, poor services, and concerns for tribal sovereignty were most influential factors. Throughout the analysis, Zaferatos' multiple methodologies of tribal planning are illumined—from the selection of political actions and preparation of contingency plans to further strategy modification—with each advancing the goal of increased tribal capacity and control in the administration of justice.

Elevating the unit of analysis to P.L. 280 states, Goldberg and Champagne conduct a statewide survey for the Advisory Council on California Indian Policy, distributing surveys and collecting tribal testimonies for years 1994-1995. In the survey distributed to all federally recognized tribes in mandatory P.L. 280 state of California (n=106), "all but 2 [of the 19 tribes that responded] complained of serious gaps in protection from county law enforcement" (Goldberg & Champagne, 1996, p. 35). The results further revealed:

- One-third of the responding tribes complained that county officials fail to respect tribal culture and sovereignty;
- One-quarter complained of unauthorized searches, questioning of children in the absence of adults, excessive force, and intimidation of Indians both on and off-reservation; and
- More than two-thirds articulated a need for tribal justice systems.

Collected testimonies "reinforced the validity of the questionnaires and offered much of the same information" (Goldberg & Champagne, 1996, p. 38). The authors attribute the comparative disadvantage of P.L. 280 tribes to "lower levels of federal support and an absence of compensating state support…abuses of power and gaps in legal authority" (Goldberg & Champagne, 1996, p. 40).

Goldberg-Ambrose (1997) later draws upon these data in presenting 3 tribal case studies from California that demonstrate both the abuse of authority and the vacuum of authority resulting from law enforcement's uncertainty of their jurisdictional rights. The case analyses include: (1) the Torres-Martinez Indians, who were powerless to prevent sludge dumping on their reservation owing to passive, unresponsive local and federal

authorities; (2) the Pomo Indians of Coyote Valley, who could not secure expedited evictions of criminal offenders until the local law enforcement "stormed into the reservation without notifying the tribe," revealing both legal vacuums and the abuse of authority; and finally, (3) the Round Valley Reservation Indians, who found themselves victim to severe police misconduct in the handling of criminal offenses (p. 30). While significant, several factors limit the generalizability of these two California studies, including the fact that the state contains the largest number of distinct tribes in the U.S., all with relatively small populations (n<300).

Other peer-reviewed statewide analyses, including legal commentaries from Di Peitro (1993), Droske (2007), and Leonhard (2012) on the mandatory states of Alaska and Minnesota and the optional P.L. 280 state of Washington respectively, relate the challenging and changing applications of the law.

3.3.2 Macro-level analyses

Turning to macro-level analyses of tribes subject to P.L. 280, a national survey conducted in 2007 that included 49 P.L. 280 tribes found that "most tribes in P.L. 280 states allowed whatever tribal courts and law enforcement that existed to wither and die" after the withdrawal of federal jurisdictional support (Luna- Firebaugh, 2007, p. 117). This response was representative of a broad-based misunderstanding that P.L. 280 had *terminated* tribal jurisdiction, rather than legislating a concurrent regime with the states. Once clarified, a process that did not fully occur until the 1980s, "tribal governments in P.L. 280 states began to look at ways to assert sovereignty and jurisdiction…to take charge of the provision of law enforcement in Indian Country" (Luna-Firebaugh, 2007, p. 118). This reaction finds support in Zaferatos' (2004) Theory; once the tribe "identifies the organizational and administrative capacities that are needed to carry out its programs" in Phase I, it begins its expansion of political infrastructure in Phase II (p. 96). Unfortunately, external conflict may continue to subvert tribal goals; the 2007 survey further revealed that a mere 2 percent of P.L. 280 tribal officers are cross-deputized with state police as compared with 10 percent among non-P.L. 280 tribal officers, highlighting the "issue of cooperation (or the lack thereof) between tribal and state agencies in P.L. 280 states" (Luna-Firebaugh, 2007, p. 123). This has placed considerable financial

strain[13] on P.L. 280 tribes, who "are faced with the choice of having essentially no law enforcement or providing their own" (Luna-Firebaugh, 2007, p. 125).

Returning to Champagne and Goldberg (2012), *Captured Justice* embodies an unprecedented effort to measure the effect of P.L. 280 through robust qualitative research design. Prior to its publication, there had been:

> "no attempts to exploit opportunities for research design and comparison presented by the fact that some tribes in mandatory P.L. 280 states were initially excluded from the application of the Act; some reservations straddle P.L. 280 and non-P.L. 280 states; and some reservations initially covered under mandatory or optional provisions of P.L. 280 have subsequently been returned to federal jurisdiction through the process of retrocession" (p. 18).

As a multi-year research project commissioned by the U.S. Department of Justice, *Captured Justice* contains the results of more than 350 interviews conducted with representatives from ten mandatory P.L. 280 tribes, one optional P.L. 280 tribe, one retroceded tribe, one excluded tribe, two "pure" non-P.L. 280 tribes, and one "straddler" tribe, where the reservation straddles P.L. 280 and non-P.L. 280 states (n=17 reservations). This comprehensive study provides invaluable insight into the experiences of those tribes under P.L. 280 jurisdiction—and most pertinently, how these are unique from those among reservations exempt from the law.

Its limitation, however, lies in its non-random (purposive) sampling method, which revokes generalizability as well as the researchers' ability to use "classic parametric statistics for the analysis of scale data and quantitative patterns in the qualitative interviews" (Champagne & Goldberg, 2012, p. 65). At the very least, in earlier reports, Goldberg et al. (2006) employ one-way analyses of variance (ANOVA) with perception data from reservation residents to determine statistically significant differences in the availability of law enforcement across P.L. 280 and non-P.L. 280 jurisdictions. Using Tukey post-hoc comparisons, the researchers find that for 212 respondents evaluating the availability of law enforcement, P.L. 280 reservation residents rated police availability significantly lower than non-P.L. 280 reservation residents ($p<0.001$). Moreover, residents in P.L. 280 jurisdictions believed state or county police

[13] 27 percent of police departments on P.L. 280 reservations are funded *fully* by their respective tribes (as compared with 14 percent among non-P.L. 280 tribal police departments) (Bureau of Justice Statistics, 2002; Goldberg and Champagne, 2006; Luna-Firebaugh, 2007).

responded in a timely manner at a rate roughly *half* of that ascribed to tribal police (44.8% versus 82.9%; $p<0.01$) (Goldberg & Champagne, 2006, p. 713).

Overall, Champagne and Goldberg's (2012) results suggest that the primary (if not only) scenario where P.L. 280 has a less detrimental effect is "when there is adequate funding, fair and good program administration, and tribal governments and county-state governments are engaged in co-governance sharing arrangements"— creating a level-playing field (p. 61). While these conditions are purportedly rare, the authors claim they are most likely to occur where tribes have gaming revenues to staff a tribal police force and where cross-deputization agreements exist.

3.4 Quantitative research

Beyond qualitative research, two studies released in the past 5 years have attempted to measure the impact of P.L. 280 through multivariate regression analysis using national data for tribes (Anderson & Parker, 2008; Dimitrova-Grajzl et al., 2012). Anderson and Parker (2008) utilize per capita income data for 71 reservations for years 1969-1999 to demonstrate how the assertion of state jurisdiction over tribal lands became a "credible commitment" in commercial transactions with tribes, thereby increasing their economic wealth. Controlling for resource endowments, human capital, and economic conditions of surrounding counties, their results "imply that state jurisdiction increased Indian per capita incomes by at least 30 percent" (Anderson & Parker, 2008, p. 10). Reasonable doubt has been cast on these findings, however; both endogeneity and selection bias may be confounding, not to mention the limitations of interpreting regression results from a sample population of 71 among 327 total reservations in the U.S. (Goldberg, 2009).

Sample size was similarly problematic for Dimitrova-Grajzl et al. (2012), who attempt to show that P.L. 280 *decreased* median incomes and *increased* crime, looking to 1981 data for 80 counties containing tribal lands affected by the law. Holding constant police expenditures, education levels, and population, the researchers found that "mandatory P.L. 280 status increased the volume of all crimes by about 77 percent, on average" (Dimitrova-Grajzl et al., 2012, p. 17). However, caution is reserved in interpreting these findings, as this work is in progress and has yet to be published in a

peer-reviewed journal. Given challenges in the quality and availability of reservation-level data, the most robust P.L. 280 research to date has relied on its own collection of qualitative data over multiple years and across multiple sites.

3.5 Study contributions

Taking a fresh approach to the empirical study of P.L. 280, this study attempts to capture tribal expressions of sovereignty in both quantitative and qualitative data. For the first section of the analysis, which reveals the results of logistic regressions, the pitfalls of former studies are avoided through the use of binary survey responses from the 2002 Census of Tribal Justice Agencies as the dependent variable—decreasing the potential for heteroskedasticity. The sample population is considerably larger, employing data for 162 Indian reservations in the U.S. The regressions adopt similar controls for economic and social indicators. For the first time, these analyses allow us to gauge whether P.L. 280 has impacted tribal planning and development of justice administration to the extent that it's effect is decipherable in modern data.

The second section includes the qualitative analysis of the CTUIR criminal retrocession, which synthesizes data from tribal histories, content analyses from the *East Oregonian* newspaper and in-depth interviews with tribal, state, and federal public officials. As "accounts of tribal law enforcement that compare pre- and post-retrocession experiences may be more illuminating research sources," this is precisely the design of the CTUIR case study (Goldberg & Singleton, 2008, p. 21). More importantly, the work with the CTUIR will represent the first empirical analysis of a tribe's experience of P.L. 280 in the mandatory state of Oregon. As such, this research promises to make significant contributions to the existing body of knowledge and to the development of new public policies and research priorities for tribes subject to P.L. 280.

IV. Quantitative analysis

The existing literature has laid the charge that P.L. 280 has diminished the sovereignty and resource capacity of those tribes on whom it was imposed. But what empirical evidence can be brought to the table? To determine whether P.L. 280 had a statistically significant impact on the development and administration of tribal justice

systems across 162 reservations, two series of regression analyses are produced to test the following null hypothesis:

> H_0: There is no relationship between a reservation's status under P.L. 280 and its operation of tribal justice systems

Before presenting the methodology, however, the variables included in the analyses are described at length.

4.1 Description of the data

In 2005, the U.S. Department of Justice's Bureau of Justice Statistics released the results of a national census, conducted in 2002, of tribal justice agencies operating in Indian Country. Over 92 percent (314) of the 341 federally recognized American Indian tribes in the lower 48 states participated. Because the response rate was inconsistent, and because the minimum population threshold is set to 200, the sample used in this study is reduced to 162 reservations. Although Anderson and Parker (2008) set a 1,000 resident cut-off and Dimitrova-Grajzl et al. (2012) use county populations with a 5 percent threshold of American Indians, their samples are severely reduced in size (n= 71 and 80 respectively), making it difficult to obtain stable, reliable estimates. In a recent analysis of institutions and casinos on American Indian reservations, Cookson (2010) employs a 250-resident sampling cutoff and thereby increases his n to 114. Dimitrova-Grajzl et al. (2012), who look specifically at crime within P.L. 280 jurisdictions, argue that the "inclusion of counties with a smaller share of American Indian population increases the size of [their] sample, but dilutes the effect of P.L. 280" (p. 14). Arguably, the reverse is true in this analysis. For example, limiting the population size to 1,000 would exclude 65 observations from the present sample, 37 (57 percent) of which are mandatory or optional P.L. 280 reservations—warranting their representation in the data[14]. Acknowledging limitations of this design, as with all statistical analyses engaging reservation populations, these preliminary empirical findings are interpreted with caution.

The purpose of the 2002 Census of Tribal Justice Agencies was to describe the characteristics of tribal law enforcement, courts and administration, corrections,

[14] In conducting further analyses with population thresholds of 300 (n=147), 400 (n=134), and 500 (n=128), the non-P.L.280 independent and geographic control variables remain positive and statistically significant at above .05. The variables that wane in their significance include casinos, reservation population, and per capita incomes.

recordkeeping, and justice statistics. Of interest to this study is the level and extent to which reservations exercise administrative control over their justice services—as opposed to non-tribal local, state, and federal agencies. To address tautological concerns from the start, nothing in the text of P.L. 280 eliminates tribal justice systems, rather it replaces federal concurrent rule with that of those states where it applies. In theory, despite being an unfunded mandate, states could have provided resources or worked cooperatively with tribes to fill the void left by the federal government. Goldberg and Singleton (2008) have suggested that "where P.L. 280 has been implemented so as to allow for greater accountability of state law enforcement to tribal communities and greater financial or other support for reservation law enforcement and criminal justice…the greater differences may lie within the sets of P.L. 280 tribes and non-P.L. 280 tribes, not between them" (p. 38). Furthering the notion that P.L. 280 reservations may not look radically different from non-P.L. 280 tribes, Anderson and Parker (2008) have suggested "some tribes probably retained their jurisdiction only because their reservations are in states with constitutions that had disclaimers of jurisdiction[15] over Indian country" (p. 646). Statistical analysis is required to determine whether disparate outcomes are significantly associated with the law. The following table presents the variables of interest, their operational definition, form, and data source.

Table 6. Variables for all model specifications

Dependent Variable

sovjust	binary	Coded 1 if a reservation had *at least one* of three components of a tribal justice system [tribal law enforcement, judicial services, detention facilities] in 2002, 0 if none; Perry, 2005: Census of Tribal Justice Agencies

Independent Variables

mandpl280 (ref. category)	binary	1 if reservation is mandatorily (fully) subject to concurrent state criminal and civil jurisdiction under Public Law 280 (between 1953-1990); Melton & Gardner, 2004
optpl280	binary	1 if reservation is optionally (or partially) subject to P.L. 280 (1953-1990)
nonpl280	binary	1 if reservation was never subject to under P.L. 280 (1953-1990)
allpl280	binary	1 if reservation is mandatorily *or* optionally subject to P.L. 280 (1953-1990)

[15] The federal government required new states to include disclaimer clauses as prerequisites to gaining statehood after a 1881 Supreme Court ruling held that states could adjudicate crimes committed on reservations by non-Indians against non-Indians (Wilkins 2002). The forced disclaimers were meant to ensure federal jurisdiction over such crimes.

Controls

geog	categorical	County-level codes ranging from 1 (metropolitan, more than 1 million residents) to 9 (rural, less than 2,500 residents and not adjacent to metropolitan area); U.S.D.A. Economic Research Service, Rural-Urban Continuum Codes, 2012
casino	binary	1 if reservation operates a gaming enterprise and/or casino; National Indian Gaming Commission, 2012
logpop	continuous	Log transformation of the total number of residents living on or near reservation, 1999-2000; U.S. Census, 2000
logpcinc	continuous	Log transformation of the per capita incomes of residents living on or near reservation, 1999-2000; U.S. Census, 2000
term	binary	1 if tribe was terminated by executive or Congressional order, 1953-1971, (HCR 108; P.L. 587; P.L. 588; P.L. 671; P.L. 733)

4.1.1 Dependent variable

Data collected from the Department of Justice's 2002 Census of Tribal Justice Agencies are used to construct a dummy dependent variable for sovereign justice systems (*sovjust*), which, being a more liberal measure than an ordinal variable, indicates whether a given reservation operates *either* a tribal police force, a tribal judicial system[16], *or* a tribal detention facility. The data are informed by responses to the following questions:

(1) Does your tribe have a law enforcement agency employing sworn tribal personnel with general arrest powers?
(2) Does your tribe have a tribal judicial system (as defined in the Indian Tribal Justice Support Act)?
(3) Does the tribe perform detention functions?

