



10-1978

## State of Washington v. Confederated Bands and Tribes of the Yakima Indian Nation

Lewis F. Powell Jr.

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Note. SG agrees, and

also says that the parties should be asked to address the question whether Washington's assumption of partial jurisdiction was invalid under Pub. L. 280. I agree. (This might avoid having to address the equal protection issue.) The parties do not discuss this considered in their papers (although it was proceeding); therefore the Court specifically should tell them to brief this question (including ① whether Pub. L. 280 permits the assumption of partial jurisdiction, and ② whether Wash. had to amend its constitution before assuming jurisdiction). Nancy

Discuss

Probably a Note  
+ with request  
for views of SG.  
But I'll await  
discussion.

Feb. 17, 1978, Cont.  
List. 1

Summer List 18, Sheet 1

No. 77-388

STATE OF WASHINGTON

v.

CONFEDERATED BANDS AND  
TRIBES OF THE YAKIMA  
INDIAN NATION

Appeal fr. CA 9  
(Hufstedler, Moore,  
Wright)

Federal/Civil

Timely

1. SUMMARY: Appeal is taken pursuant to 28 U.S.C. § 1254(2) from the CA 9's decision holding that the Washington statute which partially extends the State's criminal and civil jurisdiction over Indians and Indian reservations violates the Equal Protection Clause of the Fourteenth Amendment.

2. FACTS: Public Law 83-280, enacted by Congress in 1953, provided for the immediate assumption of jurisdiction over

Probable Note and call for SG's views. The State seems to advance a rational basis for its "checkerboard" assumption of Jurisdiction.

It seems a proper appeal because the plaintiffs sought only declaratory relief. Kennedy v. Mendoza-Martinez. - Sam

1/30/78  
Now  
Included to  
Note - +  
accept SG's  
suggestion  
as to Q



Indians and Indian reservations by five States. The act gave other States, including Washington, the option of assuming jurisdiction, provided certain conditions were first met.

Under the authority of this act, Washington in 1957 enacted RCW § 37.12 which allowed a tribe or its governing body to adopt a resolution petitioning the State to assume civil and criminal jurisdiction over it, whereupon the governor was to issue a proclamation confirming the assumption.

In 1963 the legislature amended that statute in such a manner as to provide for a division of jurisdiction over Indians into two broad categories: (1) jurisdiction assumed with the consent of the affected tribes; and (2) jurisdiction assumed without tribal consent. In the first category the State assumed jurisdiction over Indians and Indian reservations to the same extent that it exercised civil and criminal jurisdiction elsewhere in the State. In the second category Washington assumed jurisdiction to the fullest extent permissible with respect to land within a reservation held in fee (i.e., not tribal lands and not held in trust or subject to a restriction against alienation.) As for non-fee lands within a reservation occupied by a tribe that had not consented, the State assumed jurisdiction only in eight subject-matter categories: compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and operation of motor vehicles upon the public streets and highways. The non-consenting tribes were left free to seek and obtain a



complete assumption of state jurisdiction by petition. This statute thus results in what it referred to as a "checkerboard" assumption of jurisdiction. The assumption is partial in the following respects: 1) less than all of the reservations within the State may consent to the State's jurisdiction; 2) within a reservation that has not consented, the State's full assumption of jurisdiction may apply to only some of the geographic territory; and 3) within the non-fee lands of a non-consenting reservation the assumption of subject matter jurisdiction is only partial.

The Yakimas, who have never petitioned for the State's assumption of full jurisdiction over them, are located within a reservation in Yakima County. The reservation has approximately 1,400,000 acres, of which all but approximately 270,000 are held in trust or restricted status by the United States. Out of the total reservation population of about 25,000, only 3,000 are members of the Yakima Indian Nation. Within the reservation are two essentially non-Indian towns, Wapato and Toppenish, whose land is almost entirely owned in fee.

The Yakimas brought a declaratory judgment action in the DC, seeking a declaration that Washington's assumption and exercise of jurisdiction over them and their reservation was invalid on both constitutional and statutory grounds. They contended that RCW § 37.12 violated the Fourteenth Amendment, Article XXVI of the Washington Constitution, and Public Law 83-280; in the alternative they sought a declaration that the



jurisdiction assumed and exercised by the State was non-exclusive and concurrent with federal and tribal jurisdiction. The DC, after conducting a trial on the questions, dismissed the complaint, finding that the statute violated neither the state nor federal constitutions nor Public Law 83-280. He also found that state jurisdiction was exclusive rather than concurrent.

On appeal, after a panel of the CA 9 had heard argument, the case was en banc for a determination of whether Public Law 83-280 authorized Washington to assume partial jurisdiction. The majority of the court, in an opinion by Judge Sneed, concluded that the court's prior decision in Quinalt Tribe of Indians v. Gallagher, 368 F.2d 644 (CA 9 1966), supported the State's argument that partial assumption was permissible under PL 83-280 and further concluded that the decision was correctly decided and should be adhered to. The dissenting opinion, written by Judge Hufstедler, was of the view that PL 83-280 did not permit the partial geographic and subject matter assumption that the Washington statute prescribed. The case was then remanded to the panel for consideration of the remaining issues.

On remand the panel held that the statute violated the Equal Protection Clause. Focusing on the classification based on the status of title to the land upon which an alleged criminal offense occurs, the court found no rational basis supporting it. The CA 9 said that the State's interest in enforcing criminal law is no less fundamental or overriding on non-fee



lands than on fee lands and that no showing had been made that the happenstance of title holding is related in any way to the need by the land occupants for law enforcement. The court concluded that this checkerboard jurisdictional structure based on a selection by land title was the very kind of arbitrary legislative choice forbidden by the Equal Protection Clause. Finding that the invalid portion of the statute could not be severed from the rest, the court struck down the entire statute.

3. CONTENTIONS: The State argues that there is a rational basis for its checkerboard assumption scheme in that the legislature sought to apply the law equally to all citizens while preserving a maximum of tribal self-government. It contends that the legislature merely recognized the reality of land ownership patterns within reservations and decided to treat non-Indian (or fee) lands just as if they were located outside the reservation, while treating the remaining lands as the real reservation. In connection with these truly Indian lands, the legislature gave the tribes a choice: they could either have full state jurisdiction by petitioning the governor or they could keep the lands subject to federal and tribal control, with the exception of certain subject-matter areas vital to the State. The eight enumerated categories were ones in which the legislature determined that the State had a fundamental concern for the welfare of its people. The State contends that in adopting this checkerboard scheme the legislature recognized the strong historical and cultural link between the concept of tribal



self-government and Indian land ownership and thus did not act arbitrarily or irrationally.

In response the Yakimas point out that the practical impact of the CA 9's decision is to relieve the State of a law enforcement function that it has shown itself to be unwilling or unable to carry out and to provide the Yakima Nation and the federal government with the opportunity to provide adequate law and order on the reservation. They contend that the justification for the statute that the State now asserts was not suggested in the courts below and that in any case it does <sup>not</sup> provide a rational basis for the drawing of distinctions based on land title within the reservation. Contending that the decision below is clearly correct and that it will be limited in its effect, they urge the Court to summarily affirm.

4. DISCUSSION: The decision below seems sufficiently questionable to warrant plenary consideration. In light of the State's argument concerning the reasons that the legislature adopted the checkerboard scheme, I find it difficult to conclude that the distinctions drawn were totally arbitrary and irrational. Because of the Dept of Interior's role in Indian affairs, it might be helpful to solicit the views of the SG.

There is a motion to affirm

9/16/77

Gibson

Ops in petn.

jp







Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

February 23, 1978

MEMORANDUM TO THE CONFERENCE

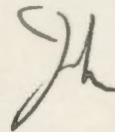
Re: 77-388 - State of Washington v. Confederated  
Bands and Tribes of the Yakima Indian Nation

Is this form of order acceptable?

"Probable jurisdiction is noted. The parties are directed to address the following issue:

'Whether the partial geographic and subject matter jurisdiction exercised by the State of Washington within the Yakima Indian Reservation pursuant to Public Law 280 violates either the statutory requirements of Public Law 280 or the Equal Protection Clause of the Fourteenth Amendment.'"

Respectfully,





*for me*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

February 23, 1978

Re: No. 77-388 - State of Washington v. Confed-  
erated Bands and Tribes of the Yakima  
Indian Nation

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Dear John,

Your proposed order *is* *with* ~~seems~~ fine ~~to~~ me.

Sincerely yours,

*P.S.*

Mr. Justice Stevens

Copies to the Conference

February 23, 1978

No. 77-388 State of Washington v.  
Confederated Bands and Tribes of  
the Yakima Indian Nation

Dear John:

Your proposed order is fine with me.

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference







BB 9/29/78

On remand from the Supreme Court, (only on E/P grounds)  
CA 9 ~~had~~ invalidated Washington statute  
that assumed partial juriv. (civil & criminal) over  
Indian lands. Wash. had acted pursuant to  
P.L. 280 (1953) that authorized ~~the~~ states to do this  
w/out consent of Indians.

In 1968 Congress amended 280 to require  
such consent, but not clear whether this was intended  
to be retroactive.

Yakima Tribe challenged statute on these grounds:

I. Disclaimer in State Const. (3). When Wash.  
was admitted to union its Const. (Art XXVI) "disclaimed"  
juriv. over Indian lands. Respr. says the statute  
assuming juriv. on basis of P.L. 280 violated the State's  
Const. *This is a serious Q and leg. history (including  
that of P.L. 280 supports Indian view. (p9)*

II Partial Juriv Issue (p11). The State assumption  
of juriv. was only "partial". Rather than covering all  
Indian lands, it excluded (unless agreed to by Indians)  
Indians on Tribal and allotted lands held in trust. This  
resulted in a "crazy quilt" juriv., difficult to comply with  
and enforce. *I'm inclined to agree with Indians & SG  
that P.L. 280 did not authorize this fractionated juriv. (p13)*

III. E/P Protection Issue (p17). CA 9 agreed there  
was no racial discri.

BENCH MEMORANDUM

To: Justice Powell

*I disagree  
with CA 9 on  
E/P issue.*

but even on rational basis  
analysis, it held invalid  
the "classification of some  
Indian lands  
differently from  
others."

Re: No. 77-388, Washington v. Yakima Indian Tribe

This case is difficult because the language and  
legislative history of the statute are unclear. But the  
underlying problem is clear enough. In 1953, Congress enacted  
P.L. 280, authorizing states with Indian lands within their  
borders to assume jurisdiction over such lands; consent of the  
Indians affected was not necessary. Enactment of P.L. 280 marked  
the apogee of assimilationist policy towards the Indians.

1953 -  
states  
could  
assume  
juriv. over  
Indian  
lands  
w/out  
their  
consent.

In 1963 the State of Washington asserted jurisdiction  
over the Yakima Indians without their consent. Under the terms

State  
assumed  
juriv. only  
over lands  
held in  
fee.

Hinder  
v. ...



of the assumption of jurisdiction, the State extended full civil and criminal jurisdiction to Indians and Indian lands, with the proviso that State jurisdiction over Indians when on their tribal lands or allotted lands within a reservation would only extend to eight narrowly defined social welfare and traffic safety areas. The State also provided that upon the request of any tribe, the State would assume full jurisdiction over the tribe and its lands.

In 1968 Congress made a significant change in its policy <sup>But</sup> towards the Indians, abandoning the assimilationist policy of the <sup>in</sup> earlier law by amending P.L. 280 to permit States to assert <sup>1968</sup> jurisdiction over Indians and Indian lands only with the consent <sup>P.L. 280</sup> of the Indians affected. Congress did not invalidate, however, <sup>amended</sup> prior unilateral assertions of jurisdiction. This has left the <sup>to require</sup> Yakimas doubly aggrieved, not only by the unilateral assertion of <sup>consent</sup> jurisdiction but also by its survival after repudiation by <sup>not,</sup> Congress of the policy underlying it. Goldberg, Public Law 280, <sup>however,</sup> 22 U.C.L.A. L. Rev. 535, 544 (1975). Further exacerbating the <sup>retroactive</sup> situation, according to Judge Hufstedler's dissent from the CA 9's en banc decision, is the fact that the state law enforcement effort has been ineffective because of the patchwork jurisdiction and the limited resources devoted to the task.

A decision invalidating Washington's present jurisdictional statute on any ground would rectify this anomalous situation. To reassert jurisdiction over the Yakimas under

current law (25 U.S.C. §1321(a)), the State would have to secure their consent. The Yakimas urge three grounds for the invalidity of Washington's assertion of jurisdiction.

I. The Disclaimer Issue

A. The Question: Is Washington's assertion of jurisdiction invalid because the State never amended Article XXVI of its Constitution to remove the disclaimer of jurisdiction over Indian land contained therein?

B. Federal Law Governs: The statehood enabling act of 1889 required that the disclaimer be embodied in the State's constitution. Section 6 of P.L. 280 authorized the amendment of the State constitution to remove the disclaimer. Section 6 provides in part,

"That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be."

The compliance of the State with the requirements of §6 is a question of federal law. The ruling by the Washington Supreme Court approving amendment by simple legislative action is unassailable as a matter of state law but obviously does not settle the federal question.

C. The Case May Be Decided on this Ground: The State argues that the question the Court asked the parties to address does not include the disclaimer issue.



