688 State Jurisdiction

Except for non-Indian against non-Indian offenses falling under the rule of *McBratney*, 104 U.S. 621 (1882), States have no criminal jurisdiction in the Indian country unless expressly conferred by an act of Congress. *See* this Manual at 678.

A number of states have been given criminal jurisdiction over all or some of the reservations within their borders by Public Law 280 (1953), now codified at 18 U.S.C. § 1162(a). On those reservations neither 18 U.S.C. §§ 1152 nor 1153 apply. 18 U.S.C. § 1162(c).

Other states, *e.g.*, Kansas, Iowa, and New York, acquired jurisdiction by other enactments. 18 U.S.C. § 3243 (Kansas), Pub.L. 80-846 (Iowa), and 25 U.S.C. § 232 (New York). The law is now settled that those states have plenary jurisdiction but that jurisdiction under 18 U.S.C. §§ 1152 and 1153 may be exercised concurrently by the federal government. *Negonsott v. Samuels*, 507 U.S. 99 (1993); *United States v. Cook*, 922 F.2d 1026, 1033 (2d Cir.), *cert. denied*, *sub nom. Tarbell v. United States*, 500 U.S. 941 (1991). The same has been held true for the so-called "option states" -- those which assumed jurisdiction pursuant to Public Law 280 after its enactment -- since § 1162 (c) refers only to the so-called "mandatory states" listed in § 1162(a). *United States v. High Elk*, 902 F.2d 660 (8th Cir. 1990). Many option states assumed less than plenary criminal jurisdiction. *See, e.g.*, *Washington v. Confederated Bands of the Yakima Indian Nation*, 439 U.S 463 (1979). Whatever the degree of cession of authority to the state, the reservations remain "Indian country" for most purposes. *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987).

The Supreme Court has held that the cession of criminal (and civil) jurisdiction by Public Law 280 did not authorize the state to apply its tax or other "regulatory" laws in Indian country. *Bryan v. Itasca County*, 426 U.S. 373 (1976). The distinction is drawn between criminal/prohibitory laws which prohibit and punish conduct offensive to a state's public policy, and those which are civil/regulatory, where the conduct is regulated and enforced by criminal penalties. The latter may not be enforced by a Public Law 280 state in Indian country. *Bryan v. Itasca County* was followed in *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987)(California bingo laws are regulatory and unenforceable). By virtue of the same analysis, such regulatory statutes may also not be enforceable through 18 U.S.C. § 1152 and the Assimilative Crimes Act on federal reservations. *See Quechan Indian Tribe v. McMullen*, 984 F.2d 304 (1993)(California fireworks laws are criminal and state may enforce); *St. Germaine v. Circuit Court for Vilas County*, 938 F.2d 75 (7th Cir. 1991), *cert. denied*, 112 S. Ct. 1704 (1992)(Wisconsin multiple offender vehicle law is criminal and may be enforced by state); *Confederated Tribes of the Colville Res. v. Washington*, 938 F.2d 146 (9th Cir. 1991), *cert. denied*, 112 S. Ct. 1704 (1992)(Washington's decriminalized vehicle code is unenforceable); *United States v. Marcyes*, 557 F.2d 1361 (9th Cir. 1977)(Washington fireworks laws are criminal and United States may enforce); *Pueblo of Santa Ana v. Hodel*, 663 F. Supp. 1300 (D.D.C. 1987) (Secretary of the Interior justifiably withheld approval of dog track where track operation would violate the Assimilative Crimes Act since dog racing was criminally prohibited by New Mexico).