In reducing the three responses to a dichotomous dependent variable measure, reservations that provide only one of these justice services are not overly penalized as compared to those who have all three. In Krepps and Caves' (1994) analysis of 638 participation in the forestry industry, this specification was also employed—arguing that the tribal takeover of even one operation produced net benefits for tribal sovereignty. Moreover, "with the arrival of tribal gaming in the 1990s, a growing number of tribes in Public Law 280 states have been using their own funds to establish tribal police forces"; these data from 2002 allow an adequate time margin for tribes to begin nullifying any

[16] Defined in the Indian Tribal Justice Support Act (25 U.S.C. § 38) as "the entire judicial branch, and employees thereof, of an Indian tribe, including (but not limited to) traditional methods and forums for dispute resolution, lower courts, appellate courts (including intertribal appellate courts), alternative dispute resolution systems, and circuit rider systems, established by inherent tribal authority whether or not they constitute a court of record."

deleterious effects of P.L. 280 on justice system planning and development—for at least one of the three branches concerned (Goldberg & Singleton, 2008, p. 12).

4.1.2 Independent variable

Defined in accordance to their jurisdictional status (Melton & Gardner, 2004) in year 1990, granting a little over a decade prior to data collection, 162 reservations are assigned binary codes across mandatory, optional, and non-P.L. 280 categories. In cases where reservations straddle more than one state, the reservation is considered a part of the state where the majority of the reservation lies. The year 1990 was selected as the appropriate cut-off point—excluding the retrocession of the Salish Kootenai Tribe of Montana in 1995, but including the next most recent retrocessions of the Quileute, Swinomish, and Chehalis Tribes of Washington in 1989. Also excluded from the sample are Oklahoma reservations (OTDSA), Alaska Native Villages (ANVSA) and Hawaiian Home Lands (HHL), as their unique Census geographic definitions obstruct standardized interpretation. In the primary analyses, non-P.L. 280 reservations (nonpl280), which comprise 60 percent of the total observations, are compared with all reservations impacted by P.L. 280 (allpl280), either optionally or mandatorily. In secondary analyses, distinction is made between reservations under optional (optpl280) and mandatory (mandpl280) P.L. 280 policy treatments, with the mandatory group serving as the reference category.

4.1.3 Controls

The geographic control variable is a rural-urban continuum code developed by the U.S. Department of Agriculture's Economic Research Service. Its categorical scores range from 1 (most metropolitan) to 9 (most rural), providing an important measure of distance to other justice service providers and greater insight into whether tribes face greater structural incentives to operate sovereign justice systems. On more remote reservations, we expect there to be a greater need for stand-alone services and therefore a positive association with the dependent variable. The data are distributed rather equally across the scores.

The size of the service population is also relevant, indicating both the human capital available for staffing a justice system and the level of public safety demand. A positive relationship is anticipated between the population control variable and the

dependent variable. Despite inherent flaws in U.S. Census 2000 data due to underreporting on reservations, they are the best and nearest measures to the 2002 Census of Tribal Justice Agencies that is available. The variable includes the outlier Navajo Nation of Arizona, which boasts 181,269 reservation residents, but its heteroskedastic nature is mitigated through log transformation. The median population size is 1,578 and roughly 90 percent of the sampled reservations have less than 10,000 residents.

As per the indications in *Captured Justice* (2012), wherever tribal gaming enterprises exist, there is greater likelihood the tribe has revenues to support tribal law enforcement. The casino variable is added to control for variation across reservations and to serve as a broader proxy for economic development. These data are retrieved from the lists of the National Indian Gaming Commission (NIGC) and once more assign binary codes indicating whether a tribe operates one or more gaming establishment versus none.

Similarly accounting for the economic status of reservations, per capita incomes are controlled in the analyses. Across all reservations, the median per capita income is $10,798. The outlying Shakopee Mdewakanton Sioux Community of Minnesota, which has per capita incomes of $84,517 owing to its small population (of 360) and wildly successful casino enterprises, is retained in the analysis. Once more, the variable is log transformed to limit heteroskedasticity.

Finally, because termination policies are enacted shortly after the passage of P.L. 280, dissolving certain tribes as federally recognized sovereigns and removing their lands from trust in a violation of treaty promises, their influence could produce spurious observations from the data. Although the "terminated" (and subsequently restored) code applies to a mere 4 percent of the data and will unlikely bear much weight in the model, it may nonetheless mitigate false inference.

Having delineated the variables, we now delve into their analysis—stating the predicted regression equations and statistical methods employed to test whether P.L. 280 plays an explanatory role in the development of tribal justice systems.

4.2 Analysis

Prior to the regression analyses, pairwise correlations were produced to determine multicollinearity among the variables. The highest degree of correlation was .2537

(p=.001) between *logpop* and *casino* controls, granting little cause for concern (Appendix 2.1). The data are then measured in the following predicted logistic regression models:

I: $sovjust = b_0 + b_1\, nonpl280 + b_2\, geog + b_3\, casino + b_4\, logpop + b_5\, logpcinc - b_6\, term + e$

II: $sovjust = b_0 + b_1\, nonpl280 + b_2\, optpl280 + b_3\, geog + b_4\, casino + b_5\, logpop + b_6\, logpcinc - b_7\, term + e$

The primary method employed in conducting statistical inference with a dichotomous dependent variable is logistic regression. Although semi-parametric, logistic regression models share several features with OLS linear probabilistic models: the log likelihood Chi-squared statistic can be interpreted in a similar fashion as the F-statistic and z-statistics associated with beta coefficients can be interpreted similarly to t-statistics in OLS. Counterbalancing these strengths, OLS and logistic models encounter similar problems of multicollinearity, omitted variable bias, and functional form. In addition to these, however, OLS models suffer from heteroskedasticity, as its predicted values can lie outside of the 0, 1 range. This is corrected in logistic regression: $\ln[p/(1-p)] = \alpha + \beta x + e$. Having justified the use of logistic regression, empirical results are now presented and interpreted.

4.3 Results

In the first series of iterations, the data reveal that across all specifications, the *nonpl280* variable is positive, highly statistically significant, and robust to the inclusion of controls. With each successive model, the chi-squared increases. We reject the null hypothesis in favor of the alternative with over 99% confidence.

Table 7. Series I model specifications

Variable	model1	model2	model3	model4	model5	model6
nonpl280	6.0638***	5.7132***	10.2507***	6.4744***	10.5613***	10.3109***
geog		1.2741**	1.2426**	1.2504**	1.3648**	1.3661**
casino			5.4393***	3.4257**	4.3769**	4.2770**
logpop				2.3640***	2.1501**	2.0819**
logpcinc					6.7436**	6.6631**
term						0.6735
_cons	2.4737***	0.9325	0.2490**	0.0011***	0.0000***	0.0000***
N	162	162	162	162	162	162
chi2	15.2428	22.3295	30.8284	43.3162	51.5948	51.7368

legend: * p<.1; ** p<.05; *** p<.01

Reservations subject to P.L. 280, mandatorily or optionally, are estimated to be more than 10 times *less* likely to operate tribal justice system services (police, court, corrections) as compared with reservations under federal jurisdiction (*nonpl280*).

In the final model below, the P.L. 280 explanatory variable obtains the greatest significance at p=.001. The control variables for per capita incomes, geographic location, reservation population and the operation of casinos also reveal positive association with the dependent variable, significant at the 95% confidence level. Whether a tribe was terminated does not weigh heavily in the analysis, likely owing to their rare occurrence in the data; its coefficient cannot be interpreted although a negative association with *sovjust* is revealed, as predicted. To assess the overall fit of the model, the Likelihood-ratio test for 6 degrees of freedom does not indicate omitted variable bias and the Cragg-Uhler (Nagelkerke) R^2 for the model is .474 (Appendix 2.2).

Table 8. Series I final model

Logistic regression — Number of obs = 162; LR chi2(6) = 51.74; Prob > chi2 = 0.0000; Log likelihood = -43.812929; Pseudo R2 = 0.3712

sovjust	Odds Ratio	Std. Err.	z	P>|z|	[95% Conf.	Interval]
nonpl280	10.31086	7.391806	3.25	0.001	2.529724	42.02591
geog	1.366076	.1743563	2.44	0.015	1.063735	1.75435
casino	4.276958	2.879821	2.16	0.031	1.142857	16.00582
logpop	2.081871	.6379639	2.39	0.017	1.141862	3.79572
logpcinc	6.663133	5.099829	2.48	0.013	1.486571	29.86559
term	.67354	.7094277	-0.38	0.708	.0854689	5.307852
_cons	3.06e-11	2.31e-10	-3.21	0.001	1.17e-17	.0000803

To determine whether those reservations subject to P.L. 280 under optional provisions constitute a distinct category from the mandatory group, a second series of logistic regressions are produced. Across iterations in Table 10, we find that the disparity between the mandatory (baseline) and exempt (*nonpl280*) categories is broader than initially posited, with the final odds ratio increasing from 10.311 to 17.232, significant with over 99.9% confidence.

Table 9. Series II model specifications

Variable	model1	model2	model3	model4	model5	model6
nonpl280	10.0000***	10.6113***	16.6861***	9.3447***	17.3258***	17.2327***
optpl280	13.3333**	17.5854***	14.2581**	7.7193*	11.1644**	11.0729**
geog		1.3206***	1.2854**	1.2549**	1.3639**	1.3641**
casino			4.4884**	3.1490*	4.0315**	4.0153**
logpop				2.0848**	1.9566**	1.9450**
logpcinc					7.9984***	7.9753***
term						0.9334
_cons	1.5000	0.4421	0.1457***	0.0019***	0.0000***	0.0000***
N	162	162	162	162	162	162
chi2	25.8629	34.9478	41.0170	48.2328	57.9259	57.9301

legend: * p<.1; ** p<.05; *** p<.01

The significance of the optional P.L. 280 variable wavers with the inclusion of controls, but is positively associated with the development of tribal justice systems with reference to mandatory P.L. 280 reservations at above the 95% confidence level in the final model (Table 11). This suggests that whether the tribes consented to state jurisdiction, whether state jurisdiction was limited in its application, or whether existing intergovernmental relations were more favorable in these states, the optional P.L. 280 reservations included in the analysis have felt the pains of law's imposition to a lesser degree than their mandatory counterparts. With an odds ratio of 11.073, however, their ability to provide tribal justice services is comparatively less than non-P.L. 280 reservations. Once more, these models allow us to reject the null hypothesis that P.L. 280 has no effect on the sovereign administration of justice with a high degree of confidence.

In the final model below, the inclusion of *optpl280* weakens casino and population variables slightly, but increases the strength of those for per capita incomes and reservation geography. These controls remain significant with over 95% confidence. The Likelihood-ratio test for 7 degrees of freedom reveals the overall model is significant and the coefficient of determination increased to .521 (Appendix 2.3), suggesting this final model explains 52.1% of the variation in the dependent variable.

Table 10. Series II final model

Logistic regression — Number of obs = 162; LR chi2(7) = 57.93; Prob > chi2 = 0.0000; Log likelihood = -40.716292; Pseudo R2 = 0.4157

sovjust	Odds Ratio	Std. Err.	z	P>|z|	[95% Conf.	Interval]
nonpl280	17.23272	13.15107	3.73	0.000	3.861568	76.90315
optpl280	11.07285	12.9888	2.05	0.040	1.111152	110.3432
geog	1.364092	.1703737	2.49	0.013	1.067898	1.74244
casino	4.015272	2.807487	1.99	0.047	1.019889	15.808
logpop	1.944967	.6295155	2.06	0.040	1.031357	3.667882
logpcinc	7.975304	6.168613	2.68	0.007	1.751351	36.31795
term	.93338	1.002468	-0.06	0.949	.113724	7.660638
_cons	5.68e-12	4.41e-11	-3.34	0.001	1.41e-18	.000023

In sum, these two logistic regressions have brought forth compelling evidence that P.L. 280 has created statistically significant disparities in the development of sovereign justice systems across the 162 reservations included in the sample. Although the analysis cannot explain *why* this is the case, it directs attention to the reality that deficits in law enforcement resources are highly correlated with the three distinct policy treatments.

4.4 Limitations

It is reiterated that these results should be interpreted with caution. In many ways, these models are supported both in theory and in qualitative evidence from the literature review. As a preliminary analysis, however, refinement in the addition of controls would be required to reduce non-spuriousness and the likelihood of omitted variable bias. Modeling tribal incentives to develop judicial systems for the enforcement of treaty fishing rights along the Columbia River may prove a variable with explanatory power. Moreover, including a variable that serves as an objective proxy for the strength of tribal-state relations would likely add depth to the analysis.

On a fundamental level, there are potential inaccuracies and misrepresentations in the self-report data that informs the dependent variable of this analysis. Establishing a population threshold of 200 residents may have also undermined the validity of statistical inference. Nevertheless, given the relative paucity of standardized data collected on

reservations across the U.S., this analysis lays the groundwork for future research as more reliable official data become available.

V. Qualitative analysis

As numbers alone may prove insufficient to convict P.L. 280 of the charges laid against it, human testimony and the archival written word are now called to the stand. In First, the scene is set with an introduction to the mandatory P.L. 280 state of Oregon and a portrait of the Confederated Tribes of the Umatilla Indian Reservation. The case study of the CTUIR is then unpacked—laying bare the qualitative methods employed and the interpretation of historical developments through Zaferatos' Theory of Tribal Community Development. The story of the CTUIR breathes life into the empirical analyses—translating the realities of law enforcement before, during, and after the imposition of state criminal jurisdiction on the Reservation, the resources at hand, the motives and strategies guiding the retrocession effort, and the resulting system of tribal justice today.

5.1 Setting the scene

5.1.1 Oregon, mandatory P.L. 280 state

In Oregon, there are three distinct jurisdictional regimes in place among the nine federally recognized tribes. The first regime represents those tribes still subject to P.L. 280. This group is comprised of the six Confederations of tribes and bands that were terminated by Congressional order (25 U.S.C. § 564; 18 U.S.C. §1162, 28 U.S.C. §1360) in August 1954 and subsequently restored between years 1977-1989. Since restoration, many tribes have begun garnering resources to exercise concurrent jurisdictional authority with the state through the institution of tribal courts and police forces. The second regime is manifest in the full and partial retrocessions by the Burns Paiute Tribe and the Confederated Tribes of the Umatilla Indian Reservation, respectively. The final regime type is found on the Confederated Tribes of Warm Springs Reservation, where the force of P.L. 280 was never applied. These myriad arrangements offer a fertile field for exploration—an unprecedented opportunity for research involving the policy implications of P.L. 280 in Oregon.

Since 1975, intergovernmental relations have been primarily mediated within Oregon's Legislative Commission on Indian Services (LCIS), which is comprised of one representative from each of the nine tribes, representatives from the Portland and the Willamette Valley, a senator and representative of the House. "Prior to its establishment, there was no suitable mechanism in state government to consider Indian needs and concerns directly" (LCIS, 2010). One of the concerns raised in LCIS and presented to the 2011 Legislature was the status of tribal police as peace officers in the state. Senate Bill 412 (SB 412) was advanced to secure in law the Oregon Supreme Court ruling on *State v. Kurtz* in 2010, which affirmed the authority of the Warm Springs tribal police officer in arresting Kurtz, a non-Indian, who attempted to elude justice by crossing reservation boundaries. Highlighted as a promising strategy in a 2013 report from the Tribal Law and Policy Institute, the recent passage of this deputizing legislation adds a layer to the analysis, providing insight into co-governance arrangements in Oregon's law enforcement (Champagne & Goldberg, 2013). As the CTUIR have long held memorandums of agreement with local, county, and state agencies with respect to tribal police authority—most dating back to retrocession in 1981—their case study allows historical depth in understanding the conversation between sovereignty and cooperative governance.