"Whether the partial geographic and subject matter jurisdiction exercised by the State of Washington within the Yakima Indian Reservation pursuant to Public Law 280 violates either the statutory requirements of Public Law 280 or the Equal Protection Clause of the Fourteenth Amendment."

In the view of the State, the question framed by the Court focuses on the statutory and constitutional validity of the assertion of partial jurisdiction, while the disclaimer argument is an objection to any assertion of jurisdiction that is not preceded by amendment of the State's constitution.

The SG responds that the Court's question includes any violation by the State of the "statutory requirements of Public Law 280." The SG points out that the question as framed by the Court is drawn almost verbatim from the SG's Memorandum on the Jurisdictional Issue. In that memorandum, the SG suggested that the Court consider the disclaimer issue.

The State also argues that previous summary decisions of this Court have settled the disclaimer issue. Of the cases cited by the State on this point, only Comenout v. Burden, 525 P.2d 217 (Wash. 1974), app. dfwsfq, 420 U.S. 915 (1975), presented the disclaimer issue. A previous ruling entered without plenary consideration does not foreclose full consideration of the issue at a later time. E.g., Usery v. Turner Elkhorn Mining Co., 428 U.S. 1, 14 (1976).

D. The Merits of the Disclaimer Issue: State jurisdiction over Indian lands may be asserted only by leave of

the United States. Antoine v. Washington, 420 U.S. 194, 205 (1975). The compliance of the State with the conditions imposed by Congress on State jurisdiction is essential to the validity of the State's jurisdiction.

Both sides support their positions by reference to the language of §6 of P.L. 280. The State argues that §6 only applies to States in which constitutional or statutory amendments are necessary to remove "any legal impediment" to the assumption of civil and criminal jurisdiction over Indians and Indian land. All legal impediments, it points out, have been removed by the State's legislative action asserting jurisdiction over the Yakimas, because the State's highest court has held that only legislative action is necessary to override the disclaimer contained in Article XXVI of the State's constitution. The State also argues that the language of §6 does not require amendment of the State constitution by popular referendum simply because of the reference to "the people" of the State. The section also appears to refer to amendment of statutes by "the people" of the State, but, the State insists, surely Congress contemplated amendment of statutes by the normal state legislative process. By the same token, State law should define the acceptable process under §6 for amendment of the disclaimer provision of the State Constitution.

The Yakimas, on the other hand, insist that §6 clearly requires amendment of the State constitution by "the people" of



the State, and that this requirement has not been met in Washington. Not only has there been no amendment by popular referendum, as is called for by the Washington constitution, but also there has been no purported amendment by any other process. Instead, the State legislature simply enacted a statute asserting the jurisdiction at issue in this case. Turning the State's argument against the State, the Yakimas also argue that just as Congress must have contemplated amendment of State statutes by normal legislative processes, it must have contemplated constitutional amendments by normal procedures, i.e., by popular referendum.

Both sides agree that the legislative history of §6 shows that Congress thought that the Washington constitution, Art. XXVI, would have to be amended before the State could assert jurisdiction over Indian lands. The State argues, however, that in providing for the amendment of State constitutions in §6, the Congress thought that it was accommodating requirements of State law, not federal law. And, the State asserts, Congress was clearly mistaken about the requirements of Washington law when it supposed that a constitutional amendment was necessary. The passages from the legislative history cited by the State, however, fail to support the State's full position. They show that in providing for amendment of State statutes in addition to State constitutions, the Congress had in mind State law requirements as defined by State courts. But with regard to the

amendment of State constitutions, the weight of the legislative history appears to tip towards the view that Congress was modifying a federal law requirement when it enacted §6.

As the Yakimas see it, the controlling legislative view of this issue was expressed succinctly by Representative Dawson.

"Mr. Berry. Mr. Chairman, then we get right back to your objection. Congress does not have to give consent to a state to amend its constitution or its laws.

"Mr. Dawson. Because when the Enabling Act was passed, they said this state can become a state upon certain conditions, except for the Enabling Act. In other words, we restrict what they can put in their laws and constitution to begin with. The state cannot go any further than their Government lets them go when they become a state, so now we are lifting one of those restrictions."

The statehood enabling act provided that the disclaimer in the Washington constitution should be "irrevocable without the consent of the United States and the people of said States [including Washington]." The same language was incorporated in Article XXVI of the Washington constitution. The Washington Supreme Court has held that the language in the Washington constitution does not require amendment of Article XXVI by popular referendum. But that holding does not control or alter the meaning of the requirement in the enabling act that the disclaimer be altered only by the people of the State, and it was this requirement that Congress reenacted in P.L.280, §6. On this view, regardless of what State law requires for the amendment of the disclaimer provision, federal law as embodied in the enabling



act and P.L. 280 require amendment by the people of the State. In support of this view of P.L. 280, the Yakimas cite McClanahan v. Arizona Tax Comm'n, 411 U.S. 164 (1972). The question in McClanahan was whether Arizona could impose an income tax on an Indian who lived on a reservation and had income only from reservation sources. In marshalling the reasons supporting the conclusion that Arizona had no such jurisdiction, the Court cited P.L. 280, as amended, as evidence that only by such explicit and special exceptions to the general rule could States assume jurisdiction over Indians on Indian land.

"Finally, it should be noted that Congress has now provided a method whereby States may assume jurisdiction over reservation Indians. Title 25 U.S.C. §1322(a) grants the consent of the United States to States wishing to assume criminal and civil jurisdiction over reservation Indians, and 25 U.S.C. §1324 confers upon the States the right to disregard enabling acts which limit their authority over such Indians. But the Act expressly provides that the State must act 'with the consent of the tribe occupying the particular Indian country', 25 U.S.C. §1322(a), and must 'appropriately [amend] its constitution or statutes.' 25 U.S.C. §1324. Once again, the Act cannot be read as expressly conferring tax immunity on Indians. But we cannot believe that Congress would have required the consent of the Indians affected and the amendment of those state constitutions which prohibit the assumption of jurisdiction if the States were free to accomplish the same goal unilaterally by simple legislative enactment."

411 U.S. at 177-78 (footnotes omitted).

In reply to this argument by the Yakimas, the State suggests that the only purpose of the requirements imposed by §6 is to ensure that federal jurisdiction and responsibility will not lapse before there is some positive expression of willingness on the part of the State to assume jurisdiction over Indian lands. I doubt that the language of §6 can bear that interpretation, and I am sure that the State has cited nothing in the legislative history to support this interpretation of §6.

On balance, I would resolve this question in favor of the Yakimas. The language of the enabling act appears to require alteration of the disclaimer by the people of the State. P.L. 280 takes this view of the enabling act and as a consequence requires amendment by ordinary procedures (popular referendum) as a condition of assertion of jurisdiction by the State. This is a requirement of federal law established in the enabling act and reiterated in P.L. 280, and the State has no power to assume jurisdiction without complying with the condition. The language of §6 fairly bears this construction.

The State objects that there is no good reason for Congress to require popular amendment of the disclaimer if state law allows legislative amendment. The SG speculates that Congress may have required popular referendum because of the significant burdens and tensions associated with State jurisdiction over Indian lands, but this is only speculation. It seems more likely to me that the reenactment of the requirement



in P.L. 280 is an echo of the constitutional theory embodied in the Enabling Act. That act provided for the people of the Territory of Washington to elect delegates to a constitutional convention that would draft a proposed constitution for the new State. That proposed constitution, necessarily containing the disclaimer clause called for by the enabling act, was then to be submitted to the people of the Territory at a referendum. For the same reason that popular approval was necessary to enact the new constitution, it was necessary to alter the terms of the constitution, including the disclaimer; hence the enabling act required that the disclaimer be irrevocable without the consent of the people. Public Law 280 preserves the requirement originally imposed by the enabling act.

E. Practical Consequences of a Decision for the Yakimas on the Disclaimer Issue: The invalidation of Washington's assertion of jurisdiction over the Yakimas, based on the disclaimer issue, would invalidate all assertions of jurisdiction by Washington. This would include not only unilateral assertions such as the one at issue here, but also those made with the consent of the Indians involved. This would affect approximately 20,000 Indians, of whom 8,000 have consented to jurisdiction and another 6,000 of whom are Yakimas. It would also affect those non-Indians living on land within reservations. Washington would not be able to reassert jurisdiction over any of these Indians or their land, even with their consent, until its people had amended

Article XXVI of the state constitution.

In other States, assertions of jurisdiction not preceded by the requisite constitutional amendment would also be invalidated. According to the en banc majority opinion of the CA 9, the other disclaimer States that have asserted jurisdiction over Indian lands are Arizona, Utah, North Dakota, and Montana. Goldberg, Public Law 280, supra, adds South Dakota to the list, but its assertion of jurisdiction has been invalidated by the South Dakota Supreme Court. Petition of Julia Hankins, 80 S.D. 435, 125 N.W.2d 829. Arizona does not appear to have amended the disclaimer clause of its constitution, Article XX, para. 4, so the validity of its limited assertion of jurisdiction over air and water pollution control would be placed in question. Utah has not amended the disclaimer in Art. III of its constitution. Montana readopted its disclaimer as Art. I of its 1972 constitution and has not altered it, so its assertion of criminal jurisdiction over the Flathead Reservation would be invalidated. North Dakota has amended its disclaimer, Art. XVI, §203, as required by P.L. 280.

## II. The Partial Jurisdiction Issue

A. The Question: Washington assumed criminal and civil jurisdiction over Indians and Indian country within the State in 1963, but provided that the jurisdiction would not extend to Indians on their tribal lands or allotted lands held in trust, unless the Indian tribe consented to full jurisdiction or a



matter arose within one of eight narrowly defined categories of jurisdiction. The question is whether P.L. 280, as it stood in 1963, allowed the assertion of this kind of partial State jurisdiction.

B. Discussion: The result of the assumption of jurisdiction by Washington is aptly described as a jurisdictional "crazy quilt," with jurisdiction depending upon the place the case arises, the race of the plaintiff or the defendant or both, and the subject matter of the case. The inconveniences of such a jurisdictional system are obvious, and I will not rehearse them here.

There is no specific legislative history that sheds any light on this problem of partial jurisdiction. Goldberg, Public Law 280, supra, 22 U.C.L.A. L. Rev. at 555. As a result, we are consigned to the language, structure, and general purpose of the statute for evidence of the acceptability of Washington's jurisdictional scheme.

The Indians and the SG start with the premise that §6 and §7 of P.L. 280 allow assertions of jurisdiction by Washington only if the terms of the jurisdictional assumption are consistent with §2 and §4 of the statute. Sections 2 and 4 are the sections conferring jurisdiction over Indian country on five States (known as the "mandatory States"). The Indians argue that since §2 and §4 conferred complete civil and criminal jurisdiction on the five mandatory States, the "option states" (States such as Washington

which may but need not assume jurisdiction over Indians and Indian land) must make an equally complete assumption of jurisdiction. The SG, in a more moderate stance, notes that in some cases entire named reservations were excluded from State jurisdiction in the mandatory States, and concludes that similar geographic exclusions by the option states would be consistent with P.L. 280. The SG also concedes that assertion of either complete civil or complete criminal jurisdiction would be consistent with the statute, though no such partial subject matter jurisdiction was approved by §2 and §4.

Both the Indians and the SG agree that the assertion of jurisdiction at issue in the present case is contrary to the purposes of P.L. 280. "The primary concern of Congress in enacting Pub. L. 280 that emerges from its sparse legislative history was with the problem of lawlessness on certain Indian reservations, and the absence of adequate tribal institutions for law enforcement." Bryan v. Itasca County, 426 U.S. 373, 379 (1976). A secondary purpose of the law was promotion of the assimilation of Indians into the general population. Both of these purposes are better served, the Yakimas and the SG argue, by a construction of P.L. 280 requiring a more complete assumption of jurisdiction than the one made by Washington. The dissent from the CA 9's en banc consideration of the present case adopted this argument from the purposes of the statute as the basis for its conclusion that Washington's assertion of partial

SG  
d  
Indians



jurisdiction did not comply with P.L. 280.

The State argues that the disclaimer in its enabling act and State constitution only eschews jurisdiction over lands "owned or held by any Indian or Indian tribes," and that lands within reservations but held in fee by non-Indians are not included within the scope of the disclaimer. The State concludes that its assertion of jurisdiction over such lands is not controlled by Art. XXVI of its constitution or by P.L. 280. So far as I can tell, this is a novel and unacceptable construction of the scope of the disclaimer and the enabling act. It seems more reasonable and more in line with long-accepted practice to conclude, as the SG does, that the disclaimer applies to all "Indian country" as that term is defined in 18 U.S.C. §1151, including all land within the limits of a reservation.

Section 7 of P.L. 280 authorizes the State to assume jurisdiction "in such manner as the people of the State shall ... obligate and bind the State to assumption thereof." According to the State, "in such manner" allows the State to make a partial territorial assertion of jurisdiction within the Yakima reservation. It also, in the view of the State, allows the State to assert partial subject matter jurisdiction and leave to the Yakimas the choice as to whether the jurisdiction should be expanded to full jurisdiction. This idea of leaving a choice to the Indians by adopting the partial jurisdiction scheme underlies the State's strongest argument on the partial jurisdiction

question.

In Quinault Tribe v. Gallagher, 368 F.2d 648 (9th Cir. 1966), the CA 9 held that the assertion of jurisdiction by Washington was total, rather than partial, because the Indians could petition the State at any time to assume full jurisdiction over all Indian country. While it is true that in a sense this jurisdictional plan leaves the Indians with what they regard as a Hobson's choice, since the alternative of no state jurisdiction is excluded, it is also true that this exclusion was consistent with P.L. 280's authorization of unilateral assertions of jurisdiction between 1953 and 1968. Leaving this (limited) choice to the Yakimas does not detract from achievement of the primary goal of P.L. 280, the restoration of effective law enforcement on the reservations. The State stands ready to assume full jurisdiction at any time, should the Indians decide that they would prefer full jurisdiction. I think there is considerable force in the argument that for the purposes of P.L. 280 the assertion of jurisdiction by Washington is effectively full jurisdiction, even though at the same time it preserves the opportunity for some degree of sovereignty for the Yakimas if they wish it.

The State also argues that the assertion of jurisdiction by Washington was ratified in the passage of the 1968 amendments to P.L. 280. The 1968 amendments authorized assumptions of partial subject matter jurisdiction, though only with the consent



of the Indians affected. The repeal of §7 of P.L. 280 provided that the repeal had no effect on any assertion of jurisdiction made pursuant to §7 before its repeal. The State regards this saving clause as a ratification of Washington's jurisdictional scheme. But the SG argues, with good reasons, that the saving clause merely leaves the validity of the earlier assumptions of jurisdiction by the States unaffected by the 1968 law, and does not settle the question of the validity of state assumptions of jurisdiction under earlier law.

C. Consequences of a Decision for the Yakimas on the Partial Jurisdiction Issue: A holding for the Yakimas on the limited partial jurisdiction ground suggested by the SG would affect about 10,000 Indians in Washington, according to the dissent in the CA 9 en banc decision. Of those, about two-thirds are parties in interest in this lawsuit.

Other States with either partial geographic jurisdiction or partial subject matter jurisdiction inconsistent with the principles suggested by the SG (that is, States with jurisdiction over less than entire reservations, or over less than all civil or all criminal cases) are Arizona, Iowa, Idaho, and North Dakota. Montana exercises criminal jurisdiction over an entire reservation. Arizona and Washington, as well as Montana, are already on the list of disclaimer states that have asserted jurisdiction without amending their state constitutions. Arizona has assumed jurisdiction over Indian lands only with regard to

air and water pollution control.

### III. The Equal Protection Issue

I must confess at the outset that I have difficulty getting a firm grasp on just what it is about the Washington jurisdictional scheme that Judge Hufstedler and her CA 9 panel found to be violative of the Equal Protection Clause. The objectionable feature appears to have been the assertion of criminal law jurisdiction over land held in fee within the reservation without a matching assertion of jurisdiction over non-fee or trust land. The panel termed this "the classification based on the status of title to the land upon which an alleged criminal offense occurs." In the view of the CA 9 panel, this assertion of jurisdiction defined by the title to the land on which the crime occurs results in a situation in which an Indian living on a parcel of non-fee land who is the victim of a crime has no law enforcement protection from the State, while an Indian living on fee land does enjoy such protection. What the panel was getting at, I think, is that the jurisdictional scheme classifies people according to whether they live on Indian or non-Indian land.

The CA 9 panel concluded that the title-based system of criminal jurisdiction was not based on racial classifications, since both Indians and non-Indians live on both fee and non-fee lands. Nor could the CA 9 find any basis for thinking that the classification actually adopted was only a mask for invidious

*not  
racial*

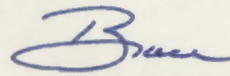


racial discrimination. The CA 9 applied the rational basis test, and concluded that Washington's assumption of jurisdiction failed to meet that standard.

I cannot see, however, that the classification in question has resulted in any denial of equal protection. The State does not leave Indians on non-fee lands without criminal law protection. Whatever jurisdiction the State does not assume is retained by the federal government and the tribal council, so there is no hiatus. Further, the Indians can have the benefit of full State jurisdiction for the asking. It is also worth noting that under current law the State is authorized to make an assumption of partial subject matter jurisdiction, albeit only with the consent of the Indians affected.

The State also suggests what to my mind is a satisfying rationale for the title-based classification embodied in the assumption of jurisdiction. The State unilaterally asserted full jurisdiction over all land held in fee within the reservation, but only partial subject matter jurisdiction over non-fee and trust lands. The State suggests that this classification served the purpose of allowing the Indians to preserve a large measure of autonomy and self-government on Indian lands. The Indians were given a choice between retaining limited autonomy, or of acceding to full state jurisdiction. The State has a legitimate interest in allowing the Indians within its borders to preserve some measure of tribal autonomy, even while the State is moving

to provide effective law enforcement within the reservation. The classification adopted is related reasonably to that purpose.





77-388 WASHINGTON v. CONFEDERATED BANDS

(Yakima)

Argued 10/2/78

Gorton (AG of Wash)

The state & Indian police officers are "cross-deputized" & most officers violate both Indian & State laws. Their talk of "checker-board" law enforcement is exaggerated.

"Disclaimer Act" question - must consider what lands are covered. It does not cover fee land.

Argues that prior decisions of this Court have not been restricted by Disclaimer Act (I'm not sure I have this right)

The meaning of Disclaimer Act to be determined by Fed law. It clearly left this to State law, & Wash St Ct has held amend to state const. is not necessary. See State's Brief-29

(Both courts below agreed with state on this issue.)

Argues that any claim that there is a fed. Q was answered by P.L. 280 - which left this to state ~~state~~ law.



Gorton (cont.)

E/Protection Issue (Gorton views  
as frivolous)

Leg. was most concerned with  
fee land - where ~~non~~ Indians  
& non-Indians live together.

The distinction drawn by state  
was motivated primarily by desire  
to recognise Tribal autonomy as  
much as possible.

Supports Tribe

Claiborne (56) (Argument seems weak)  
Concentrated argument on "Disclaimer  
Issue".

If 56 wins on this - as is true of E/P  
issue - ~~the~~ state's entire statutory scheme  
will fall.

Argues Govt's position is consistent  
with Congressional intent. Relies on  
legislative hist. 56 was added to  
P.L. 280 (but 56 refers both to  
"people" amending "their State  
court, or existing statutes, & people  
amend. statutes their legislature).

(BHW emphasized that Wash. ~~SC~~  
S/CT has held that the leg. has  
authority to construe the Disclaimer  
Clause)

~~Point~~  
Result suggests by 56 is  
in accord with Congressional  
intent in 1968 - to force the  
parties to work out a more  
reasonable resolution of juris.  
issue.



Hovis (for Tribble) <sup>not law</sup> <sup>2000 sq. mi</sup>  
Yakima Nation <sup>(Trible)</sup> had exercised total  
jurisdiction until 1953.

Result of State assumption of jurisdiction  
has been "law" w/out "order". In  
last yr. for which figs. are available,  
the State made only 2 felony &  
17 misdemeanor arrests in entire  
Reservation. Juvenile crime situation  
is a scandal.

No one can tell whether he is  
on trust or non-trust land.

Argues that P.L. 280 does not  
apply to Tribes. Congress did  
not explicitly abrogate the  
Treaty with Tribes, & abrogation  
must be explicit.

Gorton (Reply)

Indians have same protection as  
non-Indians

Tribal Code is almost identical with State Code

The arrest figures given by Hovis  
are misleading, as most arrests are  
made by Indian authorities - as they  
were before.

→ Emphasizes the phrase "where  
necessary" in § 6 of P.L. 280



Supreme Court of the United States

Memorandum

Sec 6 of P.L. 280  
(1953 Act)

"consented" to  
the amendment  
—"where necessary"  
by the "people" of  
a State of its  
"const. or existing  
statutes".

S.Ct of Wash. held  
amend of State Const  
was not necessary.



77-388

10/3/78

"When necessary" issue

State agrees language is ambiguous as to whether this refers to fed or state law. State argues, however, that it applies to state law..

"Congress wants state to assume jurisdiction", ~~SG~~

SG answers that Enabling Act required fed & well as state approval & 280 didn't change it.

South Dakota's action cuts against SG's position. Sec. of Interior apparently approved legislative action

Three issues

E/P

Partial jurisdiction (crash guilt)

Disclaimer (State Court) - § 6

Reversed 7-2

77-388 WASHINGTON v. CONFEDERATED BANDS

Conf. 10/4/78

The Chief Justice Reversed

CA 9 en banc held that P.L. 280 did not require Const. amend.  
But 3 J/Panel, on remand, ~~to~~ invalidated state assumption  
of juris. as violation of E/P.

Central issue is <sup>whether</sup> State Court. must be amended.  
Inclined to think this is a fed. Q.

CJ then "paved" on 1<sup>st</sup> vote.

~~He~~ Finally voted to Reverse  
X X X

Mr. Justice Brennan Affirm

As to partial juris issue, the relevant section of  
280 permits <sup>optional</sup> states to place themselves in same  
position as "mandatory" states. This doesn't allow  
option states to take partial juris.

Case is real "can of worms".

Section 6 is ambiguous. The "where necessary" is  
modified however by proviso.

W.J.B. doesn't think State can act - partially or  
otherwise - without amending Const.

But judg. of Panel ~~can~~ can be affirmed without  
addressing the ~~the~~ "amendment issue. In any event, affirm.

Mr. Justice Stewart Reversed

Three issues (9 agree) - all before us. Our order  
~~not~~ does not preclude consideration.

~~The "where necessary"~~

The "where necessary" is matter of state  
law & is controlling.

The partial juris. is meritless for reasons  
stated by Judge Sneed en banc

E/P issue is frivolous.



Mr. Justice White Reverie

Agrees precisely with P. S.

Mr. Justice Marshall Affirm

Agrees with W. J. B.

Mr. Justice Blackmun Reverie

HAB states he has "flip-flopped"  
+ changed his mind.  
Now agrees with P. S.

Mr. Justice Powell Reverse

Agree with P.S.

---

Mr. Justice Rehnquist Reverse

Agree with P.S.

---

Mr. Justice Stevens Reverse

Agree with P.S.

S.G. position is wholly unpersuasive



To: The Chief Justice  
Mr. Justice Brennan  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun  
Mr. Justice Powell ✓  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: 26 DEC 1978

Recirculated: \_\_\_\_\_

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 77-388

State of Washington et al., Appellants, v. Confederated Bands and Tribes of the Yakima Indian Nation.	}	On Appeal from the United States Court of Appeals for the Ninth Circuit.
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[January —, 1979]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to resolve a dispute between the State of Washington and the Yakima Indian Nation over the validity of the State's exercise of jurisdiction on the Yakima Reservation. In 1963 the Washington Legislature obligated the State to assume civil and criminal jurisdiction over Indians and Indian territory within the State, subject only to the condition that in all but eight subject-matter areas jurisdiction would not extend to Indians on trust or restricted lands without the request of the Indian tribe affected. Ch. 36, 1963 Washington Laws.<sup>1</sup> The Yakima Nation

<sup>1</sup> The statute, codified as R. C. W. S. 37.12.010, provides:

"Assumption of criminal and civil jurisdiction by state

"Assumption of criminal and civil jurisdiction by state. The State of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions

*Reviewed*

*L.F.P.*

*12/27*

*Inclined  
to join.*

*Seems right  
on the facts  
& special  
circumstances  
of this case.  
It will have  
little general  
precedential  
effect.*



did not make such a request. State authority over Indians within the Yakima Reservation was thus made by Chapter 36 to depend on the title status of the property on which the offense or transaction occurred and upon the nature of the subject-matter.

The Yakima Nation brought this action in a federal district court challenging the statutory and constitutional validity of the State's partial assertion of jurisdiction on its Reservation. The Tribe contended that the federal statute upon which the State based its authority to assume jurisdiction over the Reservation, Public Law 83-280,<sup>2</sup> imposed certain procedural requirements, with which the State had not complied,—most notably, a requirement that Washington first amend its own constitution—and that in any event Pub. L. 280 did not authorize the State to assert only partial jurisdiction within an Indian Reservation. Finally, the Tribe contended that Chapter 36, even if authorized by Congress, violated the Equal Protection and Due Process guarantees of the Fourteenth Amendment.

The District Court rejected both the statutory and consti-

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of R. C. W. 37.12.021 (tribal consent) have been invoked, except for the following:

- "(1) Compulsory school attendance;
- "(2) Public assistance;
- "(3) Domestic relations;
- "(4) Mental illness;
- "(5) Juvenile delinquency;
- "(6) Adoption proceedings;
- "(7) Dependent children; and
- "(8) Operation of moter vehicles upon the public streets, alleys, roads and highways; Provided further, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if chapter 36, Laws of 1963 had not been enacted."

The statute will be referred to in this opinion as Chapter 36.