5.1.2 The Confederated Tribes of Umatilla Indian Reservation

The Confederated Tribes of Umatilla Indian Reservation (CTUIR) represent the union of the Cayuse, Walla Walla, and Umatilla Tribes. The three Tribes once laid claim to 6.4 million acres of land in northeastern Oregon and southeastern Washington. In 1855, however, the Tribes and the United States Government negotiated a Treaty in which the Tribes ceded possession of these lands in exchange for a 250,000-acre Reservation homeland (CTUIR, 2013). As a result of federal legislation in the late 1800s, the size of the Umatilla Reservation was further reduced to 172,000 acres—158,000 acres east of Pendleton plus 14,000 acres southeast of Pilot Rock (CTUIR, 2013). Currently, the Tribes have 2,916 enrolled members, nearly half of whom live on or near the Umatilla Reservation (CTUIR, 2013). In 2010, there were 3,031 residents on the Reservation, with roughly equal representation of Indians and non-Indians, owing to the checkerboarded nature of the reservation, being comprised of fee simple and trust lands

(U.S. Census, 2010). Unemployment was roughly 13.4 percent on the reservation and per capita incomes were $22,247 over years 2006-2010, according to American Community Survey estimates. The CTUIR government, Cayuse Technologies, and the Wildhorse Casino & Resort are the three primary employers in the area. The CTUIR government operates under the mandates of its Constitution and by-laws, adopted in 1949. Its governing body, or the Board of Trustees, has nine members who are elected in 2-year cycles by the General Council (tribal members ages 18 and older). Last year, the CTUIR tribal court, which was established in 1981 after retrocession, was formally separated from the CTUIR government through a Constitutional amendment.

With respect to crime, the Bureau of Justice Statistics produced a statistical profile of the Umatilla Reservation in its *American Indians and Crime* report for 1992-2002. A survey distributed through the *Confederated Umatilla Journal* collected self-report data on incidence, prevalence, and characteristics of violent crimes on the reservation. The majority (64 percent) of the 103 respondents were members of Cayuse, Walla Walla, or Umatilla Tribes. "Survey respondents reported a total of 88 violent victimizations during the previous 12 months. Almost two-thirds of all respondents indicated they had been victims of a violent crime" (Perry, 2004, p. 34). These crimes were primarily assault, sexual assault, and battery committed under the influence of alcohol (60 percent) by someone other than family or household member (59 percent non-domestic), with the majority of victims being women (66 percent) (Perry, 2004, p. 35). More recent statistics reported in *Crime in Oregon Indian Country* revealed that over years 2007-2008, the CTUIR Tribal Police Department (17 full-time officers) had 143 reports of Part I Major Crimes (Oregon Criminal Justice Commission, 2010). By comparison, the Warm Springs Police Department (25 full-time officers) had 666 and the Coquille Tribal Police Department (4 full-time officers) had 29 total Part I crimes reported (Oregon Criminal Justice Commission, 2010).

Having surveyed these more descriptive figures on the geography, population, economy, government, and prevalence of victimization and crime of/among the CTUIR, we are now prepared to receive testimony on the impact of P.L. 280 on tribal sovereignty and the administration of justice.

5.2 Case study: The CTUIR retrocession from P.L. 280

5.2.1 Methods

In the months of February and March 2013, ten semi-structured interviews were conducted with public officials from the CTUIR Board of Trustees, Tribal Court, Tribal Legal Department and Tribal Police Department, as well as the Oregon Attorney General's Office and the U.S. Attorney's Office for the District of Oregon. The questions varied given the respondent's role and experience of/with P.L. 280. Interviews usually lasted an hour, with the transcripts being typed and reviewed by participants within 2-3 weeks following the meeting. (Appendices 3.1-3.2).

To capture additional data specific to the CTUIR retrocession, a supplementary content analysis of 31 articles from the *East Oregonian,* the newspaper in the neighboring City of Pendleton, was undertaken for years 1975-1983. Themes of sovereignty, cooperation, and conflict were operationalized in words and phrases and totaled in frequency counts. To increase the reliability of the analysis, an independent coder was asked to review the articles and produce their own word totals.

As this case study is designed to provide a historical account of P.L. 280 and its retrocession, the voices of CTUIR representatives will describe pre-Termination Era tribal governance, traditional forms of law and order, the establishment of the constitution, responses to P.L. 280, and what law enforcement under state jurisdiction looked like. From here, Zaferatos' theory will be interwoven to shed light on the various planning phases undertaken by the Tribe—from setting internal goals, to deploying political strategies and contingency responses, to building government structures. Coupled with the interview data, the content analysis will elucidate non-tribal perspectives, relating the discourse surrounding CTUIR efforts to retrocede from state jurisdiction, its success, and its subsequent establishment of a police department and court. Two further sections reflect on the retrocession process and manifestations of tribal sovereignty today.

5.2.2 Building political infrastructure & internal goal setting

5.2.2.1 *Wiyaxayxt / Wiyaakaa'awn*: Early reservation governance

In meeting with the leaders of the CTUIR and beginning these conversations on law and justice on the Reservation, references to the Whitman massacre and the Cayuse

Five formed a continuous thread—an incident deeply entrenched in cultural memory. The 1850 trial and subsequent hanging of the five Cayuse tribal members accused of killing Dr. Whitman, his wife, and 12 other non-Indians for practicing ineffective medicine in the wake of a measles outbreak represented the "first taste of *suyápo* 'white' justice" (Johnson, 2006, p. 173). As a biased trial divorced of due process and proper exercise of jurisdictional powers[17], this historical event "remains an underlying factor in the Umatilla, Walla Walla, and Cayuse peoples' reluctance to trust law enforcement and other officials in positions of authority" (Johnson, 2006, p. 172). Only five years after this trial, the Tribes would reluctantly enter treaty with the U.S.

> "*The ink was barely dry on the treaty before efforts to rescind, diminish and allot the Reservation and open it up to non-Indian settlers were underway. In 1874, the Oregon Legislature passed a resolution to extinguish title to the Umatilla Indian Reservation. In 1885, Congress enacted legislation that resulted in an immediate loss of over 100,000 acres of Reservation land and the checkerboarding of non-Indian ownership over nearly half of the diminished land base in the decades to follow. The stated policy of allotment was to end the reign of tribal governments on reservations—to terminate them. Of course, with the passage of the Indian Reorganization Act in 1934 that policy was brought to an end, but not before enormous damage was done to the Reservation land base of the CTUIR and other affected tribes*."
>
> - CTUIR representative, Legal Department

In 1934, the leaders who served as the interpreters of the chief system had the opportunity to meet with the other tribes and the federal government at Chemawa to discuss the terms of the Indian Reorganization Act (IRA). The Umatilla refused to sign, unlike Warm Springs and other Oregon tribes.[18]

> *"I asked Sam Kash Kash and Joe Shoeships what happened there. Their reason was they did not trust the U.S. government. They just didn't feel it was proper because the U.S. had broken so many promises…How were they going to pay for all of those things that they were hearing? And because of this, we didn't get those IRA benefits—business incubators, revolving credit programs. We eventually built in constitutional by-laws similar to those in the IRA, but we did it without those benefits. In 1947, they created an interim Business Committee to start creating rules and regulations to start managing our own affairs…That's*

[17] In 1847, when the crime occurred, Walla Walla was in Indian Country—completely outside U.S. jurisdiction. The U.S. did not create the Oregon Territory until August 1848. (Johnson, 2006, p. 172).

[18] The Howard Wheeler Act of 1934 was also known as the Indian New Deal. It was intended to reverse the policies of the Dawes Act, which privatized communal holdings of Indian land, and to return self-governance and an economic base to the tribes.

> *where the Constitution and by-laws were born and in 1949 the community voted on it and it passed by only 9 votes [113 to 104]. And that's the same Constitution and by-laws that we're operating under today."*
>
> - CTUIR representative, Board of Trustees

Prior to the Constitution, tribal governance "resided with the General Council, which was simply a meeting held in a barnlike structure…Tribal officials elected by the Council included a chairman, vice chairman, secretary, and interpreter. Proceedings often were conducted in the Sahaptian language" (Luce, 2006, p. 152). However, the Council was "an ineffective body to protect and enhance the welfare of the people and to assert their Treaty rights"; real authority rested with the BIA superintendent (Luce, 2006, 153). Yet "winds of change were blowing across the reservation in 1946. Young tribal members, returning from military service, were unwilling to accept the status quo" (Luce, 2006, p. 153). It was in those years that followed that the Business Committee was appointed, the first tribal attorney hired, and the Constitution approved. From that point forward, governing powers would lie primarily with the nine-member Board of Trustees.

With respect to justice administration, although a tribal judge and police force existed under the BIA (25 U.S. Code of Federal Regulations) from the late 1800s to World War II, an informal system of law and order was all that remained by the time of the early constitutional government.

> *"We used to run things in a more dispersed model of authority…run by families, generally. It was more about humiliation, exclusion, and banishment. There was a whip-man and a whip-woman who would come through town. This was a form of public humiliation…public whippings. I would see the man coming down the road and I would run. That was social control."*
>
> - CTUIR representative, Tribal Court

> *"Were there tribal police? There were none… When there was an issue requiring police on the reservation, the view of our elders was that we were last on the list because of our rural position out here."*
>
> - CTUIR representative, Board of Trustees

These accounts lend insight into the systems governing Reservation affairs prior to the imposition of P.L. 280, enabling us to better gauge its effect on the ground.

5.2.2.2 In the days of termination

The winds of change were blowing indeed; this time, as the ink on the newly adopted Constitution was drying and as the CTUIR government was developing,

> *"The 1950s brought new threats to Indian Country. These threats came in the form of tribal termination and Public Law 280. P.L. 280 was never the Umatilla's idea—just like allotment was not their idea. I think P.L. 280 was viewed as a part of a strategy to terminate if not the reservation directly, then at least tribal sovereignty over their reservation."*
>
> - CTUIR representative, Legal Department

> *"When I asked the elders what was happening when P.L. 280 came down, their favorite answer was 'We didn't go to that meeting.' What they meant was, 'We didn't know about it.' The federal government was just going to do it. I don't think they had a choice."*
>
> - CTUIR representative, Tribal Court

> *"What did our leaders say in 1953 when Public Law 280 passed? No one asked our tribe to testify. Warm Springs had more political clout—already had a well-established constitution under the IRA. We hadn't organized… The Reservation economy was self-driven by local farmers and land lessees—there were no tribal organizations to offer programs."*
>
> - CTUIR representative, Board of Trustees

This underdeveloped state of affairs on the reservation may have directly contributed the imposition of P.L. 280, according to one interviewee:

> *"From the perspective of the people in the 1950s, a lot of the tribes did not have very well-functioning criminal justice systems. In fact, P.L. 280 likely came about because the Department of the Interior came out with a report indicating how much it would cost to fix judicial systems in Indian Country and it was incredibly substantial and I think the result was, 'Let's give it to the states.' And that's exactly what happened within a year. Some states realized that's what was going on and they didn't want jurisdiction. Other states took it and found out later that they weren't getting funded for it…so it made things much worse. From the perspective of the tribes, they never had the funds to do it themselves."*
>
> - CTUIR representative, Legal Department

Realization of the impact of this reform was not immediate, however. Some tribal members and officials viewed it as benign or potentially beneficial.

> *"We initially thought it was good because of child support, as I'm told. And I talked to the attorney at the time and I asked him, 'Why did they let P.L. 280 come*

> *in?' and he said 'Well, we thought it was a good idea! It didn't hurt anything and it doesn't look like it did!' and the answer to that is, 'Yes it did!'"*
>
> - CTUIR representative, Tribal Court

In time, as the system took its new shape, tribal sentiments changed. Despite a sorted history with the BIA in earlier eras of federal policy, Indians in many instances prefer federal to state jurisdiction as the BIA has Indian welfare as its special responsibility and concern (Goldberg & Champagne, 2006, p. 704). In Oregon, similar entities were non-existent at the time. The assimilatory drift of the new policy was increasingly felt.

> *"Native Americans were being forced to assimilate into the mainstream, and so whatever tribal systems were existence, it was obviously hard to maintain those…That's where you start losing customs and cultural identity, basically having your people prosecuted in non-Indian, non-traditional systems."*
>
> - U.S. Attorney's Office, District of Oregon representative

Experiences of state law enforcement appear to mirror what is found elsewhere in the literature—with testimonies reflecting either the absence or abuse of authority, discrimination and disconnects between non-tribal law enforcement and the Reservation community.

> *"I think the Tribe wanted retrocession because they felt singled out by the state and county, they felt the law was being applied unfairly, they felt they didn't understand the community… I mean, not long ago, Pendleton was a sundown town. If it was dark and you were Indian, you weren't supposed to be there. That was within the lifetimes of the leaders now."*
>
> - CTUIR representative, Legal Department

> *"It went both ways… When people needed help and protection, oftentimes it wasn't available. State and county authorities weren't nearby, so the response was slow and neither agency was well-staffed. Other times, there would be too much law enforcement, and people would feel like they were being discriminated against… People were unhappy with the treatment and outcomes of the state court system as well. They felt it was a foreign system—not many felt they got a fair shake in the state court."*
>
> - CTUIR representative, Legal Counsel

> *"Their officers would be the first out on the Reservation to arrest us if we exercised our treaty rights to hunt and fish… but when crimes occurred, they were the last to be there to investigate, prosecute."*
>
> - CTUIR representative, Board of Trustees

> *"They used to put roadblocks on the highway—just inside the Reservation boundaries. I thought to myself, 'Surely they don't just stop Indian drivers.' That was exactly what was happening."*
>
> - CTUIR representative, Legal Counsel

By the 1970s, these objections would culminate in the General Council's order to reclaim sovereignty over justice administration on the Reservation. Within Zaferatos' Theory of Tribal Community Development, the CTUIR had reached Phase I; through the formation of the Constitution and the establishment of the Board of Trustees, the Tribes have laid the groundwork for strategic action to defend sovereignty, assert territorial control, and maintain cultural cohesion.

5.2.2.3 Building strength, seeking sovereignty

In 1974, Wendell Chino, then president of the National Congress of American Indians, made the following assessment of P.L. 280: "As far as the American Indians are concerned, it is a despicable law. Public Law 280, if not amended, will destroy Indian self-government…On those reservations where states have assumed jurisdiction under the provisions of Public Law 280, lawlessness and crimes have substantially increased and have become known as No Man's Land because the state and federal officials will not assume responsibility" (referenced in Goldberg & Singleton, 2005, p. 5). This was the time; with the rise of the American Indian Movement and the passage of the 1968 Indian Civil Rights Act, many tribes were mounting resources to reassert themselves in the political arena. Yet resources remained scarce for the CTUIR. In conversations about their early planning processes, each representative referenced the tireless commitment of their leaders and their desire to effect change as the main fodder to their fire.