<sup>2</sup> Act of Aug. 15, 1953, ch. 505, 67 Stat. 588-590. For the full text of the Act, see n. 9, *infra*.



tutional claims and entered judgment for the State.<sup>3</sup> On appeal, the contention that Washington's assumption of only partial jurisdiction was not authorized by Congress was rejected by the Court of Appeals for the Ninth Circuit, sitting en banc. The en banc court then referred the case to the original panel for consideration of the remaining issues. *Confederated Bands and Tribes of the Yakima Indian Nation of Washington*, 550 F. 2d 443 (*Yakima I*).<sup>4</sup> The three-judge panel, confining itself to consideration of the constitutional validity of Chapter 36, concluded that the "checkerboard" jurisdictional system it produced was without any rational

<sup>3</sup> The complaint also contained other claims that were decided adversely to the plaintiff by the District Court. After extensive discovery and the entry of a pretrial order, the District Court granted partial summary judgment in favor of the State on several of these claims. On the question of compliance with Pub. L. 280, the District Court held that it was bound by the decision of the Court of Appeals for the Ninth Circuit in *Quinault v. Gallagher*, 368 F. 2d 648, 655-658 (1966), which had determined that the State of Washington could accept jurisdiction under Pub. L. 280 without first amending its constitution and that Washington's jurisdictional arrangement did not constitute an authorized partial assumption of jurisdiction. The District Court also rejected the claim that Chapter 36 was facially invalid under the Equal Protection and Due Process Clauses of the Fourteenth Amendment. The question of the constitutional validity of Chapter 36 as applied to the Yakima Reservation was reserved for a hearing and factual determination. After a one-week trial, the District Court found that the appellee had not proved "that the state or county have discriminated . . . to deprive any Indian or the plaintiff Tribe of any service or protection, resource or asset afforded under the same state law to other citizens or similar geographic location." The complaint was then dismissed.

The opinion of the District Court is unreported.

<sup>4</sup> The en banc hearing was ordered by the Court of Appeals *sua sponte* after the original panel had heard argument. This hearing was limited to the question whether that Court's earlier partial jurisdiction holding in *Quinault v. Gallagher*, *supra*, n. 3, should be overruled. A majority of the en banc panel agreed with the result in *Quinault*, finding no statutory impediment to the assumption of partial geographic and subject-matter jurisdiction. 550 F. 2d 443, 448. Four judges dissented. *Id.*, at 449.



foundation and therefore violative of the Equal Protection Clause of the Fourteenth Amendment. Finding no basis upon which to sever the offending portion of the legislation, the appellate court declared Chapter 36 unconstitutional in its entirety, and reversed the judgment of the District Court. *Confederated Bands and Tribes of the Yakima Indian Nation of Washington*, 552 F. 2d 1132 (*Yakima II*).

The State then brought an appeal to this Court. In noting probable jurisdiction of the appeal, we requested the parties to address the issue whether the partial geographic and subject-matter jurisdiction ordained by Chapter 36 is authorized by federal law, as well as the Equal Protection Clause issue. 435 U. S. 903.<sup>5</sup>

<sup>5</sup> The three-judge appellate court's equal protection decision was based upon the disparity created by Chapter 36 in making criminal jurisdiction over Indians depend upon whether the alleged offense occurred on fee or nonfee land. 552 F. 2d 1332, 1334-1335. The court found this criterion for the exercise of state criminal jurisdiction facially unconstitutional. The appellate court found it unnecessary, therefore, to reach the Tribe's contention that the eight statutory categories of subject-matter jurisdiction are vague or its further contention that the application of Chapter 36 deprived it of equal protection of the laws. 550 F. 2d, at 1334.

In its Motion to Affirm, filed here in response to the appellants' jurisdictional Statement, the Yakima Nation invoked in support of the judgment "each and every one" of the contentions it had made in the District Court and Court of Appeals, but limited its discussion to the equal protection rationale relied upon by the appellate court. In its brief on the merits the Tribe has addressed—in addition to those subjects implicit in our order noting probable jurisdiction, see n. 20, *infra*, one issue that merits brief discussion. The Tribe contends that Chapter 36 is void for failure to meet the standards of definiteness required by the Due Process Clause of the Fourteenth Amendment, asserting that the eight subject-matter categories over which the State has extended full jurisdiction are too vague to give tribal members adequate notice of what conduct is punishable under state law. This challenge is without merit. As the District Court observed, Chapter 36 creates no new criminal offenses but merely extends jurisdiction over certain classes of offenses defined elsewhere in state law. If those offenses are not sufficiently defined, individual tribal members may defend against any prosecutions under them at the time such prosecutions



## I

The Confederated Bands and Tribes of the Yakima Indian Nation comprise 14 originally distinct Indian tribes that joined together in the middle of the 19th century for purposes of their relationships with the United States. A treaty was signed with the United States in 1855, under which it was agreed that the various tribes would be considered "one nation" and that specified lands located in the Territory of Washington would be set aside for their exclusive use. The treaty was ratified by Congress in 1859. 12 Stat. 951. Since that time, the Yakima Nation has without interruption maintained its tribal identity.

The Yakima Reservation is located in the southeastern part of the State of Washington and now consists of approximately 1,387,505 acres of land, of which some 80% is held in trust by the United States for the Yakima Nation or individual members of the Tribe. The remaining parcels of land are held in fee by Indian and non-Indian owners. Much of the trust acreage on the Reservation is forest. The Tribe receives the bulk of its income from timber, and over half of the Reservation is closed to permanent settlement in order to protect the forest area. The remaining lands are primarily agricultural. There are three incorporated towns on the Reservation, the largest being Toppenish, with a population of under 6,000.

The land held in fee is scattered throughout the Reservation, but most of it is concentrated in the northeastern portion close to the Yakima River and within the three towns of Toppenish, Wapato, and Harrah. Of the 25,000 permanent residents of the Reservation, 3,074 are members of the Yakima

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are brought. See *Younger v. Harris*, 401 U. S. 37. The eight subject-matter areas are themselves defined with reasonable clarity in language no less precise than that commonly accepted in federal jurisdictional statutes in the same field. See *United States v. Mazurie*, 419 U. S. 544. The District Court's ruling that Chapter 36 is not void for vagueness under the Due Process Clause of the Fourteenth Amendment was therefore correct.



Nation, and tribal members live in all of the inhabited areas of the Reservation.<sup>6</sup> In the three towns—where over half of the non-Indian population resides—members of the Tribe are substantially outnumbered by non-Indian residents occupying fee land.

Before the enactment of the state law here in issue, the Yakima Nation was subject to the general jurisdictional principles that apply in Indian country in the absence of federal legislation to the contrary. Under those principles, which received their first and fullest expression in *Worcester v. Georgia*, 6 Pet. 515, 517, state law reaches within the exterior boundaries of an Indian reservation only if it would not infringe “on the right of reservation Indians to make their own laws and be ruled by them.” *Williams v. Lee*, 358 U. S. 217, 219–220.<sup>7</sup> As a practical matter, this has meant that criminal offenses by or against Indians have been subject only to federal or tribal laws, *Moe v. Salish & Kootenai Tribes*, 425 U. S. 463 (1976), except where Congress in the exercise of its plenary and exclusive power over Indian affairs has “expressly provided that State laws shall apply.” *McClanahan v. Arizona State Tax Comm’n*, 411 U. S. 164, 170–171.

Pub. L. 280, upon which the State of Washington relied for its authority to assert jurisdiction over the Yakima Reservation under Chapter 36, was enacted by Congress in 1953 in part to deal with the “problem of lawlessness on certain Indian reservations, and the absence of adequate tribal insti-

<sup>6</sup> These are the membership figures given by the District Court. The United States, in its *amicus curiae* brief, has indicated that more than 5,000 tribal members live permanently on the Reservation and that the number increases during the summer months.

<sup>7</sup> These abstract principles do not and could not adequately describe the complex jurisdictional rules that have developed over the years in cases involving jurisdictional classes between the States and tribal Indians since *Worcester v. Georgia* was decided. For a full treatment of the subject, see generally M. Price, *Law and the American Indian* (1973); U. S. Dept. Int., *Federal Indian Law* (1938).



tutions for law enforcement." *Bryan v. Itasca County*, 473 U. S. 373, 379; H. R. Rep. No. 848, 83d Cong., 1st Sess., 5-6 (1953). The basic terms of Pub. L. 280, which was the first federal jurisdictional statute of general applicability to Indian Reservation lands,<sup>8</sup> are well known.<sup>9</sup> To five States it effected an immediate cession of criminal and civil jurisdiction over Indian country, with an express exception for the reservations

<sup>8</sup> See M. Price, *supra*, n. 7, at 210. Before 1958, there had been other surrenders of authority to some States. See, e. g., 62 Stat. 1224, 26 U. S. C. § 232 (New York), 64 Stat. 845, 25 U. S. C. § 233 (New York 1950); Act of June 8, 1940, ch. 276, 54 Stat. 249 (Kansas); Act of May 31, 1946, ch. 279, 60 Stat. 229 (North Dakota); and Act of June 30, 1948, ch. 759, 62 Stat. 1161 (Iowa). Pub. L. 280, however, was the first federal statute to attempt an omnibus transfer.

<sup>9</sup> The Act provides in full:

"AN ACT To confer jurisdiction on the States of California, Minnesota, Nebraska, Oregon, and Wisconsin, with respect to criminal offenses and civil causes of action committed or arising on Indian reservations within such States, and for other purposes

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That chapter 53 of title 18, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1151 of such title the following new item:

"1162. State jurisdiction over offenses committed by or against Indians in the Indian country.'

"SEC. 2. Title 18, United States Code, is hereby amended by inserting in chapter 53 thereof immediately after section 1161 a new section, to be designated as section 1162, as follows:

"§ 1162. State jurisdiction over offenses committed by or against Indians in the Indian country

"(a) Each of the States listed in the following table shall have jurisdiction over offenses committed by or against Indians in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over offenses committed elsewhere within the State, and the criminal laws of such State shall have the same force and effect within such Indian country as they have elsewhere within the State:

## 8 WASHINGTON v. YAKIMA INDIAN NATION

of three tribes. Pub. L. 280, §§ 2 and 4.<sup>10</sup> To the remaining States it gave an option to assume jurisdiction over criminal offenses and civil causes of action in Indian country without

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"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under Federal treaty, agreement, or statute with respect to hunting, trapping, or fishing or the control, licensing, or regulation thereof.

"(c) The provisions of sections 1152 and 1153 of this chapter shall not be applicable within the areas of Indian country listed in subsection (a) of this section."

"SEC. 3. Chapter 85 of title 23, United States Code, is hereby amended by inserting at the end of the chapter analysis preceding section 1331 of such title the following new item:

"1360. State civil jurisdiction in actions to which Indians are parties."

"SEC. 4. Title 28, United States Code, is hereby amended by inserting in chapter 85 thereof immediately after section 1359 a new section, to be designated as section 1360, as follows:

"§ 1360. State civil jurisdiction in actions to which Indians are parties

"(a) Each of the States listed in the following table shall have jurisdiction over civil causes of action between Indians or to which Indians are parties which arise in the areas of Indian country listed opposite the name of the State to the same extent that such State has jurisdiction over other

[Footnote 10 is on p. 10]



consulting with or securing the consent of the tribes that would be affected. States whose constitutions or statutes contained organic law disclaimers of jurisdiction over Indian

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civil causes of action, and those civil laws of such State that are of general application to private persons or private property shall have the same force and effect within such Indian country as they have elsewhere within the State:

"State of	Indian country affected
California	All Indian country within the State
Minnesota	All Indian country within the State, except the Red Lake Reservation
Nebraska	All Indian country within the State
Oregon	All Indian country within the State, except the Warm Springs Reservation
Wisconsin	All Indian country within the State, except the Menominee Reservation

"(b) Nothing in this section shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any Federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the State to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein.

"(c) Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the State, be given full force and effect in the determination of civil causes of action pursuant to this section.'

"SEC. 5. Section 1 of the Act of October 5, 1949 (63 Stat. 705, ch. 604), is hereby repealed, but such repeal shall not affect any proceedings heretofore instituted under that section.

"SEC. 6. Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment

country were dealt with in § 6.<sup>11</sup> The people of those States were given permission to amend "where necessary" their state constitution or existing statutes to remove any legal impediment to the assumption of jurisdiction under the Act. Pub. L. 280, § 6. All others were covered in § 7.<sup>12</sup>

The Washington Constitution contains a disclaimer of authority over Indian country,<sup>13</sup> and the State is, therefore, one of those covered by § 6 of Pub. L. 280. The State did not take any action under the purported authority of Pub. L. 280 until 1957. In that year its legislature enacted a statute which obligated the State to assume criminal and civil jurisdiction over any Indian reservation within the State at the request of the tribe affected.<sup>14</sup> Under this legislation state jurisdiction was requested by and extended to several Indian tribes within the State.<sup>15</sup>

to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.

"SEC. 7. The consent of the United States is hereby given to any other State not having jurisdiction with respect to criminal offenses or civil causes of action, or with respect to both, as provided for in this Act, to assume jurisdiction at such time and in such manner as the people of the State shall, by affirmative legislative action, obligate and bind the State to assumption thereof."

<sup>10</sup> See n. 9, *supra*. The five States given immediate jurisdiction were California, Minnesota, Nebraska, Oregon, and Wisconsin. Alaska was added to this group in 1958. Act of Aug. 8, 1958, Pub. L. No. 85-615, 72 Stat. 545 (1958), codified at 18 U. S. C. § 1162 (1976), 28 U. S. C. § 1360 (1976).

<sup>11</sup> See n. 9, *supra*.

<sup>12</sup> See n. 9, *supra*.

<sup>13</sup> Wash. Const., Art. XXVI, ¶ 2.

<sup>14</sup> R. C. W. ch. 37.12.

<sup>15</sup> For a detailed discussion of the Washington history under Pub. L. 280, see 1 National American Indian Court Judges Ass'n: The Impact of Public Law 280 upon the Administration of Criminal Justice on Indian Reservations (1974) (hereinafter 1 Indian Court Judges).



In one of the first prosecutions brought under the 1957 jurisdictional scheme, an Indian defendant whose tribe had consented to the extension of jurisdiction challenged its validity on the ground that the disclaimer clause in the state constitution had not been amended in the manner allegedly required by § 6 of Pub. L. 280. *State v. Paul*, 53 W. 2d 789 (1959). The Washington Supreme Court rejected the argument, construing the state constitutional provision to mean that the barrier posed by the disclaimer could be lifted by the state legislature.<sup>16</sup>

In 1963, Washington enacted Chapter 36, the law at issue in this litigation.<sup>17</sup> The most significant feature of the new statute was its provision for the extension of at least some jurisdiction over all Indian lands within the State, whether or not the affected tribe gave its consent. Full criminal and civil jurisdiction to the extent permitted by Pub. L. 280 was extended to all fee lands in every Indian reservation and to trust and allotted lands therein when non-Indians were involved. Except for eight categories of law, however, state jurisdiction was not extended to Indians on allotted and trust lands unless the affected tribe so requested. The eight jurisdictional categories of state law that were thus extended to all parts of every Indian reservation were in the areas of compulsory school attendance, public assistance, domestic relations, mental illness, juvenile delinquency, adoption proceedings, dependent children, and motor vehicles.<sup>18</sup>

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<sup>16</sup> The Washington Supreme Court relied upon a previous decision in which it had rejected a challenge to Washington legislation permitting taxation of property leased from the Federal Government. *Boeing Aircraft v. Reconstruction Finance Corp.*, 25 W. 2d 652 (1932). The *Boeing* legislation was challenged on the ground that the State had failed to remove by amendment a constitutional disclaimer of authority to tax federal property, and the Washington Court held in *Boeing* that legislative action was sufficient.

<sup>17</sup> See n. 1, *supra*.

<sup>18</sup> See n. 1 and n. 5, *supra*.

The Yakima Indian Nation did not request the full measure of jurisdiction made possible by Chapter 36, and the Yakima Reservation thus became subject to the system of jurisdiction outlined at the outset of this opinion.<sup>19</sup> This litigation followed.

## II

The Yakima Nation relies on three separate and independent grounds in asserting that Chapter 36 is invalid. First, it argues that under the terms of Pub. L. 280 Washington was not authorized to enact Chapter 36 until the state constitution had been amended by "the people" so as to eliminate its Art. XXVI which disclaimed state authority over Indian lands.<sup>20</sup>

<sup>19</sup> Those tribes that had consented to state jurisdiction under the 1957 law remained fully subject to such jurisdiction. R. C. W. 37112.010 (1976). Since 1963 only one tribe, the Colville, has requested the extension of full state jurisdiction. 1 Indian Court Judges, *supra*, n. 15, at 77-81. The Yakima Nation, ever since 1952 when its representatives objected before a congressional committee to a predecessor of Pub. L. 280, see n. 33, *infra*, has consistently contested the wisdom and the legality of attempts by the State to exercise jurisdiction over its Reservation lands. See *ibid*.

<sup>20</sup> Washington strenuously argues that this question is not properly before the Court. We think that it is. The Yakima Indian Nation has pressed this issue throughout the litigation. In its motion to Dismiss or Affirm, the alleged invalidity of Washington's legislative assumption of jurisdiction was presented as a basis upon which the judgment below should be sustained. See n. 5, *supra*. As the prevailing party, the appellee was of course free to defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals. *United States v. American Ry. Exp. Co.*, 265 U. S. 425, 435-436; *Dandridge v. Williams*, 397 U. S. 471, 475, and n. 6. Moreover, the disclaimer issue was implicit in the subjects the parties were requested to address in our order noting probable jurisdiction of this appeal. 435 U. S. 903. Cf. *Gent v. Arkansas*, 384 U. S. 937; *Zicarelli v. New Jersey State Commission*, 401 U. S. 931.

Washington also contends that this Court's summary dismissals in *Makah Indian Tribe v. Washington*, 76 Wash. 2d 485, 457 P. 2d 485 (1969), appeal dismissed, 397 U. S. 316; *Tonasket v. Washington*, 84 Wash. 2d 164, 525 P. 2d 744 (1974), appeal dismissed, 420 U. S. 915; and



Second, it contends that Pub. L. 280 does not authorize a State to extend only partial jurisdiction over an Indian reservation. Finally, it asserts that Chapter 36, even if authorized by Pub. L. 280, violates the Fourteenth Amendment of the Constitution. We turn now to consideration of each of these arguments.

*Comenout v. Burdman*, 84 Wash. 2d 192, appeal dismissed, 420 U. S. 915, should preclude reconsideration of the disclaimer issue here. In those cases, it had been argued that Washington's statutory assumption of jurisdiction was ineffective under Pub. L. 280 and invalid under the state constitution because of the absence of a constitutional amendment eliminating Chapter XXVI. In each case, the Washington Supreme Court rejected both the state constitutional and the federal arguments. On appeal from each, the appellants questioned the validity of the state court's conclusion that under the federal statute no constitutional amendment was required. Our summary dismissal are, of course, to be taken as rulings on the merits, *Hicks v. Miranda*, 422 U. S. 332, 343-345, in the sense that they rejected the "specific challenges presented in the statements of jurisdiction" and left "undisturbed the judgment appealed from." *Mandel v. Bradley*, 432 U. S. 173, 176. They do not, however, have the same precedential value here as does an opinion of this Court after briefing and oral argument on the merits, *Edelman v. Jordan*, 415 U. S. 651, 670-671; *Richardson v. Ramirez*, 418 U. S. 24, 53. A summary dismissal of an appeal represents no more than a view that the judgment appealed from was correct as to those federal questions raised and necessary to the decision. It does not, as we have continued to stress, see, e. g., *Mandel v. Bradley*, *supra*, necessarily reflect our agreement with the opinion of the Court whose judgment is appealed. It is not at all unusual for the Court to find it appropriate to give full consideration to a question that has been the subject of previous summary action. *Massachusetts Bd. of Retirement v. Murgia*, 427 U. S. 307, 309 n. 1; *Usery v. Turner Elkhorn Mining Co.*, 428 U. S. 1, 14. We do so in this case. The question that Washington asks us to avoid or to resolve on the basis of *stare decisis* has never received full plenary attention here. It has been the subject of extensive briefing and argument by the parties. It has provoked several, somewhat uncertain, opinions from the Washington courts, see n. 26, *infra*, whose ultimate judgments were the subjects of summary dismissals here. Finally, it is an issue upon which the Executive Branch of the United States Government has recently changed its position diametrically as explained in its *amicus* brief and oral argument in this case.



## III

We first address the contention that Washington was required to amend its constitution before it could validly legislate under the authority of Pub. L. 280. If the Tribe is correct, we need not consider the statutory and constitutional questions raised by the system of partial jurisdiction established in Chapter 36. The Tribe, supported by the United States as *amicus curiae*,<sup>21</sup> argues that a requirement for popular amendatory action is to be found in the express terms of § 6 of Pub. L. 280 or, if not there, in the terms of the Enabling Act that admitted Washington to the Union.<sup>22</sup> The argument can best be understood in the context of the specific statutory provisions involved.

## A

The Enabling Act under which Washington, along with the

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<sup>21</sup> The United States has fully briefed the constitutional amendment question and the question whether partial jurisdiction is authorized by Pub. L. 280. Its position on the equal protection holding of the Court of Appeals is equivocal.

<sup>22</sup> The Tribe also contends that under its 1855 Treaty with the United States, 12 Stat. 951, it was guaranteed a right of self-government that was not expressly abrogated by Pub. L. 280. The argument assumes that under our cases, see, e. g., *Menominee Tribe v. United States*, 391 U. S. 404, treaty rights are preserved unless Congress has shown a specific intent to abrogate them. Although we have stated that the intention to abrogate or modify a treaty is not to be lightly imputed, *Menominee Tribe v. United States*, *supra*, at 413; *Pigeon River Co. v. Coz Co.*, 291 U. S. 138, 160, this rule of construction must be applied sensibly. In this context, the argument made by the Tribe is tendentious. The treaty right asserted by the Tribe is jurisdictional. So also is the entire subject-matter of Pub. L. 280. To accept the Tribe's position would be to hold that Congress could not pass a jurisdictional law of general applicability to Indian country unless in so doing it itemized all potentially conflicting treaty rights that it wished to affect. This we decline to do. The intent to abrogate inconsistent treaty rights is clear enough from the express terms of Pub. L. 280. The Tribe's argument on this point warrants no further discussion.



States of Montana, North Dakota, South Dakota, and Montana gained entry into the Union, was passed in 1889. Act of Feb. 22, 1889, ch. 180.<sup>23</sup> Section 4 of that Act required the constitutional conventions of the prospective new States to

<sup>23</sup> Act of Feb. 22, 1889, ch. 180, S. 4, 25 Stat. 676. The act provides:

"1. Enabling Act for the Admission of Washington and Other States (25 Stat. 676), Section 4

*"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of all that part of the area of the United States now constituting the Territories of Dakota, Montana, and Washington, as at present described, may become the States of North Dakota, South Dakota, Montana, and Washington, respectively, as hereinafter provided.*

"SEC. 4. That the delegates to the conventions elected as provided for in this act shall meet at the seat of government of each of said Territories . . . after organization, shall declare, on behalf of the people of said proposed States, that they adopt the Constitution of the United States; whereupon the said conventions shall be, and are hereby, authorized to form constitutions and States governments for said proposed States, respectively. The constitutions shall be republican in form, and make no distinction in civil or political rights on account of race or color, except as to Indians not taxed, and not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence. And said conventions shall provide, by ordinances irrevocable without the consent of the United States and the people of said States:

"Second. That the people inhabiting said proposed States do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the Congress of the United States: . . ."

Other admitting Acts requiring a disclaimer of authority over Indian lands are Act of July 16, 1894, ch. 138, 28 Stat. 107 (Utah); Act of June 16, 1906, ch. 3335, 34 Stat. 267 (Oklahoma); Act of June 20, 1910, ch. 310, 36 Stat. 557 (Arizona and New Mexico). The language of these Acts is virtually the same as that of 25 Stat. 676.



enact provisions by which the people disclaimed title to lands owned by Indians or Indian tribes and acknowledged that those lands were to remain "under the absolute jurisdiction and control of" Congress until the Indian or United States title had been extinguished. *Id.*, ch. 180. The disclaimers were to be made "by ordinances irrevocable without the consent of the United States and the people of the States." *Ibid.* Washington's constitutional convention enacted the disclaimer of authority over Indian lands as part of Art. XXVI of the state constitution.<sup>24</sup> That Article, captioned "Compact with the United States," is prefaced with the statement—precisely tracking the language of the admitting

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<sup>24</sup> Wash. Const. Art. XXVI, n. 2. Art. XXVI reads as follows:

"COMPACT WITH THE UNITED STATES

"The following ordinance shall be irrevocable without the consent of the United States and the people of this state:—

"Second. That the people inhabiting this state do agree and declare that they forever disclaim all right and title to the unappropriated public lands lying within the boundaries of this state, and to all lands lying within said limits owned or held by any Indian or Indian tribes; and that until the title thereto shall have been extinguished by the United States, the same shall be and remain subject to the disposition of the United States, and said Indian lands shall remain under the absolute jurisdiction and control of the congress of the United States and that the lands belonging to citizens of the United States residing without the limits of this state shall never be taxed at a higher rate than the lands belonging to residents thereof; and that no taxes shall be imposed by the state on lands or property therein, belonging to or which may be hereafter purchased by the United States or reserved for use: Provided, That nothing in this ordinance shall preclude the state from taxing as other lands are taxed any lands owned or held by an Indian who has severed his tribal relations, and has obtained from the United States or from any person a title thereto by patent or other grant, save and except such lands as have been or may be granted to any Indian or Indians under any act of congress containing a provision exempting the lands thus granted from taxation, which exception shall continue so long and to such an extent as such act of congress may prescribe."



statute—that “the following ordinance shall be irrevocable without the consent of the United States and the people of the State of Washington.” Its substantive terms mirror the language used in the enabling legislation.

We have already noted that two distinct provisions of Pub. L. 280 are potentially applicable to States not granted an immediate cession of jurisdiction. The first, § 6, without question applies to Washington and the seven other States admitted into the Union under enabling legislation requiring organic law disclaimers similar to that just described. This much is clear from the legislative history of Pub. L. 280,<sup>25</sup> as well as from the express language of § 6. That section provides

“Notwithstanding the provisions of any Enabling Act for the admission of a State, the consent of the United States is hereby given to the people of any State to amend, where necessary, their State constitution or existing statutes, as the case may be, to remove any legal impediment to the assumption of civil and criminal jurisdiction in accordance with the provisions of this Act: *Provided*, That the provisions of this Act shall not become effective with respect to such assumption of jurisdiction by any such State until the people thereof have appropriately amended their State constitution or statutes as the case may be.”

All other States were, as we have noted, covered by § 7. In that section Congress gave the consent of the United States

“to any other State . . . to assume jurisdiction at such time and in such manner as the people of the State shall,

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<sup>25</sup> See H. R. Rep. No. 848, 83d Cong., 1st Sess. (1953). According to this report accompanying H. R. 1053 (the House version of Pub. L. 280) “examination of the Federal statutes and State constitutions has revealed that the enabling acts for eight States, and in consequence the constitutions of those States, contain express disclaimers of jurisdiction. Included are Arizona, Montana, New Mexico, North Dakota, Oklahoma, South Dakota, Utah, and Washington.” *Id.*, at 6.

by affirmative legislative action, obligate and bind the State to the assumption thereof."