> *"In the early years, Board members were all volunteers. We still had elders such as Sam Kash Kash, Bill Minthorn, and Joe Shoeships. We had meetings out in a little BIA building that went until 3am. These were dedicated people. At one of my first meetings with the Board of Trustees, the directive was made clear: 'Get jurisdiction back.'"*
>
> - CTUIR representative, Legal Counsel

> *"We wanted to be like the other tribes—where things were going on. We had no money, no staff. We were going through mine fields—multi-jurisdictional lines everywhere. That very first meeting with the General Council, their first order was 'We want our own police.'"*
>
> - CTUIR representative, Board of Trustees

> *"We would all get together at night—sitting in a room, smoking until 3 in the morning drafting criminal codes, plans for the police, the court, who will we put in these positions if we retroceded tomorrow…? It was all dreams to me."*
>
> - CTUIR representative, Tribal Court

The next step was laying the blueprint for action through a feasibility analysis. The Tribes sought the legal guidance of the Native American Rights Fund; through them, they secured a lead attorney and a sub-contract from the BIA.

> *"I don't know how we got it, but it was designed to help us with unresolved legal issues, water rights, and PL-280. We then developed a planning committee—focused on capacity building. How do we get out of P.L. 280? We didn't know. What was our toolkit? We developed a progressive work plan and a progressive mindset*: Let's move on. *It was a struggle for our leaders to accept this plan; there was still a lot of resentment and distrust."*
>
> - CTUIR representative, Board of Trustees

Having made the necessary government expansions in Phase II, the Tribes progress to Phase III, where they begin selecting political actions and anticipating opposition. The path would not be clear-cut, as they continued to learn.

5.2.3 Selecting political actions & anticipating external conflict

In analyzing the strategies employed by the Tribes in their pursuit of retrocession, both tribal (internal) and non-tribal (external) perspectives are illumined. While interview data continue to represent CTUIR experiences, the content analysis of the *East Oregonian* sheds light on how their political actions were interpreted by their neighbors.

5.2.3.1 Internal perspective

> *"The approaches we took are at least entertaining…because there was no process defined in statute or regulation as to how jurisdiction could be retroceded. So we had to figure out how to get the State to offer to retrocede…The initial thought was that the State Legislature could do that…that would be the 'State.'"*
>
> - CTUIR representative, Legal Counsel

The Tribes first approached Senator Mike Thorne, who was from a long-time farming family in Eastern Oregon. This political partnership was tenuous; interests were somewhat misaligned. As many members of his rural district leased Reservation land, there were fears of the consequences of CTUIR civil jurisdictional powers.

> *"They weren't having it because the people on the Reservation were of the mindset that 'if the Umatilla Tribe has total jurisdiction over the Reservation, they're gonna drive us out—they're gonna get even…and if they have power of eminent domain, it makes them even more dangerous.'"*
>
> - CTUIR representative, Board of Trustees

The opposition could not be mounted; in 1975, Senator Thorne decided to oppose SB 338, which would have granted *full* retrocession from the state. The Tribes adopted a new strategy—pursuing the support of U.S. Senator Mark Hatfield.

> *"We'd had interactions with him before and we thought that, if nothing else, if Congress were to pass a law or a bill that provided for the retrocession of the Umatilla Tribe then that would suffice; legally and mechanically, that would provide the answer."*
>
> - CTUIR representative, Legal Counsel

Senator Hatfield charged his staff with investigating the political feasibility of moving forward with the proposal; several town hall meetings wee organized to hear from local constituents. Unfortunately, non-Indian public opinion remained uniformly against the Umatilla retrocession. To clarify what P.L. 280 did and didn't do, what retrocession meant, and how the CTUIR would exercise jurisdictional authority, a Criminal Justice Plan was drafted.

> *"It contained a criminal code with procedures, definitions for the court, codes for the police, training requirements—everything we could think of."*
>
> - CTUIR representative, Legal Counsel

Nevertheless, Senator Hatfield withdrew his support in 1977; the legislative effort fell prey to the same objections voiced during the Thorne campaign. The CTUIR were left to strategize anew. Plans for the retrocession of *both* civil and criminal jurisdiction needed amendment.

> *"The primary concerns were for civil jurisdiction allowing the Tribe to tax non-tribal reservation residents and begin exercising eminent domain authority and thereby evict them from their lands. This is when we began to focus on criminal jurisdiction."*
>
> - CTUIR representative, Legal Counsel

Seeking support in Oregon once more, CTUIR leaders met with Governor Vic Atiyeh in June of 1979. The Governor had been actively engaged in Oregon's newly established Legislative Commission on Indian Services (LCIS) and was engaged in Indian issues.

> *"He was very straightforward with us: 'Make it politically safe for me and I'll do it.' We had to overcome the opposition. We went to meet with everyone in the local County and share our Criminal Justice Plan with them. We gained pockets of support, but it took some effort with the County Sheriff. 'Can't just pin badges and guns on these Indian boys and call them a police department,' he once said."*
>
> - CTUIR representative, Legal Counsel

As the qualifications of future tribal police appeared to be a primary source of dissent, training standards that were even more expansive than State requirements were written into the Criminal Justice Plan. Meetings with the Sheriff and other community officials were planned—allowing the Tribes to begin, in earnest, the process of education and securing if not support, then at least non-opposition to the retrocession effort.

> *"Through that process, certainly not right away, I think that some at the County began to see some benefit of the Tribe having at least criminal jurisdiction because of the increase in law enforcement personnel, the prospect of the Tribe needing to contract for County jail space and that kind of thing."*
>
> - CTUIR representative, Legal Counsel

Having gained this new level of accord, the CTUIR reported back to the State Capitol—seeking final approval from the Governor.

> *"We finally obtained criminal jurisdiction through an executive order*[19] *from Governor Atiyeh. He tried to do it the correct way—he stepped up to bat."*
>
> - CTUIR representative, Board of Trustees

The executive order was sent to the Secretary of the Interior, who accepted the State retrocession request on January 2, 1981. Throughout these political campaigns, we see the CTUIR leadership traversing Phases III and IV of Zaferatos' Theory—anticipating external conflict, adopting contingent strategies, and accessing new political outlets to gain the support that finally ensured their success. To bring balance to the tribal

[19] The Executive Order issued by Oregon's governor states: ... I hereby offer to the United States for its acceptance ... all criminal jurisdiction conferred on the State of Oregon by section 1162, Title 18, United States Code, over the Umatilla Indian Reservation, as such reservation is constituted on the effective date of this executive order. The transfer of jurisdiction offered by this order shall become effective upon acceptance. Exec. Order No. EO-80-8 (May 13, 1980).

perspective and to better understand those external reactions that impeded retrocession efforts, we now introduce the content analysis of the *East Oregonian* archives.

5.2.3.2 External perspective

Surveying the articles published between 1975-1981 in the Pendleton-based *East Oregonian,* there is a distinct shift in rhetoric from more conflict-driven to cooperative language regarding the "return"[20] of tribal jurisdiction as the years progress. The shift is most notable in 1978, the same year of the *Oliphant v. Suquamish Tribe* decision, CTUIR re-strategizing in the wake of the Hatfield bill's failure, and the institution of monthly meetings between the Tribes and Umatilla County agencies. Before presenting the results of the content analysis, however, non-Indian media portrayals of the retrocession effort—through the Thorne, Hatfield, and Atiyeh political campaigns—is reviewed.

It was February 14th of 1975 when Senator Thorne introduced SB 338, a bill that would restore federal-tribal jurisdictional control on the Umatilla Indian Reservation, in the Senate Judiciary Committee. Not three months later, articles in the *East Oregonian* reveal strained working relations between the Senator and the CTUIR, with Thorne demanding "assurance that there were 'no hidden things' in implementing the new Indian authority which would harm Umatilla County or the public"—further claiming "the Indians have not done their homework…and that has been a source of embarrassment and frustration" (Clark, 1975a). Responding to Thorne's request for transparency and stakeholder inclusion, the CTUIR leadership met with 50 tribal members, several local law enforcement, and two County Commissioners on May 9th to receive questions on their retrocession request. "'If Mr. Thorne wants to throw stones, fine,' said the CTUIR Chairman. 'We will not throw stones. We are playing the game as it should be played,' he said…denying Thorne's fear that there is anything the Indians have kept 'hidden' from the public" (Clark, 1975b). Leading up to May 30th, when the final defeat of SB 338 is announced, media frames continue to reflect opposition—two parties at odds. Ending the campaign, Thorne stressed the need for educational outreach; "They have to get a good basis of support from the non-Indian community. That is the only way this is going to

[9] Throughout the *East Oregonian* articles, retrocession is misrepresented as a "return" of jurisdictional authority to the Tribes, illustrating the broad-based misconception that this authority was "terminated" by Public Law 280, when in fact it remained concurrent, [*Bryan v. Itasca County* 426 U.S. 373, 376 n.2 (1976)*; Three Affiliated Tribes v. Wold Engineering*, 476 U.S. 877 (1986); *State v. Schmuck*, 121 Wash. 2 d at 396].

work" (Clark, 1975c). A lack of communication and fears of unknown ramifications of tribal law enforcement are presented as the primary pitfalls of the legislation.

In the Hatfield campaign, more specific concerns were voiced over eminent domain and the scope of tribal authority as defined by reservation boundaries. In reporting on the issue of eminent domain, the *East Oregonian* made early allegations that with civil authority, "the Tribe could force landowners to sell land to the Tribe" (Cady, 1977a). More than three weeks passed before a response from the Tribal Attorney was reported, offering reassurance that "fears that the Tribe would confiscate property and force people to move [were] groundless" (Rupp, 1977). With respect to the boundaries of the Reservation, confusion centered on whether they were the ones originally defined in the Treaty of 1855 or the "diminished" ones. For non-Indians, this distinction held serious weight. According to one editorial, "Indian people have been claiming right to much more than they used to. The tribes apparently want to be able to write and enforce laws within the reservation boundaries as they stood in 1855. Those boundaries come into the City of Pendleton, reach up to Athena and Weston and generally take in a lot of area that Congress allowed to be bought by non-Indians in the late 1800s" (*East Oregonian,* 1977a). Renouncing his support in May 1977, U.S. Senator Hatfield declared he had "no intention of introducing legislation to restore the reservation boundaries to those established by the 1855 treaty" and that "withdrawal of the jurisdictional proposal should put to rest all concerns about taxing authority, trial by tribal courts, and condemnation proceedings" (*East Oregonian,* 1977b). According to Senator Thorne, Hatfield was "trying to get out of a politically sticky situation…the question of boundaries became an insurmountable problem" (*East Oregonian,* 1977b).

As we already know, this experience led the CTUIR to abandon efforts to retrocede civil jurisdiction. It was between this defeat and the initiation of talks with Governor Atiyeh that various macro- and micro-political changes began to level the playing field between the CTUIR and non-tribal government agencies. First, at the national level, the *Oliphant* decision eliminated all concerns involving tribal criminal jurisdiction over non-Indians. While this was a major strike to tribal sovereignty, state, county, and local governments became less threatened by retrocession, embracing it instead as a net benefit in terms of resources for public safety administration. In the

Atiyeh campaign, this was readily evident. As the *East Oregonian* reported, *Oliphant* was "expected to blunt controversy that accompanied similar [retrocession] efforts two years ago," as "'any criminal justice system developed by the Tribe would have application only to Indians on the Reservation'" (Rupp, 1979a). It was affirmed that "a big advantage of the return of criminal jurisdiction to the Tribes is that the move would open the door to 'a host of other projects or programs that might be jointly undertaken by the Tribe and local authorities"; one such project was the construction of a new detention facility in Umatilla County (Rupp, 1979a). Second, at the local level, the institution of the aforementioned monthly meetings in 1978 served to ameliorate intergovernmental relations. As then Umatilla County Commissioner Ford Robertson acknowledged, "most misunderstandings among the entities come about because of a lack of communication" (*East Oregonian,* 1978). The confluence of these variables, in addition to confinement of CTUIR authority to criminal jurisdiction over the "diminished" boundaries of the Reservation, yields non-Indian support for Atiyeh's retrocession request in 1980. On January 8th 1981, the headlines pronounced: "Necessary document published: Tribes now have criminal jurisdiction" (*East Oregonian,* 1981).

Turning now to the content analysis itself, which illustrates the shifting discourse surrounding retrocession through the operationalization of sovereignty, cooperation, and conflict, we review the words identified as primary convoys of meaning.

Table 11. Coded words: *East Oregonian,* 1975-1981

Sovereignty	*Cooperation*	*Conflict*
self-determination	cooperate/cooperative	opposition
authority (tribal)	support/supported	dissent
return/restore/regain/grant/o	help	at odds
btain jurisdiction/powers	joint/jointly/joining	disagree/disagreement
self-jurisdiction	agree/agreement	harassment
their own/its own (laws,	worked out/work closely with	complaints/complained
police, court, etc.)	assist/assistance	concern/concerned
self-policing	share	counter/contrary
self-governing	concurrence/concurrent rule	controversy/ controversial
entirely	contract with	upset
tribal powers	arrangements	harm
empowered	coordinated	non-cooperation
primary jurisdiction	work under commissions	frustration
wholly existing	with/commissioned by	throw stones
independent/independence	alliances	fear(s)

solely sovereign/sovereignty total jurisdiction separate take/took over (law enforcement, etc.)	cross-deputized/deputized huddle rapport resolve no objection community relations	allegation / alleged problem(s) objected force/forceful abrogate misunderstandings suspicion misconceptions

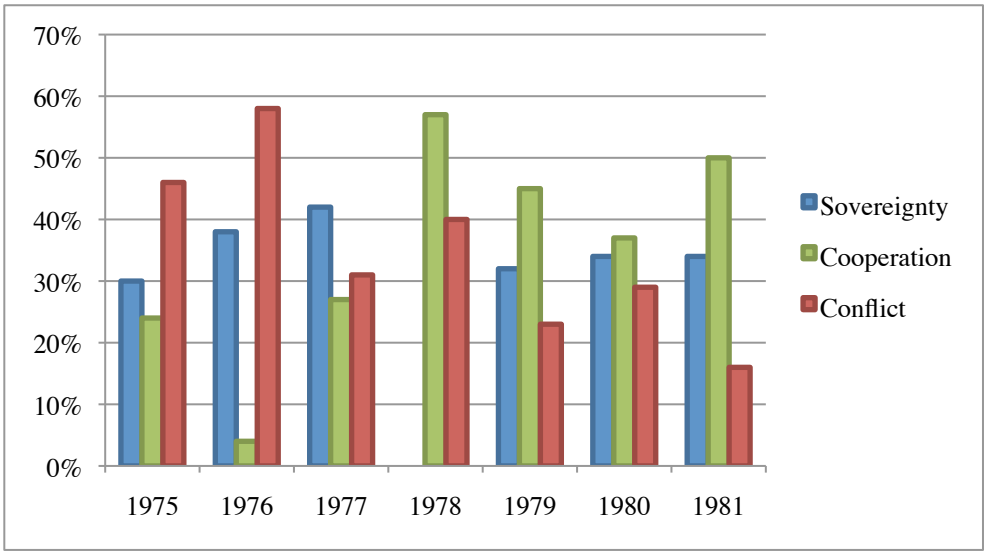
In composing the lists above, the author worked with an independent coder to confirm the "fit" of these words as proxies for the three categories. As the research design centers on issue framing—gauging the predominance of confrontational versus cooperative language, their balance with talk of sovereignty—frequency counts presented the most straightforward and unbiased methodological approach.