These provisions appear to establish different modes of procedure by which an option State, depending on which section applies to it, is to accept the Pub. L. 280 jurisdictional offer. The procedure specified in § 7 is straightforward: affirmative legislative action by which the State obligates and binds itself to assume jurisdiction. Section 6, in contrast, is delphic. The only procedure mentioned is action by the people "to amend their constitutions or statutes, as the case may be" to remove any legal impediments to the assumption of jurisdiction. The phrase "where necessary" in the main clause suggests that a requirement for popular—as opposed to legislative—action must be found if at all in some source of law independent of Pub. L. 280. The proviso, however, has a different import.

#### B

The proper construction to be given to the single inartful sentence in § 6 has provoked chapters of argument from the parties. The Tribe and the United States urge that notwithstanding the phrase "where necessary," § 6 should be construed to mandate constitutional amendment by disclaimer States. It is their position that § 6 operates not only to grant the consent of the United States to state action inconsistent with the terms of the enabling legislation but also to establish a distinct procedure to be followed by Enabling Act States. To support their position, they rely on the language of the proviso and upon certain legislative history of § 6.<sup>26</sup>

In the alternative, the Tribe and the United States argue that popular amendatory action, if not compelled by the terms of § 6, is mandated by the terms of the Enabling Act of Feb. 22, 1889, ch. 180, § 4. Although they acknowledge that Congress in § 6 did grant the "consent of the United States"

<sup>26</sup> See n. 35, *infra*, and accompanying text.



required under the Enabling Act before the State could remove the disclaimer, they contend that § 6 did not eliminate the need for the "consent of the people" specified in the Enabling Act. In their view, the 1889 Act—if not Pub. L. 280—dictates that constitutional amendment is the only valid procedure by which that consent can be given.

The State draws an entirely different message from § 6. It contends that the section must be construed in light of the overall congressional purpose to facilitate a transfer of jurisdiction to those option States willing to accept the responsibility. Section 6 was designed, it says, not to establish but to remove legal barriers to state action under the authority of Pub. L. 280. The phrase "where necessary" in its view is consistent with this purpose. It would construe the word "appropriately" in the proviso to be synonymous with "where necessary" and the entire section to mean that constitutional amendment is required only if "necessary" as a matter of state law. The Washington Supreme Court having found that legislative action is sufficient to grant the "consent of the people" to removal of the disclaimer in Art. XXVI of the state constitution,<sup>27</sup> the State argues that the procedural

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<sup>27</sup> The validity of Chapter 36 was first challenged in the federal courts in *Quinault Tribe of Indians v. Gallagher*, 368 F. 2d 648 (CA9 1966). In *Quinault*, the Court of Appeals for the Ninth Circuit held that under § 6 and the Enabling Act the consent of the people to removal of the disclaimer need only be made in some manner "valid and binding under state law." *Id.*, at 657. Relying on the Washington Supreme Court's holding in *State v. Paul*, 53 W. 2d 789 (1959), that legislative action would suffice, it concluded that Washington's assumption of jurisdiction was valid. When Chapter 36 was first challenged in the state courts, the Washington Supreme Court reaffirmed its holding in *State v. Paul*. See *Makah Indian Tribe v. State*, 76 W. 2d 483, 457 P. 2d 590 (1969); *Tonasket v. State*, 84 W. 2d 164, 525 P. 2d 217 (1974). See also n. 16, *supra*. In *Makah*, the Court reasoned, as it had in *Paul* that the makers of the Washington Constitution intended that for purposes of Art. XXVI "the people would speak through the mouth of the legislature." 76 W. 2d, at



requirements of § 6 have been fully satisfied. It finds the Enabling Act irrelevant since in its view § 6 effectively repealed any federal law impediments in that Act to state assertion of jurisdiction under Pub. L. 280.<sup>28</sup>

## C

From our review of the statutory, legislative, and historical materials cited by the parties, we are persuaded that Washington's assumption of jurisdiction by legislative action fully complies with the requirements of § 6. Although we adhere to the principle that the procedural requirements of Pub. L. 280 must be strictly followed, *Kennerly v. District Court*, 400 U. S. 423, 427; *McClanahan v. State Tax Comm'n*, 411 U. S. 124, 180, and to the general rule that ambiguities in legislation affecting retained tribal sovereignty are to be construed in favor of the Indians, see, e. g., *Bryan v. Itasca Cty.*, 426 U. S. 373, 392, those principles will not stretch so far as to permit us to find a federal requirement affecting the manner in which the States are to modify their organic legislation on the basis of materials that are essentially speculative. Cf. *Bd. of Cty. Comm'rs v. United States*, 308 U. S. 343, 350-351. The language of § 6, its legislative history, and its role in Pub. L. 280 all clearly point the other way.

We turn first to the language of § 6. The main clause is

490. In addition, it relied on *Quinault* for the proposition that under § 6 the constitutional disclaimer need be removed only by a method binding under state law. In *Tonasket*, the Washington court reaffirmed this reasoning. It also relied on the alternate ground that the disclaimer in Art. XXVI could be construed not to preclude "criminal and civil regulation" on Indian lands and therefore would not stand as a barrier to state jurisdiction. 84 W. 2d, at 177.

<sup>28</sup> The State asserts as well that the Washington constitutional disclaimer does not pose any substantive barrier to state assumption of jurisdiction over fee and unrestricted lands within the reservation. In light of our holding that Washington has satisfied the procedural requirements for repealing the disclaimer, we need not consider the scope of this state constitutional provision.



framed in permissive, not mandatory terms. Had the drafters intended by that clause to mandate popular amendatory action, it is unlikely that they would have included the words "where necessary." As written, the clause suggests that the substantive requirement for constitutional amendment must be found in some source of law independent of § 6. The basic question, then, is whether that requirement can be found in the language of the proviso to § 6 or alternatively in the terms of the Enabling Act.

We are unable to find the procedural mandate missing from the main clause of § 6 in the language of the proviso. That language in the abstract could be read to suggest that constitutional amendment is a condition precedent to a valid assumption of jurisdiction by disclaimer States. When examined in its context, however, it cannot fairly be read to impose such a condition. Two considerations prevent this reading. First, it is doubtful that Congress—in order to compel disclaimer States to amend their constitutions by popular vote—would have done so in a provision the first clause of which consents to that procedure "where necessary" and the proviso to which indicates that the procedure is to be followed if "appropriate." Second, the reference to popular amendatory action in the proviso is not framed as a description of the procedure the States must follow to assume jurisdiction, but instead is written as a condition to the effectiveness of "the provisions of" Pub. L. 280. When it is recalled that the only substantive provisions of the Act—other than those arguably to be found in § 7—accomplish an immediate transfer of jurisdiction to specifically named States, it seems most likely that the proviso was included to ensure that § 6 would not be construed to effect an immediate transfer to the disclaimer group of option States. The main clause removes a federal law barrier to any new state jurisdiction over Indian country. The proviso suggests that disclaimer States are not automatically to receive jurisdiction by virtue of that removal. Without



the proviso, in the event that state constitutional amendment were not found "necessary,"<sup>29</sup> § 6 could be construed as effecting an immediate cession. Congress clearly wanted all the option States to "obligate and bind" themselves to assume the jurisdiction offered in Pub. L. 280.<sup>30</sup> To be sure, constitutional amendment was referred to as the process by which this might be accomplished in disclaimer States. But, given the distinction that Congress clearly drew between those States and automatic transfer States, this reference can hardly be construed to mandate that process.

Before turning to the legislative history, which, as we shall

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<sup>29</sup> Disclaimer States have responded in diverse ways to the Pub. L. 280 offer of jurisdiction. See Goldberg, Pub. L. 280: The Limits of State Jurisdiction over Reservation Indians, 22 U. C. L. A. L. Rev. 535, 546-548, 567-575. Only one—North Dakota—has amended its constitution.

<sup>30</sup> In *Kennerly v. District Court*, 400 U. S. 423, we emphasized the need for the responsible jurisdictions to "manifest by political action [their] willingness and ability to discharge their new responsibilities." *Id.*, at 427. *Kennerly* involved an attempt by the state courts of Montana to assert civil jurisdiction over a transaction that occurred within reservation boundaries. The tribe had requested state jurisdiction, but the State had not obligated itself to assume it. The case was litigated on the theory that § 7 obligated itself to assume it. The case was litigated on the theory that § 7 requirement of "affirmative legislative action." *Ibid.* Two of our other cases involving Pub. L. 280 also illustrate the need for responsible action under the federal statute. In *Williams v. Lee*, 358 U. S. 217, we held that the State of Arizona—one of the disclaimer States—could not validly exercise jurisdiction over a civil action brought by a non-Indian against an Indian for a transaction that occurred on the Navaho Reservation. We relied on the traditional principle that a State may not infringe the right of reservation Indians "to make their own laws and be ruled by them" without an express authorization by Congress. *Id.*, at 220. In *Williams*, the State had not attempted to comply with § 6: the state court had taken jurisdiction without state statutory or constitutional authorization. A similar situation obtained in *McClanahan v. State Tax Comm'n*, 411 U. S. 164 (1973). There we held that Arizona could not by simple legislative enactment tax income earned by a Navaho from reservation sources. The tax statute at issue was not framed as a measure obligating the State to assume responsibility under Pub. L. 280.



see, accords with this interpretation of § 6, we address the argument that popular amendatory action, if not a requirement of Pub. L. 280, is mandated by the legislation admitting Washington to the Union. This argument requires that two assumptions be made. The first is that § 6 eliminated some but preserved other Enabling Act barriers to a State's assertion of jurisdiction over Indian country. The second is that the phrase "where necessary" in the main clause of § 6 was intended to refer to those federal law barriers that had been preserved. Only if each of these premises is accepted does the Enabling Act have any possible application.

Since we find the first premise impossible to accept, we proceed no further. Admitting legislation is, to be sure, the only source of law mentioned in the main clause of § 6 and might therefore be looked to as a referent for the phrase "where necessary" in the clause. This reading, however, is not tenable. It supplies no satisfactory answer to the question why Congress—in order to give the consent of the United States to the removal of state organic law disclaimers—would not also have by necessary implication consented to the removal of any procedural constraints on the States imposed by the Enabling Acts. The phrase "notwithstanding the terms of any Enabling Act" in § 6 is broad—broad enough to suggest that Congress when it referred to a possible necessity for state constitutional amendment did not intend thereby to perpetuate any such requirement in an Enabling Act. Even assuming that the phrase "consent of the people" in the Enabling Act must be construed to preclude consent by legislative action—and the Tribe and the United States have offered no concrete authority to support this restrictive reading of the phrase—<sup>81</sup> we think it obvious that in the "notwith-

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<sup>81</sup> There is, for example, nothing in the legislative history of the Enabling Act to indicate that the "consent of the people" could be given only by a process of constitutional amendment. The scant legislative record of the Enabling Act is devoted to a debate over the wisdom of



standing" clause of § 6 Congress meant to remove any federal impediments to state jurisdiction that may have been created by an Enabling Act.

The legislative history of Pub. L. 280 supports the conclusion that § 6 did not of its own force establish a state constitutional amendment requirement and did not preserve any such requirement that might be found in an Enabling Act. Pub. L. 280 was the first jurisdictional bill of general applicability ever to be enacted by Congress. It reflected congressional concern over law and order problems on Indian reservations and the financial burdens of continued federal jurisdictional responsibilities on Indian lands, *Bryan v. Itasca County*, 426 U. S. 373. It was also, however, without question reflective of the general assimilationist policy followed by Congress from the early 1950's through the late 1960's.<sup>32</sup>

splitting the Dakota territory into two States and of admitting both immediately to the Union. In none of these debates was there any extended discussion of the Indian land disclaimer or any indication that the "consent of the people" to removal of the disclaimer could not be given by the people's representatives in the legislature. See Adverse Reports of the House Committee on the Territories, May 1886 and Feb. 1888, annexed to H. R. Rep. No. 1025, 50th Cong., 1st Sess., 19-25 (1888). See also, *e. g.*, 19 Cong. Rec. 2804, 2883, 3001, 3117 (1888); 20 Cong. Rec. 801, 869 (1889). The only explicit references to the disclaimer of authority over Indian lands are found in H. R. Rep. No. 1025, *supra*, at 8-9 (calling attention to fact that by the terms of the bill large Indian Reservations in the Dakota Territory "remain within the exclusive control and jurisdiction of the United States) and in 19 Cong. Rec. 2832 (1888) (Oklahoma Delegate objecting to the disclaimer).

<sup>32</sup> That policy was formally announced in H. R. Con. Res. 108, 67 Stat. B132, approved on July 27, 1953, the same day that Pub. L. 280 was passed by the House. 99 Cong. Rec. 9968, 83d Cong., 1st Sess. (1953). As stated in H. R. Con. Res. 108, the policy of Congress was "as rapidly as possible, to make the Indians within the territorial limits of the United States subject to the same laws and entitled to the same privileges and responsibilities as are applicable to other citizens of the United States, to end their status as wards of the United States, and to grant them all of the rights and prerogatives pertaining to American citizenship . . . ."



See H. R. Rep. No. 848, 83d Cong., 1st Sess. (1953). See also Hearings before the Subcommittee on Indian Affairs of the Interior & Insular Affairs Committee on H. R. 459, H. R. 3235, and H. R. 3624, 82d Cong., 2d Sess. (1952). The failure of Congress to write a tribal consent provision into the transfer provision applicable to option States as well as its failure to consult with the tribes during the final deliberations on Pub. L. 280 provide ample evidence of this.<sup>88</sup>

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This policy reflected a return to the philosophy of the General Allotment Act of 1187, ch. 119, S. 1, 24 Stat. 288, as amended 25 U. S. C. § 331 (1970), popularly known as the Dawes Act, a philosophy which had been rejected with the passage of the Indian Reorganization Act of 1934, 48 Stat. 984.

In *Bryan v. Itasca County*, 426 U. S. 373, the Court emphasized that Pub. L. 280 was not a termination measure and should not be construed as such. Our discussion here is not to the contrary. The parties agree that Pub. L. 280 reflected an assimilationist philosophy. That Congress intended to facilitate assimilation when it authorized a transfer of jurisdiction from the Federal Government to the States does not necessarily mean, however, that it intended in Pub. L. 280 to terminate tribal self-government. Indeed, it may be that even after the transfer tribal courts retain concurrent jurisdiction in areas in which they formerly shared jurisdiction with the Federal Government. The Tribe has urged that we so hold. This issue, however, is not within the scope of our order noting probable jurisdiction, see n. 20, *supra*, and we do not decide it here.

<sup>88</sup> These features of Pub. L. 280 have attracted extensive criticism. See generally *Goldberg, supra*, n. 29. Indeed, the experience of the Yakima Nation is in itself sufficient to demonstrate why the Act has provoked so much criticism. In 1952, in connection with the introduction of bills that proposed a general jurisdictional transfer, see Hearings before the Subcommittee on Indian Affairs of the Interior & Insular Affairs Committee on H. R. 459, H. R. 3235, and H. R. 3624, 82d Cong., 2d Sess. (1952) (hereinafter 1952 Hearings), a representative of the Yakimas testified that the Tribe was opposed to the extension of state jurisdiction on the Yakima Reservation. He stated:

"The Yakima Indians . . . feel that in the State Courts they will not be treated as well as they are in the Federal courts, because they believe that many of the citizens of the State are still prejudiced against the Indians.

"They are now under the Federal laws and have their own tribal laws,



Indeed, the circumstances surrounding the passage of Pub. L. 280 in themselves fully bear out the State's general thesis that Pub. L. 280 was intended to facilitate, not to impede, the transfer of jurisdictional responsibility to the States. Pub. L. 280 originated in a series of individual bills introduced in the 83d Congress to transfer jurisdiction to the five willing States who eventually were covered in §§ 1 and 4.<sup>34</sup> H. R. Rep. No. 848, 83d Cong., 1st Sess. (1953). Those bills were consolidated into H. R. 1063, which was referred to the House Committee on Interior and Insular Affairs Committee for consideration. Closed hearings on the bills were held before the Subcommittee on Indian Affairs on June 29 and July 15, 1953.<sup>35</sup> During the opening session on June 29,

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customs, and regulations. This system is working well and the Yakima Tribe believes that it should be continued and not changed at this time." 1952 Hearings, at 84-85.

In 1953, when the Indian Affairs Subcommittee of the House Committee on Indian Affairs considered the final version of Pub. L. 280, the Committee was again aware that the Yakima Nation opposed state jurisdiction. The House Report accompanying H. R. 1063 contains a letter from the Department of the Interior listing the Tribe as among those opposed to "being subjected to State jurisdiction" and having a "tribal law-and-order organization that functions in a reasonably satisfactory manner." H. R. 848, 82d Cong., 1st Sess., 7 (1953). Had Washington been included among the mandatory States, it is thus quite possible that the Yakima Reservation would have been excepted.

<sup>34</sup> Similar bills had been introduced in the 82d Congress, and in public hearings held on those the idea of a general transfer was discussed at length. See 1952 Hearings, *supra*, n. 31.

<sup>35</sup> See Unpublished Transcript of Hearings on H. R. 1063 before the Subcommittee on Indian Affairs of the House Committee on Interior & Insular Affairs on June 29 and July 15, 1953 (hereinafter cited as June 29 Hearings, and July 15 Hearings.) The transcript of these hearings was first made available to this Court by the United States during the briefing of *Tonasket v. Washington*, 411 U. S. 451. It was again supplied in *Bryan v. Itasca County*, 426 U. S. 373, and for this appeal has been reproduced in full in the Appellee's Appendix. These hearings, along with the House Report on H. R. 1063 as amended, H. R. Rep. No. 848, 83d Cong., 1st



Committee Members, counsel, and representatives of the Department of the Interior discussed various proposals designed to give H. R. 1063 general applicability. June 29 Hearings 1-16. It rapidly became clear that the Members favored a general bill. *Ibid.* At this point, Committee counsel noted that several States "have constitutional prohibitions against jurisdiction." *Id.*, at 17. There followed some discussion of the manner in which these States should be treated. On July 16, a version of § 6 was proposed. July 15 Hearings 23. After further discussion of the disclaimer problem, the "notwithstanding" clause was added, *id.*, at 27, and the language eventually enacted as § 6 was approved by the Committee that day. The speed and the context alone suggest that § 6 was designed to remove an obstacle to state jurisdiction, not to create one. And the discussion at the hearings, which in essence were mark-up sessions, makes this clear.

On July 15, committee counsel presented an amendment which was eventually to become § 6. He explained the effect of the amendment as follows:

"[T]he legislation as acted upon by the committee would apply to only five states. The two additional section amendments would apply first to eight states having constitutional or organic law impediments and would grant the consent of the United States for them to remove such impediments and thus to acquire jurisdiction.

"The other amendment would apply to any other Indian states . . . who would acquire jurisdiction at such time as the legislative body affirmatively indicated their desire to so assume jurisdiction." July 15 Hearings, at 24.

Immediately after the proposed § 6 was read to the subcommittee, the Chairman, Congressman D'Ewart, commented:

Sess. (1953) and the Senate Report, which is virtually identical, S. Rep. No. 699, 83d Cong., 1st Sess. (1953), constitute the primary legislative materials on Pub. L. 280.

"I do not think we have to grant permission to a state to amend its own statutes. *Id.*, at 25.

Committee counsel replied:

"Mr. D'Ewart, I believe the reason for this is that in some instances it is spelled out both in the constitution and the statutory provisions as a result of the Act and it may be unnecessary, but by some state courts it may be interpreted as being necessary." *Id.*, at 26.

The version of § 6 read to the Committee members by counsel contained no reference to the Enabling Acts but merely granted consent for the States to remove existing impediments to the assertion of jurisdiction over Indians. It was suggested that in order effectively to authorize the States to modify their organic legislation the clause should be more specific. This suggestion resulted in the proposal of the "notwithstanding" clause. The following exchange then took place:

"[Committee counsel]: I believe that the clause "notwithstanding any provisions of the Enabling Act" for such states might well be included. It would make clear that Congress was repealing the Enabling Act.

"[Congressman Dawson]: to give permission to amend their constitutions.

"[Committee counsel]: I think that would help clarify the intent of the committee at the present time and of Congress if they favorably acted on the legislation." *Id.*, at 27.

The next day, July 16, the Committee filed its report on the substitute bill. H. R. Rep. No. 848, 83d Cong., 1st Sess. (1953). The report explains that § 6 would

"give consent of the United States to those States presently having organic laws expressly disclaiming jurisdic-



tion to acquire jurisdiction subsequent to enactment by amending or repealing such disclaimer laws.”<sup>36</sup>

The Committee hearings thus make clear an intention to remove any federal barriers to the assumption of jurisdiction by Enabling Act States. They also make clear that that consent was not to effect an immediate transfer of jurisdiction. While some Committee members apparently thought that § 6 States, as a matter of state law, would have to amend their constitutions in order to remove the disclaimers found there,<sup>37</sup> there is no indication that the Committee intended to impose any such requirement.

We conclude that § 6 of Pub. L. 280 does not require disclaimer States to amend their constitutions to make an effective acceptance of jurisdiction. We also conclude that any Enabling Act requirement of this nature was effectively repealed by § 6. If as a matter of state law a constitutional amendment is required, that procedure must—as a matter of state law—be followed. And if under state law a constitutional amendment is not required, disclaimer States must still take positive action before Pub. L. 280 jurisdiction can become effective. The Washington Supreme Court having determined that for purposes of the repeal of Art. XXVI of the Washington Constitution legislative action is sufficient,<sup>38</sup> and appropriate state legislation having been enacted, it follows

<sup>36</sup> The House passed the bill without debate on July 27, 1953. 99 Cong. Rec. 9962-9963 (1953). In the Senate, the bill was referred to the Committee on Interior and Insular Affairs. 99 Cong. Rec. 10065 (1953). That Committee held no hearings of its own, and it reported out the bill two days later without amendment. 99 Cong. Rec. 10217 (1953). The bill received only brief consideration on the Senate floor before it was passed on August 1, 1953. 99 Cong. Rec. 10783-10784 (1953).

<sup>37</sup> See June 29 Hearings at 17; July 15 Hearings, at 24-28.

<sup>38</sup> The Tribe has intimated that the Washington Supreme Court's holding is incorrect. However, the procedure by which the disclaimer might be removed or repealed—Congress having given its consent—is as we have held a question of state law.

that the State of Washington has satisfied the procedural requirements of § 6.

## IV

We turn to the question whether the State was authorized under Pub. L. 280 to assume only partial subject-matter and geographic jurisdiction over Indian reservations within the State.<sup>39</sup>

The argument that Pub. L. 280 does not permit this scheme of partial jurisdiction relies primarily upon the text of the federal law. The main contention of the Tribe and the United States is that partial jurisdiction, because not specifically authorized, must therefore be forbidden. In addition, they assert that the interplay between the provisions of Pub. L. 280 demonstrates that § 6 States are required, if they assume any jurisdiction, to assume as much jurisdiction as was transferred to the mandatory States.<sup>40</sup> Pointing out that 18

<sup>39</sup> Both parties find support for their positions on this issue in the legislative history of the amendments to Pub. L. 280 in Title IV of the Indian Civil Rights Act of 1968, 82 Stat. 73. The 1968 legislation provides that States that have not extended criminal or civil jurisdiction to Indian country can make future extensions only with the consent of the tribes affected. 25 U. S. C. §§ 1321 (a), 1322 (a). The amendments also provide explicitly for partial assumption of jurisdiction. *Ibid.* In addition, they authorize the United States to accept retrocessions of jurisdiction, full or partial, from the mandatory and the § 7 States. 25 U. S. C. § 1323 (a). Section 7 itself was repealed with the proviso that the repeal was not intended to affect any cession made prior to the repeal. 25 U. S. C. § 1323 (b). Section 6 was re-enacted without change. 25 U. S. C. § 1324.

We do not rely on the 1968 legislation or its history, finding the latter equivocal, and mindful that the issues in this case are to be determined in accord with legislation enacted by Congress in 1953.

<sup>40</sup> Since entire reservations were exempted from coverage in three of the mandatory States, the Tribe and the United States concede that the option States could probably assume jurisdiction on a reservation-by-reservation basis. The United States also concedes that the word "or" in § 7 might be construed to mean that option States need not extend both civil and criminal jurisdiction.



U. S. C. § 1151 defines Indian country for purposes of federal jurisdiction as including an entire reservation notwithstanding "the issuance of any fee patent," they reason that when Congress in § 2 transferred to the mandatory States "criminal jurisdiction" over "offenses committed by or against Indians in Indian country," it meant that all parts of Indian country were to be covered. Similarly, they emphasize that civil jurisdiction of comparable scope was transferred to the mandatory States. They stress that in both §§ 2 and 4, the consequence of state assumption of jurisdiction is that the state "criminal laws" and "civil laws of general application" are henceforth to "have the same force and effect within . . . Indian country as they have elsewhere in the State." Finally, the Tribe and the United States contend that the congressional purposes of eliminating the jurisdictional hiatus thought to exist on Indian reservations, of reducing the cost of the federal responsibility for jurisdiction on tribal lands, and of assimilating the Indian tribes into the general state population are disserved by the type of checkerboard arrangement permitted by Chapter 36.

We agree, however, with the State of Washington that statutory authorization for the state jurisdictional arrangement is to be found in the very words of § 7. That provision permits option States to assume jurisdiction "in such manner" as the people of the State shall "by affirmative legislative action, obligate and bind the State to assumption thereof." Once the requirements of § 6 have been satisfied, the terms of § 7 provide the substantive scope of jurisdiction permitted to disclaimer States. The phrase "in such manner" in § 7 means at least that any option State can condition the assumption of full jurisdiction on the consent of an affected tribe. And here Washington has done no more than refrain from exercising the full measure of allowable jurisdiction without consent of the tribe affected.

Section 6, as we have seen, was placed in the Act to eliminate possible organic law barriers to the assumption of jurisdiction by disclaimer States. The Tribe and the United

States acknowledge that it is a procedural not a substantive section. The clause contains only one reference of relevance to the partial jurisdiction question. This is the phrase "assumption of civil or criminal jurisdiction in accordance with the provisions of this Act." As both parties recognize, this phrase necessarily leads to other "provisions" of the Act for clarification of the substantive scope of the jurisdictional grant. The first question then is which other "provisions" of the Act govern. The second is what constraints those "provisions" place on the jurisdictional arrangements made by option States.