Table 12. Frequency counts and number of articles by year, 1975-1981

Year	*no. Articles*	*Sovereignty*	*Cooperation*	*Conflict*
1975	4	10	8	15
1976	2	9	1	14
1977	7	19	12	14
1978	2	0	4	3
1979	3	7	10	5
1980	5	12	13	10
1981	8	13	19	6
Totals:	31	71	67	67

Surveying the 31 articles pertaining to the retrocession effort and preliminary establishment of tribal justice systems, Table 13 reveals the total word counts for the three categories by year. These counts are concurrent with those of the independent coder (Appendix 3.3). The categories amass nearly equal counts across years, though their distribution is distinct. In these counts, it become readily clear that conflict language takes the stage in the earliest years of political campaigning and tapers off dramatically after 1978. It reappears, nevertheless, in the year of the Atiyeh campaign, with reference to those implementation concerns demanding resolution. Words connoting sovereignty peak right before 1978, and rebuild thereafter in tandem with cooperative language. Cooperation gains quite notably in the latter timeframe, with 42 counts between 1979 and 1981. To visually depict these shifting trends and to standardize the raw counts as percentages, the following graph is produced:

Figure 2. Shifting discourse over time



As some of this variance may be attributed to article authorship, it was ensured that representation from at least two distinct authors was afforded for the years surveyed. Years 1977 and 1980 revealed the greatest diversity, with at least three authors and editorialists weighing in on the CTUIR retrocession efforts. Given this inherent limitation, however, results should be interpreted with some caution. Please refer to Appendix 3.4 for a full report of language counts by article author and year.

Returning now to 1981, not only the official year of retrocession, but a year where upwards of 80 percent of the rhetoric in the *East Oregonian* highlights cooperation and sovereignty, we explore the nascence of the Tribal Court and Police Department through the words of those leaders directly engaged in their formation.

5.2.4 Government expansion

In 1981, having secured retrocession from state criminal jurisdiction, the Tribes cycle back to Phase II of Zaferatos' Theory—building new tribal political structures. When the official notice of retrocession was released in the *Federal Register*, there was initial shock:

> *"I was in our Attorney's office and I said, 'Hey—there's a retrocession here and they say it was effective yesterday!' He said, 'What??' and we looked at it and said, 'God dang they did it!!!' And then somebody said, 'Oh, you've got to set up the court up in two weeks...'"*
>
> - CTUIR representative, Tribal Court

Naturally, the weeks that followed were a flurry of activity—from adopting new tribal codes, to securing BIA Self-Determination (638) contracts, to recruiting personnel, to purchasing equipment, among other tasks.

> *"Were there challenges? ...There were plenty! I guess probably the easiest part was doing the paperwork... With regard to recruiting, there was no one to take the lead on it, so I spent a fair amount of time on that and others pitched in. Of course, we recruited a Chief of Police first and we left it to him to actively recruit other personnel."*
>
> - CTUIR representative, Legal Counsel

> *"We started with $5,000 budget. We bought a bunch of desks and typewriters. Then we went to $15,000 and we were paid for one night a week at $10.00/hr. We put in a lot of volunteer time because it was worth it to us."*
>
> - CTUIR representative, Tribal Court

These major developments received some mixed reaction from the tribal community, including elements of self-doubt. Most, however, favored these concrete expressions of judicial sovereignty.

> *"I think some Indians were leery of it…said, 'We've never run a court, we've never had police…I don't think we can!' Then there were those of us who wanted to do it ourselves and we said, 'Just watch us do it! If you don't want to help then get out of the way.'"*
>
> - CTUIR representative, Tribal Court

> *"People had celebrations in which they invited the fledgling Tribal Police Department and its members to attend and honor them, having them join in dances at powwows...The police were there to protect tribal members and people liked that!"*
>
> - CTUIR representative, Legal Counsel

Those early days of the tribal police department reflected a great deal of cooperation with external agencies. According to a current legal representative of the Tribes, the CTUIR have entered 14 cooperative policing agreements with federal, state, county, and city law enforcement.

> *"My first day on the job, they took me downtown and they introduced me to the Sheriff. He gave me a commission and he told us, 'If any of our people give you a hard time, you turn them over to me.' It was kinda tense out here at first… We*

> *didn't want people to be afraid of us. We weren't gonna go out there and start arresting White people left and right."*
>
> - CTUIR representative, Board of Trustees

In time, the Tribal Police and Court would establish their legitimacy as impartial authorities. Fast-forward to the present day and we find that these entities have steadily expanded their operations and maintained positive working relationships with the external community—sharing resources toward the common goal of public safety.

> *"For the Cayuse, we had to let go of our ideas of revenge. No one messed with our people. It was like an unwritten law. I'm proud of this police department because we've done a turnaround on our attitude. Now, we're a major player in the community. When we do joint task forces, our police department is a leader in that. Our guys are trained at every level. I think we've come a long ways."*
>
> - CTUIR representative, Board of Trustees

> *"When I first started, attorneys in town didn't want to come out here—didn't make them any money, I guess. Now, we've got them begging to come here…I can't get rid of them. We see about 500 to 1,000 cases in a year—civil and criminal—and we send out appeals to an appointed ad-hoc panel."*
>
> - CTUIR representative, Tribal Court

Summing up current perceptions of justice administration on the Reservation, the Legal Counsel offered a definitive assessment:

> *"No matter how unhappy someone might be with the tribal police and court system, nobody would want to go back to state jurisdiction today."*
>
> - CTUIR representative, Legal Counsel

The value of retrocession is evident to both the tribal leaders and community at-large. Part of the next task, therefore, is determining how the story of the CTUIR may serve as a model for other tribes—the variables that supported their success.

5.2.5 Reflections on retrocession

As the accounts of the tribal leaders and the content analysis reveal, there is a broader message to be gleaned from the CTUIR retrocession process. While the CTUIR necessarily framed retrocession as an issue of asserting sovereignty and securing quality public safety services, as time went on, the leaders increasingly adopted language that spoke to the benefit of their mutual aid in law enforcement. Within Zaferatos' Theory,

this decision to abandon more confrontational, conflict-inducing policy tactics in favor of more cooperative ones was a rational, strategic response to the opposition faced by the Tribes. This good-neighborliness, as representatives described in every interview conducted, was a major determinant of political success.

> *"There are four elements at play: first and foremost is a commitment to public safety regardless of national orientation or race. Then of course, is the protection of treaty rights, the exercise of sovereignty, and last but not least, there is the piece that involves being a good neighbor. The Umatilla have a proven track record when it comes to this."*
>
> - CTUIR representative, Legal Department

> *"Our stance is to present no surprises, don't burn any bridges, don't overpromise anything, and share with our neighbors."*
>
> - CTUIR representative, Board of Trustees

> *"The Tribe is very progressive in the way they deal with State and local governments. Rather than adopting a confrontational approach, they really try to come to mutual agreement and just be a good neighbor. Overall, things are very stable—even though every Board of Trustees member comes up for election every two years."*
>
> - CTUIR representative, Police Department

In some interviews, CTUIR cooperation with non-tribal entities was attributed to the divided pattern of landownership on the Reservation.

> *"The Umatilla are in a unique position historically, having the only checkerboarded Reservation in the state...I think in many ways this has forced everyone to work together out there."*
>
> - Oregon Attorney General's Office representative

> *"It's a negative by one way of it, but it turned out to be a positive—the checkerboarded Reservation meant that we had real shoulder-to-shoulder mixture with non-Indians. A lot of our attitude rubs off…ways of being civil rubs off too."*
>
> - CTUIR representative, Board of Trustees

External political actors who affirm tribal governance and create what Zaferatos (2004) calls a "level playing field," plays a significant role in the assertion of tribal sovereignty, as the content analysis revealed (p. 92). Having the commitment of Governor Atiyeh, the CTUIR were then encouraged in their active collaboration with local agencies. As observed in the mandatory P.L. 280 state of California, where no tribe

has retroceded, the *absence* of State support may constitute the primary intervening variable in the successful development of for tribal law enforcement and courts (Goldberg & Singleton, 2005, p. 5).

Woven throughout reflections on the CTUIR retrocession was the understanding that the pursuit of sovereignty is complementary to, not at odds with, increased cooperation within the administrative subsystem—an important contribution to current theoretical debates on the true form and expression of tribal sovereignty.

> *"I don't think there's a law enforcement entity in Oregon that doesn't benefit from partnerships...That's the way it works. I'm just hypothesizing, but in a grander scheme, if tribes retrocede, then it's about building partnerships."*
>
> - U.S. Attorney's Office, District of Oregon representative

To extend the examination of sovereignty into the post-retrocession era, we turn to those conversations in which the CTUIR representatives were asked to appraise their current levels of jurisdictional control.

5.3 Discussion: Sovereignty today

As one CTUIR representative described, tribal sovereignty is "Indians running our own programs and living with our own decisions. Indians administering justice for Indians: doing it with fairness and in a way that reflects our values." As this paper analyzes the effect of P.L. 280 on tribal sovereignty, a standard rubric was needed to assess the amount of judicial sovereignty perceived to be gained by retrocession. With the concept of '10 sticks of sovereignty' being coined in one of the meetings, interviewees were asked to rank the CTUIR accordingly, from 1 (least) to 10 (most) sticks. These were among their responses:

> *"Out of 10 sticks of sovereignty, we're maybe a 6. Even if we had civil and criminal jurisdiction over everything, we still don't own all of the land. We gained at least 1 or 2 sticks of sovereignty through retrocession...at least."*
>
> - CTUIR representative, Tribal Court

> *"It's going to have to be between a 6 or 7. Given the fact that before retrocession was accomplished, it was a zero, it's gone through an evolution to where it is today and we are still, at least in my estimates, faced with some huge gaps. The Indian Civil Rights Act reflects a large portion of those gaps by limiting tribal authority to impose fines and jail time. From its very first passage, it's been*

> *amended twice to where now, under the Tribal Law and Order Act, it is expanded (but still limited) from 1 year and a $5,000 fine to 3 years and a $15,000 fine. With the Violence Against Women Act, the controversial provision in there is the one that gives tribes the authority to punish non-Indian defendants who commit domestic violence against tribal members. That falls with the original* Oliphant *decision*[21]*, which was a travesty all in its own teacup."*
>
> - CTUIR representative, Legal Counsel

> *"Probably we're an 8. Under Senate Bill 412, tribal police are given the same enforcement powers as any police officer in the state of Oregon. Some would say that it gives us* more *authority than other police departments because they can't come here and do enforcement on the reservation over Indians. We already have SLECs*[22] *through the BIA so we can enforce Major Crimes on the Reservation. Of course, we have authority through tribal codes and federal law over all Indians here…so, it's really good."*
>
> - CTUIR representative, Police Department

Policy—be it Allotment, ICRA, TLOA, VAWA, or SB 412—is what chains or liberates expressions of tribal sovereignty. Both the quantitative and qualitative empirical evidence presented in this analysis have demonstrated that P.L. 280 arrests tribal sovereignty. Having entered the Era of Indian Self-Determination, P.L. 280 is an anachronism that warrants reevaluation. The following section presents several policy considerations that may serve to restore sovereignty among those reservations affected by P.L. 280.

VI. Policy Considerations

> *"I think what they should do is knock off P.L. 280, knock off* Oliphant*, allow us to adjudicate non-Indians, and then give us the budget to do it."*
>
> - CTUIR representative, Tribal Court

In a meta-analysis of the policy subsystem, we find that over the past five years—particularly in the passage of TLOA and the reauthorization of VAWA—the crises perpetuated by the jurisdictional maze of Indian Country law enforcement are no longer "insulated from the glare of publicity" (True et al. 2007, p. 159). Recently, it appears not

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[21] *Oliphant v. Suquamish Indian Tribe*. 435 US §191 (1978): Denies tribal court prosecution of offenses committed by non-Indians against Indians on tribal land.

[22] The Bureau of Indian Affairs (BIA), Office of Justice Services (OJS) issues Special Law Enforcement Commissions (SLEC) to Tribal, Federal, State, and local full-time certified law enforcement officers who offer active assistance in the enforcement of applicable Federal criminal statutes, including Federal hunting and fishing regulations in Indian Country.

a month passes without a journalistic feature on escalating crime on Indian reservations, many of which share the experiences of P.L. 280 tribes (Williams, 2012a, b, c; Hostler, 2012; Kalvelage, 2012). FRONTLINE and *Independent Lens* recently released David Sutherland's exposé, "Kind Hearted Woman," which chronicles the justice system experiences of a domestic violence/sexual assault survivor living on the Spirit Lake Reservation in North Dakota (PBS, 2013). The Federal Bureau of Investigation (FBI) has launched its own series titled "Journey Through Indian Country," highlighting the complexities of fighting crime on tribal lands (FBI, 2012). Acknowledging systemic failings, U.S. Associate Attorney General Tony West has claimed, "Crime in Indian Country is a top priority for the Department of Justice and this Administration" (Department of Justice, 2012). In light of this "heightened attentiveness by the media and broader publics," as well as recent commitments at the macropolitical level, is the subsystem pending a policy punctuation (True et al., 2007, p. 159)? Revisiting President Nixon's words in 1975, "The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions."

To lay the groundwork for policy considerations, we review a recent report from the Tribal Law and Policy Institute and Bureau of Justice Assistance that presents 10 promising strategies being deployed in P.L. 280 states. Across the sample, the authors identify 6 common elements (Champagne & Goldberg, 2013, pp. iii-vi):

1. The strategies reflect strong and persistent leadership from state and tribal authorities, often leading to institutionalization of ongoing tribal-state relations programs;
2. They typically follow from sustained educational efforts to explain tribal sovereignty and P.L. 280 to state police officers and judges;
3. They focus on providing effective and comprehensive justice services;
4. Some provide tribal members with culturally compatible policing and court alternatives;
5. Many favor cooperation between tribal and county/state governments; and
6. Most promote the enhancement of tribal government powers.

Addressing several of these features, both at micro- and macro-political levels, the policy considerations raised herein confront the core challenges posed in the administration of justice on P.L. 280 reservations. The four recommendations succinctly presented by the representative of the CTUIR Tribal Court at the beginning of this section were echoed in

almost every interview conducted. In sum, they represent concerns for tribal exit from P.L. 280, the extension of adjudicatory powers over non-Indians, the recognition and empowerment of tribal police by non-tribal governments, and funding that affords more than symbolic expressions of judicial sovereignty.

6.1 A new brand of retrocession

In the Tribal Law and Order Act of 2010, a tripartite provision was built in to mitigate the structural inequalities of allowing only state requests for retrocession as defined in ICRA. Now, tribal governments may petition the U.S. Attorney General for the restoration of concurrent federal criminal jurisdiction in P.L. 280 states. However, tribes remain circumvented in their attempts to remove state jurisdiction. Regardless of this limitation, the provision is perceived as a step in the right direction.

> *"In the next twenty years, we will likely see many tribes mounting retrocession efforts. TLOA is a piece of this. With the reassertion of federal jurisdiction, those tribes hopefully will be able to access federal funding for tribal justice systems in the BIA and through 638 contracts. Once tribes get to the point where they are exercising that authority, there will be substantially less need for the state to be involved…Although I think there will always be some tribes that will be okay with P.L. 280 because they don't have the internal resources and structure."*
>
> - CTUIR representative, Legal Department

As this assessment suggests, the wholesale repeal of P.L. 280 may not be appropriate in all contexts; some tribes may prefer concurrent rule with the state. Nevertheless, for those tribes who have historically contentious relations with the state, the inability to "knock off P.L. 280" completely may continue to undermine their development of sovereign justice systems. This new TLOA provision constitutes the *only* avenue available to tribes seeking release from P.L. 280. This begs the question: why are Tribal Nations denied the same ability as states in requesting full or partial retrocession?