The Tribe and the United States argue as an initial matter that § 7 is not one of the "provisions" referred to by § 6. They rely in part upon the contrast between the phrase "assumption of civil and criminal jurisdiction" in § 6 and the disjunctive phrase "criminal offenses or civil causes of action" in § 7. From this distinction between the "civil *and* criminal jurisdiction" language of § 6 and the optional language in § 7, we are asked to conclude that § 6 States must assume full jurisdiction in accord with the terms applicable to the mandatory States even though § 7 States are permitted more discretion. We are unable to accept this argument, not only because the statutory language does not fairly support it, but also because the legislative history is wholly to the contrary. It is clear from the Committee hearings that the States covered by § 6 were, except for the possible impediments contained in their organic laws, to be treated on precisely the same terms as option States.<sup>41</sup>

Section 6, as we have seen, was essentially an afterthought designed to accomplish the limited purpose of removing any barrier to jurisdiction posed by state organic law disclaimers of jurisdiction over Indians. All option States were originally treated under the aegis of § 7.<sup>42</sup> The record of the Committee

<sup>41</sup> See June 24 and July 15, *supra*, n. 35.

<sup>42</sup> See *ibid.*



hearings makes clear that the sole purpose of § 6 was to resolve the disclaimer problem.<sup>48</sup> Indeed, to the extent that the Tribe and the United States suggest that disclaimer States stand on a different footing from all other option States, their argument makes no sense. It would ascribe to Congress an intent to require States that by force of organic law barriers may have had only a limited involvement with Indian country to establish the most intrusive presence possible on Indian reservations, if any at all, and at the same time an intent to allow States with different traditions to exercise more restraint in extending the coverage of their law.

The Tribe and the United States urge that even if, as we have concluded, all option States are ultimately governed by § 7, the reference in that section to assumption of jurisdiction "as provided for in the Act" should be construed to mean that the automatic transfer provisions of §§ 2 and 4 must still apply. The argument would require a conclusion that the option States stand on the same footing as the mandatory States. Their view is not persuasive. The mandatory States were consulted prior to the introduction of the single-state bills that were eventually to become Pub. L. 280. All had indicated their willingness to accept whatever jurisdiction Congress was prepared to transfer. This, however, was not the case with the option States. Few of those States had been consulted, and from the June 29 and July 15 hearings it is apparent that the drafters were primarily concerned with establishing a general transfer scheme that would facilitate, not impede, future action by other States willing to accept jurisdiction. It is clear that the all-or-nothing approach suggested by the Tribe would impede even the most responsible and sensitive jurisdictional arrangements designed by the States. To find that under Pub. L. 280 a State could not exercise partial jurisdiction, even if it were willing to extend

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<sup>48</sup> See, *e. g.*, July 15 Hearings, at 24.



full jurisdiction at tribal request, would be quite inconsistent with this basic history.

The language of § 7, which we have found applicable here, provides, we believe, surer guidance to the issue before us.<sup>44</sup> The critical language in § 7 is the phrase permitting the assumption of jurisdiction "at such time and in such manner as the people of the State shall . . . obligate and bind the State to the assumption thereof." Whether or not "in such manner" is fully synonymous with "to such extent," the phrase is at least broad enough to authorize a State to condition the extension of full jurisdiction over an Indian reservation on the consent of the tribe affected.

The United States argues that a construction of Pub. L. 280 which permits selective extension of state jurisdiction allows a State to "pick and choose" only those subject-matter areas and geographical parts of reservations over which it would like to assume responsibility. Congress, we are told, passed Pub. L. 280 not as a measure to benefit the States but to reduce the economic burdens associated with federal jurisdiction on reservations, to respond to a perceived hiatus in law enforcement protections available to tribal Indians, and to achieve an orderly assimilation of Indians into the general population. That these were the major concerns underlying the passage of Pub. L. 280 cannot be doubted. See *Bryan v. Itasca Cty.*, *supra*, 426 U. S., at 379.

But Chapter 36 does not reflect an attempt to reap the benefits and to avoid the burdens of the jurisdictional offer made by Congress. To the contrary, the State must assume total jurisdiction whenever a tribal request is made that it do so. Moreover, the partial geographic and subject-matter

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<sup>44</sup> The 1968 amendments, which re-enacted § 6 without change as 25 U. S. C. § 1324 but repealed § 7, 25 U. S. C. § 1323 (b), and added substantive jurisdictional provisions covering "any state," see 25 U. S. C. §§ 1321, 1322, suggest that in the future the scope of jurisdiction for all States is to be the same.



jurisdiction that exists in the absence of tribal consent is responsive to the law enforcement concerns that underlay the adoption of Pub. L. 280. State jurisdiction is complete as to all non-Indians on reservations and is also complete as to Indians on nontrust lands. The law enforcement hiatus that preoccupied the 83d Congress has to that extent been eliminated. On trust and restricted lands within the reservations whose tribes have not requested the coverage of state law, jurisdiction over crimes by Indians is, as it was when Pub. L. 280 was enacted, shared by the tribal and federal governments. To the extent that this shared federal and tribal responsibility is inadequate to preserve law and order, the tribes need only request and they will receive the protection of state law.

The State of Washington in 1963 could have unilaterally extended full jurisdiction over crimes and civil causes of action in the entire Yakima Reservation without violating the terms of Pub. L. 280. We are unable to conclude that the State, in asserting a less intrusive presence on the Reservation while at the same time obligating itself to assume full jurisdictional responsibility upon request, somehow flouted the will of Congress. A State that has accepted the jurisdictional offer in Pub. L. 280 in a way that leaves substantial play for tribal self-government, under a voluntary system of partial jurisdiction that reflects a responsible attempt to accommodate the needs of both Indians and non-Indians within a reservation, has plainly taken action within the terms of the offer made by Congress to the States in 1953. For Congress surely did not deny an option State the power to condition its offer of full jurisdiction on tribal consent.

## V

Having concluded that Chapter 36 violates neither the procedural nor the substantive terms of Pub. L. 280, we turn, finally, to the question whether the "checkerboard" pattern

of jurisdiction applicable on the reservations of nonconsenting tribes is on its face invalid under the Equal Protection Clause of the Fourteenth Amendment.<sup>45</sup> The Court of Appeals for the Ninth Circuit concluded that it is, reasoning that the land-title classification is too bizarre to meet "any formulation of the rational basis test." 552 F. 2d, at 1135. The Tribe advances several different lines of argument in defense of this ruling.

First, it argues that the classifications implicit in Chapter 36 are racial classifications, "suspect" under the test enunciated in *McLaughlin v. Florida*, 379 U. S. 184, and that they cannot stand unless justified by a compelling state interest. Second, it argues that its interest in self-government is a fundamental right, and that Chapter 36—as a law abridging this right—is presumptively invalid. Finally, the Tribe argues that Chapter 36 is invalid even if reviewed under the more traditional equal protection criteria articulated in such cases as *Massachusetts Bd. of Retirement v. Murgia*, 427 U. S. 307.<sup>46</sup>

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<sup>45</sup> The Court of Appeals did not disturb the finding of the District Court that Chapter 36 had not been applied on the Yakima Reservation to discriminate against the Tribe or any of its members. The District Court found that the governmental legal services available to the Tribe and its members were not significantly different from those offered to other rural and city residents of Yakima County. It also concluded that the distinctions drawn between non-Indians and Indians in the statute were not motivated by a discriminatory purpose. In view of these findings, our inquiry here is limited to the narrow question whether the distinctions drawn in Chapter 36 on their face violate the Equal Protection Clause of the Fourteenth Amendment.

<sup>46</sup> The Court of Appeals limited its holding to the land-tenure classification. The Tribe, in support of the judgment, has argued that the Chapter 36 classifications based on the tribal status of the offender and on whether a juvenile is involved are also facially invalid. In our view these status classifications of Chapter 36, are indistinguishable from the inter-related land-tenure classification so far as the Equal Protection Clause is concerned.



We agree with the Court of Appeals to the extent that its opinion rejects the first two of these arguments and reflects a judgment that Chapter 36 must be sustained against an Equal Protection Clause attack if the classifications it employs "rationally further the purpose identified by the State." *Massachusetts Bd. of Retirement v. Murgia*, 427 U. S. 307, 314. It is settled that "the unique legal status of Indian tribes under federal law" permits the Federal Government to enact legislation singling out tribal Indians, legislation that might otherwise be constitutionally offensive. *Morton v. Mancari*, 417 U. S. 535, 551-552. States do not enjoy this same unique relationship with Indians, but Chapter 36 is not simply another state law. It was enacted in response to a federal measure explicitly designed to readjust the allocation of jurisdiction over Indians. The jurisdiction permitted under Chapter 36 is, as we have found, within the scope of the authorization of Pub. L. 280. And many of the classifications made by Chapter 36 are also made by Pub. L. 280. Indeed, classifications based on tribal status and land tenure inhere in many of the decisions of this Court involving jurisdictional controversies between tribal Indians and the States, see, *e. g.*, *McBratney v. United States*, *supra*. For these reasons, we find the argument that such classifications are "suspect" an untenable one. The contention that Chapter 36 abridges a "fundamental right" is also untenable. It is well-established that Congress, in the exercise of its plenary power over Indian affairs, may restrict the retained sovereign powers of the Indian tribes. See, *e. g.*, *United States v. Wheeler*, — U. S. —. In enacting Chapter 36, Washington was legislating under explicit authority granted by Congress in the exercise of that federal power.<sup>47</sup>

The question that remains, then, is whether the lines drawn

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<sup>47</sup> This is not to hold that Pub. L. 280 was a termination measure. Whether there is concurrent tribal and state jurisdiction on some areas of the Reservation is an issue we do not decide. See n. 32, *supra*.

by Chapter 36 fail to meet conventional Equal Protection Clause criteria, as the Court of Appeals held. Under those criteria, legislative classifications are valid unless they bear no rational relationship to the State's objectives. *Massachusetts Bd. of Retirement v. Murgia*, *supra*, at 307. State legislation "does not violate the Equal Protection Clause merely because the classifications [it makes] are imperfect." *Dandridge v. Williams*, 397 U. S. 471, 485. Under these standards we have no difficulty in concluding that Chapter 36 does not offend the Equal Protection Clause.

The lines the State has drawn may well be difficult to administer. But they are no more or less so than many of the classifications that pervade the law of Indian jurisdiction. See *Seymour v. Superintendent*, 386 U. S. 351; *Moe v. Salish & Kootenai Tribes*, 425 U. S. 463. Chapter 36 is fairly calculated to further the State's interest in providing protection to non-Indian citizens living within the boundaries of a reservation while at the same time allowing scope for tribal self-government on trust or restricted lands. The land-tenure classification made by the State is neither an irrational or arbitrary means of identifying those areas within a reservation in which tribal members have the greatest interest in being free of state police power. Indeed, many of the rules developed in this Court's decisions in cases accommodating the sovereign rights of the tribes with those of the States are strikingly similar. See, *e. g.*, *Untied States v. McBratney*, *supra*; *Draper v. United States*, *supra*; *Williams v. Lee*, *supra*; *McClanahan v. Arizona*, *supra*. In short, checkerboard jurisdiction is not novel in Indian law, and does not, as such, violate the Constitution.

For the reasons set out in this opinion, the judgment of the Court of Appeals is reversed.

*It is so ordered.*



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

December 27, 1978

Re: No. 77-388 - State of Washington v.  
Confederated Bands and Tribes of the  
Yakima Indian Nation

Dear Potter:

I hope to circulate a dissent soon.

Sincerely,

*T.M.*

T.M.

Mr. Justice Stewart

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 27, 1978

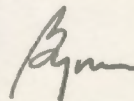
Re: 77-388 — State of Washington, et al.  
v. Confederated Bands and  
Tribes of the Yakima Indian  
Nation

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Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

Copies to the Conference



December 28 1978

No. 77-388 Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,

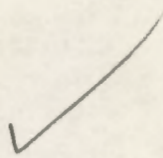
Mr. Justice Stewart

lfp/ss

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS



December 28, 1978

RE: 77-388 - State of Washington v. Confederated Bands and  
Tribes of the Yakima Indian Nation

Dear Potter:

Please join me.

Respectfully,

A handwritten signature, likely of John Paul Stevens, is written below the word "Respectfully,".

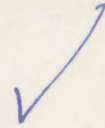
Mr. Justice Stewart

Copies to the Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST



January 2, 1979

Re: No. 77-388 State of Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 2, 1979

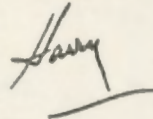
✓

Re: No. 77-388 - Washington v. Confederated Bands

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

January 11, 1979

No. 77-388 - Washington v. Confederated Bands

Dear Potter:

I join.

Regards,

W E B  
Jr

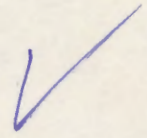
Mr. Justice Stewart

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Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 11, 1979



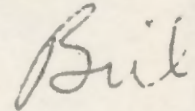
RE: No. 77-388 State of Washington v. Confederated Bands  
of the Yakima Indian Nation

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Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

cc: The Conference



[illegible]