6.2 Repealing *Oliphant*

Between the Indian Country Crimes Act of 1817 and the *Oliphant v. Suquamish Tribe* Supreme Court ruling of 1978, tribal courts have been denied criminal jurisdiction over non-Indians. In discussing the *Oliphant* decision with a Tribal Court representative, they likened it to P.L. 280 as an "antique, racist, and wrong" policy, further asserting:

> *"We don't want to mistreat anybody. We want to give due process, fair trial. We want to make sure we have law enforcement capabilities…I don't think it should be based on race, but right now it is and I don't like it."*
>
> - CTUIR representative, Tribal Court

Once more, while steps have been taken in the right direction, the wholesale repeal of *Oliphant* will require time, resources, and sustained political will. The reauthorization of VAWA included the SAVE Native Women Act (S. 1763), a bill that extends limited and provisional tribal adjudicatory powers over non-Indian domestic violence crimes committed against tribal members on reservations. While most will be unable to exercise these powers until March 2015, some Tribal Nations are already vying to be the first in the country to begin prosecutions under a U.S. Department of Justice pilot project (Michael, 2013). Once the first prosecution is made, there are grounds to appeal the constitutionality of *Oliphant* in the Supreme Court. For Tribal Nations to reclaim inherent sovereignty and maintain a "safe and peaceable living among citizens," *full* jurisdictional authority over crimes in Indian Country is a prerequisite. In the absence of this authority, however, two adaptive forms of cooperative law enforcement have emerged: deputization agreements and statutory peace officer authority for tribal police.

6.3 Cooperative law enforcement

> *"We're paralyzed by imaginary boundaries… what the federal law says, the state law says, what* our *law says! But I don't think our law is 180 degrees different from what our neighbors are using!"*
>
> - CTUIR representative, Board of Trustees

The ability to cross jurisdictional divides is the crux of law enforcement. This is particularly true in Indian Country, where legal complexities often shroud the overarching pursuit of justice—creating paralysis. As such, policies that support cooperative law enforcement have become a panacea. First, where intergovernmental relations are strong, tribal police departments are increasingly negotiating deputization agreements with state and local authorities—authorizing them to arrest non-tribal members and extradite them for prosecution. As mentioned with reference to the CTUIR, the police department operates under as many as 14 cooperative policing agreements with the state and county.

> *"No longer is it the case that a certain race can get away with crime because an officer is not deputized with authority over them. In Umatilla County, we have not had push back; there is mutual appreciation for the greater resources, greater coverage."*
>
> - CTUIR representative, Legal Department

But the alternative approach to these agreements, which overrides their necessity altogether, is the extension of statutory peace officer authority to tribal police. This is precisely the effect of SB 412, or the Tribal Policing Bill, passed in the 2011 session of the Oregon State Legislature.

6.3.1 Senate Bill 412 in Oregon

For more than a decade, Oregon tribes have worked to secure state recognition of tribal police officer authority. Multiple cases had been brought before the Oregon Supreme Court, including one that contested the authority of a tribal officer who was fully deputized with the County. The *State v. Kurtz* case brought the debate to a head. Once the Oregon Court of Appeals overturned the Supreme Court's acknowledgment of the Warm Springs officer's powers of arrest, SB 412 was advanced as a broad legislative fix. Although the CTUIR already had longstanding agreements in place, they were leading advocates for the bill.

> *"I think SB 412 was about fairness, credibility, certainty, and legitimacy. It all goes back to jurisdiction and being able to cross boundaries to enforce the law. It was a piece that was necessary to support in order to make our package a bit more…complete."*
>
> - CTUIR representative, Board of Trustees

Like those initial attempts at retrocession, SB 412 encountered considerable opposition.

> *"One of the arguments that I would often hear from people in state and local law enforcement circles would be, "Well, I remember when…" You know, a historical interaction with a tribal police officer or a tribal police department and that's the lens through which they view all tribal police officer and police departments."*
>
> - U.S. Attorney's Office, District of Oregon representative

> *"There were fears of 'super officers' and the abuse or overextension of authority. Opponents also claimed SB 412 was unconstitutional and called for state and county officers to be recognized as tribal police—out of fairness."*
>
> - CTUIR representative, Legal Department

Nevertheless, the bill was signed into law with a sunset provision in June 2015. Tribal police departments that take the necessary steps to become compliant with SB 412 lay claim to peace officer authority under the state. These steps do not come without sacrifice, however.

> *"Tribes have to waive sovereign immunity for certain kinds of lawsuits, they have to get certain kinds of insurance, they have to provide that certain records are going to be publicly available...I mean, there are huge decisions concerning sovereignty."*
>
> - Oregon Attorney General's Office representative

However, these sacrifices have clearly made gains for sovereignty, with the majority of Oregon's nine tribes already in compliance.

As micro-level responses to vacuums in Indian Country law enforcement, both deputization agreements and measures like SB 412 have demonstrated merit in enhancing reservation public safety. In states where similar agreements and policies may not succeed, there is the additional avenue of special law enforcement commissions with the federal government (SLECs). "Once tribal officers take on federally commissioned status, they may qualify for state peace officer status or have the powers of arrest as a matter of state law" (Champagne & Goldberg, 2012, p. 151). As the CTUIR police are covered under *all* of these deputizing measures, they lend strong testimony to their utility.

6.4 Funding

Harkening back to the quantitative results, it is clear that the "lack of federal support has precluded or stunted the growth of tribal law enforcement and justice systems in Public Law 280 states" (Goldberg & Singleton, 2005, p. 7). Naturally, as the final policy consideration, the federal government's stance towards funding P.L. 280 tribal justice systems is called into question. For tribes like the Umatilla, willingness to administer justice was always present—capacity was not.

> *"We only want to do what we can do well...and pay for. Otherwise, we're just a burden on the County. A long time ago, that was their attitude—'You're under federal jurisdiction, why do we gotta take care of you?' Well, that's what Public Law 280 said. On that side of the coin, they were always wishing that we had more capacity to do stuff on our own. But that's part of the deal—anything you*

> *want to do, you've got to have the capacity to fulfill that vision. And it's a long vision you've gotta have."*
>
> - CTUIR representative, Board of Trustees

As their story reveals, the receipt of BIA funding allowed the CTUIR to build a fully functioning criminal justice system. Fortunately, federal dollars are steadily finding their way back onto P.L. 280 reservations through programs administered by the U.S. Department of Justice that support victim services, court development, community-based policing, and the like (Goldberg & Singleton, 2005). While beneficial, funding efforts can nevertheless go awry. Goldberg and Singleton (2005) highlight an example in California, where the BIA directed funds to P.L. 280 counties "in exchange for more augmented and more culturally informed law enforcement services on local reservations"; yet it came at the expense of tribal educational and vocational programs, whose funding was diverted to meet this new objective (p. 17). In renewing federal commitments to justice systems under P.L. 280, *new* allocations should be administered in a manner that affirms concurrent tribal authority.

At the state level, it is broadly understood that P.L. 280 states did not direct funding towards tribal law enforcement.

> *"Generally, tribes are coming up with their own funds for tribal police. The state doesn't even have enough funds for* state *law enforcement. The Confederated Tribes of Grand Ronde…have historically funded Polk County officer positions…so the opposite. I'm not aware of any state pot of money for tribes that allows them to develop tribal police departments."*
>
> - Oregon Attorney General's Office representative

In the mandatory P.L. 280 state of Wisconsin, however, the Department of Justice has administered a grant program since 1955, now the County-Tribal Law Enforcement (CTLE) grant, which not only supports tribal justice systems but also incentivizes collaboration with non-tribal entities. In applying for funding[23], tribes and the counties that contain their reservation lands "submit a jointly developed cooperative agreement spelling out the law enforcement issues, the services to be performed, and the amount needed to implement the program" (Wisconsin Statutes § 165.90; Champagne &

[23] The program is funded by a portion of the money paid to the state by tribes pursuant to gaming compacts.

Goldberg, 2012, p. 149). As the data used in the quantitative analysis reveals, 10 of 11 Wisconsin tribes with populations of over 200 were operating at least one branch of the justice system in 2002, as compared with 7 of 24 tribes in California. Capacity makes all the difference—it matters less what source (state or federal) grants funds to tribes, so long as it enhances their sovereignty.

VII. Conclusion

The present analysis has sought to fill voids in existing research through unprecedented empirical evidence quantifying the disadvantage faced by P.L. 280 tribes in the removal of federal jurisdictional support and through an in-depth case study of a tribe's experience of, and exit from, state criminal jurisdiction under P.L. 280. Opening with a comprehensive review of the infrastructure of Indian Country law enforcement, the political and historical processes ushering in P.L. 280, and the studies determining its effect, this paper unsealed P.L. 280's record and examined its case history. Weighing new evidence against it, P.L. 280 was found guilty of arresting tribal sovereignty in the administration of justice. In the sentencing proceedings, restorative policies were considered as reparation to those tribes who fell victim to this Termination Era policy. In the closing argument, however, it is acknowledged that every trial grapples with potential biases and errors. Though the burden of proof may appear relieved, P.L. 280 and its discontents clearly delineated, we maintain restraint in issuing a conviction. To make the case more robust, study limitations are revealed and areas for future research recommended.

7.1 Study limitations

In the broadest sense, the paucity of official data on P.L. 280 reservations is a challenge presented to any research method engaging this population (Goldberg & Singleton, 2005). For the quantitative analysis, the Census of Tribal Justice Agencies would ideally be conducted annually—offering a far superior understanding to that of the cross-sectional data currently constituting the dependent variable. As Section 4.4 acknowledges, future analyses would benefit from additional control variables and possible adjustments to the reservation population threshold (n=200).

As for the semi-structured interviews, more representation from non-tribal representatives who held public office during the CTUIR retrocession would lend important insight. In general, a larger sample would level any biases or inconsistencies, as only 10 interviews were conducted. Nevertheless, saturation (agreement) was reached among the majority of tribal representatives in providing their accounts of retrocession.

The content analysis sought to amend the lack of non-tribal voice in the interview data, although it could be valuable to compare the reportage of the *East Oregonian* and the *Confederated Umatilla Journal* (CUJ) for the same years and determine whether consensus in language and issue framing exists.

As a single case study, the testimony of the CTUIR cannot be generalized. In fact, there is marked danger in doing so for retroceded tribes: "Studying only tribes that have successfully retroceded runs the risk of focusing exclusively on tribes that had especially bad experiences with state criminal jurisdiction, faced unusually low obstacles to retrocession, or were particularly well-positioned to overcome those obstacles" (Goldberg & Singleton, 2008, p. 460). In this way, the qualitative analysis should be expanded to incorporate comparisons with other Oregon tribes—the Burns Paiute, Confederated Tribes of Grand Ronde and Warm Springs, for example. This brings us to the exploration of future avenues of research.

7.2 Areas for future research

Opportunities for future research are boundless, as this field remains under-studied yet highly relevant to modern discourse concerning the reform of Indian Country's "jurisdictional maze" (Cardani, 2009, p. 114). Further empirical evaluation of the impact of P.L. 280 is needed to set the baseline for informing policy and budgetary allocations. Without understanding of what enhances and weakens the administration of justice under P.L. 280, we remain blind to the crime and victimization it perpetuates—through legal vacuums and/or the abuse of power. The present study is one of too few establishing this baseline. And with respect to those policy interventions already set in motion (i.e. SB 412 and the new VAWA provisions), researchers may exploit experimental field designs to gauge their force in P.L. 280 jurisdictions. As a part of a

strategy to expand data collection in these areas of Indian Country, such studies would bring crucial evidence to the table.

As for testimony, Champagne and Goldberg's *Captured Justice* has done much to balance the overrepresentation of California P.L. 280 tribes in qualitative data; yet still more P.L. 280 tribes have stories to share. Research demands further insight into the necessary elements to navigate P.L. 280, achieve retrocession, forge cooperative law enforcement agreements, and so forth. Both non-tribal and tribal policymakers stand to benefit from this information. Of recent, the Yakama Tribe in the optional P.L. 280 state of Washington has been looking to the Umatilla and Tulalip Tribes as guides for effecting their own retrocession—a concrete example of knowledge transfer (Hauge, 2012). These are changing times; those who are actively shaping them should bear witness to the role of P.L. 280 in the modern age.

While these past two sections illumine what lies beyond the reach of this research, it is worth reminding what *is* captured within—and more importantly, what value it holds for the participating tribe. I bring this analysis to an end with the words of one respected elder of the Umatilla:

> *"We've been in this box for so long, we've got to get out of it...and be a little more creative...to move forward. And when the next generation of leaders comes, what's the hope for them? The footprints need to be somewhere out there… People read; some of them dismiss everything, but there are some that are going to read what you're talking about and it will be very important for them. And it's not necessarily tribal members. We need people to support us—to know where we are and how we struggled to get where we are. We need supporters on the outside, so hopefully what you write will generate interest among those with whom we're not connected. It's one thing to have tribal members on board—it's another to have supporters in the right places. So how do we influence the people? By having a good message. You're a part of that message now."*

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Appendix

1.1 Federal statutes impacting tribal criminal jurisdiction

Law	*Reference*	*Year*	*Impact*
Trade and Intercourse Act	25 U.S.C. § 177	1790	Asserts any crime committed by a non-Indian against an Indian is punishable by the laws of the state or territory (tribal or non-tribal) of the offender
General Crimes Act	18 U.S.C. § 1152	1817	General federal laws for the punishment of crimes upheld in tribal lands (now as federal enclaves); Indian offenses remain under tribal jurisdiction
Assimilative Crimes Act	18 U.S.C. § 13	1825	Extends coverage through federal enforcement of certain state criminal laws in federal enclaves
Major Crimes Act	18 U.S.C. § 1153	1885	Further extends federal jurisdiction over Indians who commit 7 (later amended to 16) enumerated major crimes whether the victim is Indian or non-Indian
Indian Country Crimes Act	18 U.S.C. § 1152	1948	Redefines Indian Country; secures federal jurisdiction over inter-racial crimes
Public Law 280	18 U.S.C. § 1162; 25 U.S.C. § 1360	1953	Relegates federal jurisdiction over Indian lands to 6 mandatory states, with exceptions[24]; Amended in 1968 to allow retrocession by state request
Indian Civil Rights Act	25 U.S.C. § 1301	1968	Reaffirms tribal jurisdiction over *all* Indians, but limits the sentencing power of tribal courts
Indian Self-Determination Act	25 U.S.C. § 450	1975	Allows for the reassertion of sovereignty over tribal services through self-governance contracts, etc.
Tribal Law and Order Act	25 U.S.C. § 2801	2010	Increases federal collaboration with and funding for tribal law enforcement agencies, expanded sentencing authority of tribal courts, etc.

1.2 U.S. Supreme Court decisions impacting tribal criminal jurisdiction

Case	*Reference*	*Year*	*Impact*
Worcester v. Georgia	31 U.S. § 515	1832	State laws have no rule of force in Indian Country

[24] Tribes excluded from P.L. 280: Confederated Tribes of Warm Springs Reservation (OR), Red Lake Band of Chippewa Indians (MN), and Menominee Tribe (WI).

U.S. v. McBratney	104 U.S. § 621	1882	State criminal jurisdiction over non-Indians maintained in offenses enacted on tribal lands
Ex parte Crow Dog	109 U.S. § 556	1883	Reaffirms tribal self-governance and the absence of state jurisdictional authority on reservations, as well as federal jurisdiction in cases of intra-tribal crimes
U.S. v. Kagama	118 U.S. § 375	1886	Upholds federal plenary power over Indian Affairs and federal jurisdiction over Major Crimes
Bryan v. Itasca County	426 U.S. § 373	1976	State civil authority under P.L. 280 does not permit the taxation of tribal members
Oliphant v. Suquamish Indian Tribe	435 U.S. § 191	1978	Denies tribal court prosecution of offenses committed by non-Indians
United States v. Wheeler	435 U.S. § 313	1978	Double jeopardy does not apply in cases subject to both tribal and federal prosecutions
California v. Cabazon Band of Mission Indians	480 U.S. § 202	1987	Clarifies that state civil regulatory authority does not apply in tribal lands subject to Public Law 280.
Duro v. Reina	495 U.S. § 676	1990	Denies tribes the right to prosecute the crimes of non-member Indians

1.3 Criminal Jurisdiction in Indian Country (pre-Public Law 280)

Offender	*Victim*	*Jurisdiction*
Indian	Indian	Federal jurisdiction for felonies listed in the Major Crimes Act (18 U.S.C. § 1153); tribal jurisdiction for misdemeanors; no jurisdiction for felonies not listed in 1153.
Indian	Non-Indian	Federal jurisdiction for felonies listed in 18 U.S.C.§ 1153 and for other felonies and misdemeanors not listed in 1153, including assimilative crimes, unless the tribe has already punished the offender; tribal jurisdiction for misdemeanors.
Non-Indian	Indian	Federal jurisdiction for both felonies and misdemeanors, including assimilative crimes.
Non-Indian	Non-Indian	State jurisdiction for both felonies and misdemeanors.
Indian	Victimless Crime	Primary jurisdiction to the tribe; some cases may also have federal jurisdiction.
Non-Indian	Victimless Crime	Primary jurisdiction to the state; federal jurisdiction in some cases.

1.4 Criminal Jurisdiction in Indian Country under Public Law 280

Offender	*Victim*	*Jurisdiction*
Indian	Indian	State jurisdiction for felonies listed in the Major Crimes Act (18 U.S.C.§ 1153); tribal jurisdiction for misdemeanors; no jurisdiction for felonies not listed in 1153.
Indian	Non-Indian	State jurisdiction for felonies listed in Major Crimes Act and for other felonies and misdemeanors not listed in 1153, including assimilative crimes, unless the tribe has already punished the offender; tribal jurisdiction for misdemeanors.
Non-Indian	Indian	State jurisdiction for both felonies and misdemeanors, including assimilative crimes.
Non-Indian	Non-Indian	State jurisdiction for both felonies and misdemeanors.
Indian	Victimless Crime	Primary jurisdiction to the tribe.
Non-Indian	Victimless Crime	Primary jurisdiction to the state.

A Historical Timeline of Public Law 280 [http://www.tribal-institute.org/lists/tjsa.htm#five; http://www.aidainc.net/Publications/pl280.htm]

MANDATORY ---------->

[Subsequent retrocessions/repeals of P.L. 280 in brackets; italicized if a partial, i.e. civil *or* criminal, retrocession]

California (All Indian Country)
Oregon (All except Warm Springs[1]) [Burns Paiute, '79] [*Umatilla,* '81]
Minnesota (All except Red Lake) [Bois Forte, '75]
Nebraska (All Indian Country) [Omaha, '70] [Winnebago, '86]
Alaska (All except Metlakatla)[2]
Wisconsin (All Indian Country) [Menominee, '76]

[----------]

1953 1955 1957 1961 1963 1967 **1968**[3] /69 /70 /71 /72 1975 /76 1979 /81 1985 /86 /87 /88 /89 1995 2002

OPTIONAL---------->

Nevada[4] ('55; no tribal consent provision) [15 tribes, '75] [Ely Colony, '88]
South Dakota[5] ('57-61; tribal consent)
Washington ('57-63; tribal consent) [*Quinault,* '69] [*Chehalis,* '89] [*Tulalip,* '00
[*Suquamish,* '72] [*Quileute,* '89]
[*Colville,* '87] [*Swinomish,* '89]
Florida ('61; no tribal consent)
Idaho ('63; tribal consent)
North Dakota[6] ('63; tribal consent)
Montana[7] ('63; tribal consent) [*Salish Kootenai,* '95]
Iowa ('67; no consent)
Arizona[8] ('67; no consent) [Pascua Yaqui, '85]
Utah[9] ('71; tribal consent)

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[1] The original exceptions of the Red Lake, Warm Springs, and Metlakatla Reservations were for Indian Nations which not only successfully demonstrated that they had satisfactory law enforcement mechanisms in place, but successfully objected to being subjected to state jurisdiction.

[2] Alaska Natives are not included in the statistical analysis due to their unique Census category (ANVA). The same holds for Oklahoma Tribes (OTSA) and Native Hawaiians (--)

[3] Indian Civil Rights Act of 1968 allows for retrocession/repeal of Public Law 280.

[4] Nevada assumed optional jurisdiction under Public Law 280 in 1967, amending the provision a few years later to require tribal consent. Nev. Rev. Stat. § 41.430. See also Chapter 601, Statutes of Nevada (1973). A 1973 amendment provided for retrocession except for those tribes already subject to the Act which consented to continued state jurisdiction. No tribes requested continuation of state jurisdiction. In 1975, retrocession was accepted for 15 tribes that had been subjected to state jurisdiction under Public Law 280. 40 Fed. Reg. 27,501 (1975). In 1988, retrocession was offered and accepted for the Ely Colony. 53 F. Reg. 5837 (1988). At present, Nevada does not exercise any jurisdiction under Public Law 280.

[5] In 1961, South Dakota attempted to assert jurisdiction under Public Law 280 with respect to criminal offenses and civil cause of actions arising on highways. S.D. Codified Laws §§ 1-1-12 to 1-1-21. The Eighth Circuit declared this legislation invalid in 1990. *Rosebud Sioux Tribe v. South Dakota*, 900 F.2d 1164 (8th Cir. 1990).

[6] Spirit Lake is the sole affected tribe in North Dakota. North Dakota attempted to accept civil jurisdiction under Public Law 280, subject to tribal or individual consent. N.D. Cent. Code §§ 27-19-01 to 27-10-13. Both the condition of individual acceptance and the condition of tribal acceptance have been declared invalid under federal law. *Three Affiliated Tribes of the Fort Berthold Reservation v. Wold Eng'g*, 476 U.S. 877 (1986) (tribal acceptance); Nelson v. Dubois, 232 N.W.2d 54 (N.D. 1975) (tribal acceptance).

[7] Only the Confederated Tribes of Salish and Kootenai requested Public Law 280 provisions and in 1995, they achieved partial retrocession.

[8] In 1967, Arizona attempted to assume jurisdiction under Public Law 280 over air and water pollution only. Ariz. Rev. Stat. §§ 36-1801, 36-1856 (1973 Supp.). Subsequently, the United States Supreme Court's decision in *Bryan v. Itasca County*, 426 U.S. 373 (1976) made it clear that Public Law 280 did not encompass state regulatory jurisdiction of the type that Arizona had attempted to exercise. Arizona has since repealed its laws assuming jurisdiction over air and water pollution. Ariz. Laws 1986, § 19, Subsec. B (1987) (water pollution); Ariz. Laws 2003, § 4 (2003) (air pollution).

[9] In 1971, Utah asserted jurisdiction under Public Law 280, subject to tribal consent. Utah Code §§ 63-36-9 to 63-36-21, ch. 169, § 1 (1971). No tribe has consented to jurisdiction under the terms of this law.

1.6 Mandatory and optional P.L. 280 states, detailed

Reference: Goldberg & Singleton, 2008, pp. 8-9; Champagne & Goldberg, 2012, pp. 14-18

I. Mandatory P.L. 280 States

Alaska (229 tribes — 1 PL 280, 228 PL 280 Limited Territory)

None of the state's original Public Law 280 jurisdiction has been retroceded, and no tribes were excluded from the statute at the outset. Public Law 280, however, applies only within "Indian country," and the United States Supreme Court has held that the Alaska Native Claims Settlement Act of 1972 eliminated much of the Indian country in Alaska when it abolished all but one of the reservations. Except for that one reservation, the Metlakatla Indian Community, only scattered Native town-sites and trust allotments remain as Indian country in Alaska. As a consequence, most Alaska Native village lands are subject to state jurisdiction, not because of Public Law 280 but because they are not Indian country at all. For the Metlakatla Indian Community, Congress has underscored what is true for all tribes under Public Law 280 — that tribal jurisdiction is concurrent or shared. Because Congress has gone out of its way to emphasize Metlakatla's jurisdiction, and perhaps also because Metlakatla is a relatively isolated island, the BIA has been unusually supportive of that Tribe's law enforcement and criminal justice systems.

California (106 tribes — all PL 280)

None of the state's original Public Law 280 jurisdiction has been retroceded, and no tribes were excluded from the statute at the outset.

Minnesota (13 tribes — 1 excluded, 1 retroceded, 11 PL 280)

One tribe, Red Lake Band of Chippewa, was excluded from Public Law 280 at the outset. Another tribe, Nett Lake Band of Chippewa (Bois Fort Reservation), was the subject of retrocession in 1975.

Nebraska (5 tribes — 2 retroceded, 1 retroceded partial, 2 PL 280, 1 no Indian country)

Three tribes have been the subject of retrocession, the Omaha in 1970, the Winnebago in 1986, and the Santee Sioux in 2006. The Omaha retrocession was partial, leaving under state jurisdiction offenses involving the operation of motor vehicles on public roads or highways within the reservation. Of the remaining two tribes, one is subject to Public Law 280 and the other does not currently have any land base that would constitute Indian country for purposes of Public Law 280.

Oregon (9 tribes — 1 excluded, 1 retroceded partial, 1 retroceded full, 6 PL 280)

One tribe, Warm Springs, was excluded from Public Law 280 at the outset. Two other tribes, the Burns Paiute and Umatilla, were the subject of full and criminal retrocession in 1979 and 1981 respectively.

Wisconsin (11 tribes — 1 excluded, 10 PL 280)

One tribe, Menominee, was excluded from Public Law 280 at the outset. Subsequently the Tribe was terminated; when it was later restored to federal recognition, the state retroceded its Public Law 280 jurisdiction.

II. Optional P.L. 280 States

Florida (2 tribes, all PL 280)

Florida opted for Public Law 280 jurisdiction in 1962. One of the two tribes, the Seminole, has four separate reservations.

Idaho (4 tribes, all PL 280 partial)

In 1973, Idaho opted for Public Law 280 jurisdiction as to seven named subject areas only— compulsory school attendance; juvenile delinquency and youth rehabilitation; dependent, neglected, and abused children; insanity and mental illness; public assistance; domestic relations; and the operation and management of motor vehicles upon highways and roads maintained by the county or state. Some of these subject areas, such as domestic relations, do not implicate criminal jurisdiction. In addition, a 1976 decision of the United States Supreme Court indicates that some of these subject areas may not be permissible bases for state jurisdiction under Public Law 280 because they are regulatory in nature rather than criminal (see p. 11-12, infra). In the end, the main criminal jurisdiction that Idaho exercises through Public Law 280 is jurisdiction over child abuse, criminal traffic offenses, and acts by juveniles that would be criminal if committed by adults.

Montana (7 tribes, 6 non-PL 280, 1 retroceded partial)

In 1963, Montana opted for state jurisdiction over any tribe that consented. Only one tribe consented, the Confederated Salish and Kootenai Tribes. In 1995, the state retroceded jurisdiction over felonies back to the federal government for the Confederated Salish and Kootenai Tribes.

Nevada (16 tribes, all retroceded)

Nevada opted for state jurisdiction under Public Law 280 in 1967. In 1975, it retroceded jurisdiction over all but one of the tribes, and in 1988 it retroceded jurisdiction over the remaining tribe.

Washington (29 tribes, 4 PL 280, 18 PL 280 partial, 7 retroceded partial)

In 1957, Washington opted for state jurisdiction under Public Law 280 for any tribe that would give its consent. Ten tribes provided resolutions of consent under the terms of this act. In 1963, Washington amended this law to assert state jurisdiction, regardless of tribal consent, over all non-trust lands on reservations, over non-Indians on reservations, and over eight subject areas: compulsory school attendance; public assistance; domestic relations; mental illness; juvenile delinquency; adoptions; dependency matters; and operation of vehicles on public roads. The 1963 amendment also provided that Indians on trust lands could become subject to full, state criminal jurisdiction under Public Law 280 with tribal consent. Some of the eight subject areas, such as domestic relations, do not implicate criminal jurisdiction. In addition, a 1976 decision of the United States Supreme Court indicates that some of these subject areas may not be permissible bases for state jurisdiction under Public Law 280 because they are regulatory in nature rather than criminal (see pp. 11-12, infra). Thus, where Washington's Public Law 280 jurisdiction is limited to these eight subjects, state criminal jurisdiction is confined to child abuse, criminal traffic offenses, and acts by juveniles that would be criminal if committed by adults. Over the years, the state of Washington has retroceded its criminal jurisdiction over seven tribes in the state, including six of those that originally consented to full Public Law 280 jurisdiction. In most instances, however, this retrocession does not affect the state's jurisdiction over the eight compulsory subject areas, such as juvenile offenses. The tribes that have been the subject of retrocession are Tulalip (2000), Chehalis (1989), Quileute (1989), Swinomish (1989), Colville (1987), Suquamish (1972), and Quinault (1969).

2.1 Pairwise correlations

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pwcorr nonpl280 geog casino logpop logpcinc term, sig
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	nonpl280	geog	casino	logpop	logpcinc	term
nonpl280	1.0000					
geog	0.1027	1.0000				
	0.1934					
casino	-0.1712	0.2144	1.0000			
	0.0294	0.0061				
logpop	0.2525	0.2083	0.2537	1.0000		
	0.0012	0.0078	0.0011			
logpcinc	-0.2189	-0.2037	-0.0020	-0.0238	1.0000	
	0.0051	0.0093	0.9802	0.7635		
term	-0.1327	-0.0248	-0.1055	-0.2412	-0.1262	1.0000
	0.0922	0.7543	0.1816	0.0020	0.1095	

2.2 Goodness of fit tests for Series I final model of *sovjust*

```
Measures of Fit for logistic of sovjust

Log-Lik Intercept Only:        -69.681   Log-Lik Full Model:           -43.813
D(155):                         87.626   LR(6):                         51.737
                                         Prob > LR:                      0.000
McFadden's R2:                   0.371   McFadden's Adj R2:              0.271
ML (Cox-Snell) R2:               0.273   Cragg-Uhler(Nagelkerke) R2:     0.474
McKelvey & Zavoina's R2:         0.594   Efron's R2:                     0.359
Variance of y*:                  8.105   Variance of error:              3.290
Count R2:                        0.877   Adj Count R2:                   0.200
AIC:                             0.627   AIC*n:                        101.626
BIC:                          -700.952   BIC':                         -21.211
BIC used by Stata:             123.239   AIC used by Stata:            101.626
```

2.3 Goodness of fit tests for Series II final model of *sovjust*

```
Measures of Fit for logistic of sovjust

Log-Lik Intercept Only:        -69.681   Log-Lik Full Model:           -40.716
D(154):                         81.433   LR(7):                         57.930
                                         Prob > LR:                      0.000
McFadden's R2:                   0.416   McFadden's Adj R2:              0.301
ML (Cox-Snell) R2:               0.301   Cragg-Uhler(Nagelkerke) R2:     0.521
McKelvey & Zavoina's R2:         0.603   Efron's R2:                     0.425
Variance of y*:                  8.294   Variance of error:              3.290
Count R2:                        0.901   Adj Count R2:                   0.360
AIC:                             0.601   AIC*n:                         97.433
BIC:                          -702.057   BIC':                         -22.317
BIC used by Stata:             122.133   AIC used by Stata:             97.433
```

3.1 Informed consent form

INFORMED CONSENT FORM

Project Title:	Sovereignty under Arrest? Navigating Public Law 280 and its Discontents
Principal Investigator:	Professor Scott Akins
Student Researcher:	Sarah Cline
Sponsor:	Oregon State University
Version Date:	December 4, 2012

WHAT IS THE PURPOSE OF THIS FORM?

This form contains information you will need to help you decide whether to be in this study or not. Please follow along as the form is read aloud and ask questions about anything that is not clear.

WHY IS THIS STUDY BEING DONE?

The purpose of this research is to examine the impact of Public Law 280 (P.L. 280) on the development of tribal justice systems, the results of retrocession efforts, and the effectiveness of interagency agreements in the enforcement of criminal law on reservations.

WHY AM I BEING INVITED TO TAKE PART IN THIS STUDY?

You are being invited to take part in this study because, as current/former public official representing a tribal, state, county, or federal agency, you are able to speak with authority on the status of reservation public safety and justice systems in the mandatory P.L. 280 state of Oregon.

WHAT WILL HAPPEN IF I TAKE PART IN THIS RESEARCH STUDY?

If you agree to participate in the interview, the Student Researcher (Sarah Cline) will conduct an interview with you that will last up to 2 hours. At the beginning of the interview, the researcher will ask you if you would allow them to record the interview on an audiotape. By recording the interview, the researcher can correctly understand and record everything said. The tape will be used to write out (transcribe) the entire interview. You will have the opportunity to review and approve of the transcript.

Next, the researcher will ask you several questions about P.L. 280, criminal jurisdiction, tribal retrocession, etc. She will listen and take notes as you respond. Your responses will be associated only with your title, not your name. However, confidentiality is not wholly secured given the nature of your role as a current/former public official. As such, please respond in accordance with your role as a representative of a tribal, state, or federal government.

_____ You may record my voice in the interview.
Initials

_____ You may <u>not</u> record my voice in the interview.
Initials

WHAT ARE THE RISKS OF THIS STUDY?
There are no anticipated risks of participating in this study.

WHAT ARE THE BENEFITS OF THIS STUDY?
This research aims to clarify the administration of public safety on reservations in P.L. 280 states and thereby guide current and future policies between tribal, state, and federal governments. This study also seeks to address research objectives of the Tribal Law and Order Act of 2010.

WILL I BE PAID FOR BEING IN THIS STUDY?
There is no monetary compensation for participation.

WHO IS PAYING FOR THIS STUDY?
This research is not funded. CTUIR cultural funds are not available for tribal members who participate.

WHO WILL SEE THE INFORMATION I GIVE?
Parts of the information you provide during this research study may feature in a thesis paper, which becomes a public document on the Oregon State University (OSU) School of Public Policy website once approved. The paper will also be submitted to the Confederated Tribes of the Umatilla Indian Reservation.

To protect your responses as a research participant:

- Interviews are conducted in a secure location, i.e., wherever you feel most comfortable.
- Audio recordings will be transferred to a password-protected computer file, transferred to a USB drive, and secured in a locker on the OSU campus for the length of the research project. These recordings will be deleted when the project is completed.
- Interview transcripts and copies of this consent form will also be stored on the same USB drive, locked, and made available only to the Principal Investigator (Dr. Scott Akins) and Student Researcher (Sarah Cline).
- Your position title (not name) will be the only identifier listed with any/all responses included in the final report. You will have the opportunity to review the interview transcripts and you will receive a copy of the final report for your records.
- It is possible (if not likely) that due to your current/former role as a public official, you may be identifiable despite the fact that your name is not explicitly referenced anywhere in the report.

WHAT OTHER CHOICES DO I HAVE IF I DO NOT TAKE PART IN THIS STUDY?
Participation in this study is voluntary. If you decide to participate, you are free to withdraw at any time without penalty. If you choose to withdraw from this project before it ends, the researchers may keep already collected (and approved) information and include it in the final report.

WHO DO I CONTACT IF I HAVE QUESTIONS?
If you have any questions about this research project, please contact Dr. Scott Akins at (541) 737-5370 or sakins@oregonstate.edu and/or Sarah Cline, at (925) 337-6501 or clines@onid.orst.edu. :
If you have questions about your rights or welfare as a participant, please contact the Oregon

State University Institutional Review Board (IRB) Office, at (541) 737-8008 or by email at IRB@oregonstate.edu.

WHAT DOES MY SIGNATURE ON THIS CONSENT FORM MEAN?
Your signature indicates that this study has been explained to you, that your questions have been answered, and that you agree to take part in this study. You are entitled to a copy of this consent form.

Participant Signature:_____ Date:_____

Researcher Signature:_____ Date: _____

3.2 Interview questions

INTERVIEW QUESTIONS

Project Title: Sovereignty under Arrest? Navigating Public Law 280 and its Discontents
Principal Investigator: Professor Scott Akins
Graduate Student Researcher: Sarah Cline

Research Description/Purpose:
This study highlights the complexities of criminal law enforcement in Indian Country, seeking to determine whether the extension of state/county jurisdiction over tribal lands through Public Law 280 of 1953 (18 U.S.C. § 1162; 25 U.S.C. § 1360; hereinafter referred to as P.L. 280) affected reservation public safety and the development of tribal justice systems. At the core of this analysis is the question of sovereignty, resources, and administrative power. Taking a mixed-method analytical approach, the first portion of the research provides a quantitative analysis of the impact of PL-280 on indicators of the jurisdictional reach and resource capacity of tribal justice systems on more than 150 reservations in the U.S. The data are primarily gleaned from the Bureau of Justice Statistics, U.S. Census, Native Nations Institute, and the Bureau of Indian Affairs. Through a series of logistic regressions with relevant controls, a battery of hypotheses will be tested to determine the effect of PL-280 on the functioning of tribal justice agencies. This empirical analysis is then grounded in a qualitative case study involving the Confederated Tribes of the Umatilla Indian Reservation (CTUIR). Through content analysis of public archival materials and purposive semi-structured interviews with public officials who were engaged in tribal retrocession, experiences of the criminal justice system under P.L. 280 and post-P.L. 280 will be illumined. Interviews will also be sought with county, state, and federal representatives who can speak to non-tribal perceptions of P.L. 280. While this study will primarily be used for a Master's thesis, it contributes to the overarching research objectives listed in the Tribal Law and Order Act of 2010, which seek to locate best practices and administrative models in reducing crime and victimization on reservations—particularly those subject to P.L. 280.

Questions for CTUIR representatives:

1. Please share any knowledge (and experience, if applicable) you have of law enforcement under Public Law 280.
2. Under P.L. 280, was there an observed difference in the way local law enforcement exercised jurisdictional power (as compared with federal agents)?

3. How did state and tribal justice agencies exercise concurrent jurisdictional authority under P.L. 280? If at all?
4. Could you please share your knowledge (and experience, if applicable) of tribal retrocession of criminal jurisdiction?
5. How has reservation law enforcement changed since retrocession?
6. How did the reservation community (both Indian and non-Indian) respond to retrocession efforts?
7. Please speak to the development of the tribal police force. What challenges, if any, existed?
8. On a scale from 1-10, with 10 representing the greatest degree of sovereignty in the administration of justice, where does the tribe stand today? Why?
9. Where would it rank pre-retrocession?
10. How were cross-deputization agreements forged with the county?
11. Have these increased reservation public safety? Why or why not?
12. What impact, if any, has Senate Bill 412 had on reservation crime?
13. If resources were unlimited, what would reservation law enforcement look like in ten years?

Questions for state representatives:

1. Please share any knowledge (and experience, if applicable) you have of law enforcement under Public Law 280.
2. How did state and tribal justice agencies exercise concurrent jurisdictional authority under P.L. 280? If at all?
3. Could you please share your knowledge (and experience, if applicable) of the Confederated Tribes of Umatilla Indian Reservation's retrocession of criminal jurisdiction?
    a. How has reservation law enforcement changed since retrocession?
4. Have other tribes expressed interest in retrocession? Why or why not?
5. Please describe the working relationship with CTUIR law enforcement (whether police, the court, or attorneys).
6. How were cross-deputization agreements forged with CTUIR?
7. Have these been successful? Why or why not?
8. What impact, if any, has Senate Bill 412 had on reservation crime?
9. If resources were unlimited, what would reservation law enforcement look like in ten years?

Questions for federal representatives:

1. Please share any knowledge (and experience, if applicable) you have of law enforcement under Public Law 280.
2. How did state and tribal justice agencies exercise concurrent jurisdictional authority under P.L. 280? If at all?
3. What became the role of federal agents in reservation law enforcement after P.L. 280?
4. What responsibility, if any, does the federal government have to P.L. 280 tribes?
5. Could you please share your knowledge (and experience, if applicable) of tribal retrocession of criminal jurisdiction?
6. How has reservation law enforcement changed since retrocession?
7. Have cross-deputization agreements increased public safety?
8. What impact, if any, has Senate Bill 412 had on reservation crime?
9. If resources were unlimited, what would reservation law enforcement look like in ten years?

3.3 Independent coder report

Word Count	Year							
	1975	1976	1977	1978	1979	1980	1981	Grand Total
Conflict	15	14	14	3	5	10	6	67
Cooperation	8	1	12	4	10	13	19	67
Sovereignty	10	9	19		7	12	13	70
Grand Total	**33**	**24**	**45**	**7**	**22**	**35**	**38**	**204**

Word Count	Year							
	1975	1976	1977	1978	1979	1980	1981	Grand Total
Conflict	**15**	**14**	**14**	**3**	**5**	**10**	**6**	**67**
abrogate				1				1
allegation	1							1
alleged		2						2
at odds	1							1
complained						1		1
complaints		1					2	3
concerned			1					1
concerns		1	2			3		6
contrary			1					1
controversial			2					2
controversy					1			1
counter		1						1
criticism						1		1
disagree		1						1
disagreement						1		1
dissent			1					1
fear	1				1			2
fears			2				1	3
force		1	2					3
forceful		1						1
frustration	1							1
harass		1						1
harassment		3						3
harm	1							1
misconceptions							1	1
misunderstandings				1				1
no cooperation	2							2
non-cooperation					1			1
objected	1							1

oppose	1							1
opposed	2							2
opposing		1						1
opposition	1							1
problem	1	1	1		1	3	1	8
problems			1	1		1	1	4
suspicion					1			1
throw stones	2							2
upset			1					1
Cooperation	**8**	**1**	**12**	**4**	**10**	**13**	**19**	**67**
agree	1							1
agreement	1		2			1		4
agreements			2					2
alliances							1	1
also be deputized							1	1
arrangement							1	1
arrangements						2		2
assist					2			2
assistance			1				1	2
assisted							1	1
commissioned						1		1
community relations							1	1
concurrence	1							1
concurrent			2					2
concurrently			1					1
contract						1		1
contract with county	1						2	3
contracted							1	1
contracts						1		1
cooperate							1	1
cooperated	1							1
cooperation							3	3
cooperative				1				1
coordinated						1		1
cross-deputized							4	4
help	1			1	1	1		4
helping							1	1
huddle				1				1
joining			1					1
joint			1					1
jointly				1	1			2
no objection						1		1
rapport					1			1

resolved	1			1	2		4
share				1			1
support	1	1		1	1		4
supported				2			2
work closely						1	1
work under					1		1
worked out			1				1
working agreement			1				1
Sovereignty	**10**	**9**	**19**	**7**	**12**	**13**	**70**
authority			4				4
empowered			1			1	2
entirely		1					1
granting criminal jurisdiction					1		1
independence				1			1
independent			1				1
Indian authority	1						1
its own	1	1	2				4
obtain both civil and criminal jurisdiction						1	1
offering jurisdiction					1		1
powers			1		2		3
primary						1	1
primary jurisdiction			1				1
regain civil and criminal jurisdiction					1		1
regained criminal jurisdiction						1	1
restoration of legal jurisdiction	1						1
restore			1				1
return	1				3		4
return				1			1
return civil and criminal jurisdiction	1						1
return criminal jurisdiction						1	1
returned			1			2	3
returning			1	3		1	5
returning				1			1
returns criminal jurisdiction					1		1
self-determination		2					2
self-governing		1					1
self-jurisdiction	5						5
self-policing		1					1
separate enforcement and judicial system					1		1
solely			1				1

sovereign			1					1
sovereignty					1			1
take over		1						1
their own		2	1			1	4	8
took over							1	1
total jurisdiction			1					1
tribal authority			1					1
tribe's authority						1		1
wholly existing			1					1
Grand Total	**33**	**24**	**45**	**7**	**22**	**35**	**38**	**204**

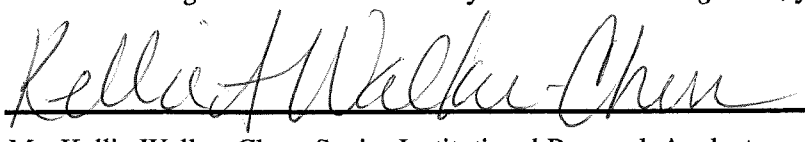
3.4 Coded word counts by article author and year, 1975-1981

Word Count By Author	**Year 1975**	**1976**	**1977**	**1978**	**1979**	**1980**	**1981**	**Grand Total**
Bob Crider						**13**		**13**
Conflict						4		4
Cooperation						4		4
Sovereignty						5		5
Editorial1		**13**						**13**
Conflict		3						3
Cooperation		1						1
Sovereignty		9						9
Editorial2			**2**					**2**
Sovereignty			2					2
Jim Eardley					**1**			**1**
Cooperation					1			1
Kip Cady			**29**					**29**
Conflict			6					6
Cooperation			10					10
Sovereignty			13					13
Mike Forrester			**2**					**2**
Cooperation			1					1
Sovereignty			1					1
Steve Clark	**23**	**11**						**34**
Conflict	11	11						22
Cooperation	6							6
Sovereignty	6							6
Virgil Rupp			**5**		**21**	**17**	**23**	**66**
Conflict			4		5	5	5	19
Cooperation			1		9	7	15	32
Sovereignty					7	5	3	15
Author	**10**		**7**	**7**		**5**	**15**	**44**

unknown

Conflict	4	4	3	1	1	13
Cooperation	2		4	2	4	12
Sovereignty	4	3		2	10	19

I, the undersigned, affirm that the coding report above is my independent verification of the author's findings from the content analysis of the *East Oregonian*, years 1975-1981.



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