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Source: *Political Research Quarterly*, Vol. 57, No. 2 (Jun., 2004), pp. 295-303

Published by: Sage Publications, Inc. on behalf of the University of Utah

Stable URL: <http://www.jstor.org/stable/3219872>

Accessed: 25/12/2008 10:21

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Tribal-State Relations Involving Land and Resources in the Self-Determination Era

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This research focused on the nature of modern relationships between tribal and state governments in the land and natural resources arena. Surveys were completed by 49 states, the District of Columbia, and 77 tribal governments. The results indicated that neither tribes nor states had a high level of administrative capacity to deal with environmental issues on reservations, and that when states did develop such capacity it was often used against Native American interests. Perceptions of pollution on reservations varied between state and tribal governments. States with neighboring reservations—and especially elected officials—were more hostile to native interests than states without native neighbors. Bureaucratic relations appeared more cooperative. Tribal-state interactions, while not conforming to national-subnational or territorial models of federalism, conformed to the concept of relational federalism.

The work presented here focuses on the nature of modern relationships between tribal and state governments. While there has been substantial study of federal-state relationships and federal-tribal relationships, little attention has been paid to tribal-state relations. This is partly because tribal-state relations do not involve the typical national-subnational federalism found in most discussions involving the United States, one of the three types of federalism identified by Elazar (1993: 191). The situation also does not involve Elazar's second type of federalism, which is based on a common understanding of territorial boundaries. Rather, conflicts over boundaries are usually at the core of state-tribal relations. The discussion of tribal-state relations involves Elazar's third type of federalism, which he identified as "relational" federalism.

Relational federalism is defined as a situation in which power and responsibility for governance are shared among different units, but without either clear territorial boundaries or a clear national-subnational division of governmental power. In a relational federalist situation, there are relationships among governing units that share power, but the situation is fluid and dynamic, rather than clearly agreed upon or set forth in defining documents.

Relational federalism supplies an appropriate framework for the discussion of tribal-state contact, because tribal governments are not the creatures of their neighboring states, as are counties or cities. States and tribal governments are neither equals within the United States system nor are they in a dominant-subservient relationship. As case studies indicate—and as this research investigates across the continent for the first time—these relationships can develop into a number of different on-the-ground arrangements.

This research investigates the central political arena in which tribal and state governments interact, the discussion over who has control of land and resources. The research covers the end of the first 25 years of the federally-designated

Self-Determination era. The policy of Self-Determination was first verbalized by the Nixon Administration in 1970 and was institutionalized in 1975 by the Indian Self-Determination and Educational Assistance Act. The Act was promoted as a way to transfer power from the federal government to tribal governments through increased Native American participation in decision-making. The Act was heralded as a major step toward eventual Native American control of native lands and lives, but the Act itself conferred no such control (Esber 1992: 213; Cornell 1988; Castile 1988; Rawls 1996: 68-71.)

In order to understand recent developments, state-tribal relations will first be put into historical context. These relationships are characterized by increased interaction over time, conflict, and lack of clarity. This article will then consider the results of surveys sent to state and tribal governments.

STATE-TRIBAL GOVERNMENT RELATIONS IN CONTEXT

In the vast majority of instances, direct relationships between state governments and native nations could best be described as sporadic until well into the twentieth century. This is not to say that Native American and state actors were not in contact, but only that such contact was seldom government-to-government. The poor implementation of the Articles of Confederation left native-federal and federal-state relationships in chaos and, largely as a result, the Constitution was clearer about those relationships (Washburn 1995: 51-53; United States Constitution, art. 1, sec. 8). It stated that only Congress could "regulate commerce . . . with the Indian tribes," and most Native American-United States interactions were clearly international until at least the mid-1800s (Washburn 1995: chs. 2, 3; Berkey 1992; O'Brien 1989: ch. 4).

In general, when state governments became directly involved with Native Americans during this period, the states' focus was on removing Indians to land farther west or on protecting state citizens from native anger. For obvious reasons, these two activities often intertwined (O'Brien 1989: ch. 4; Brown 1970: chs. 3, 4, 16).

Probably the most famous interaction between a state and a native nation in this period involved the removal of the Cherokee from Georgia to what became Oklahoma. While the removal process was initiated after the passage of a federal law, it wound up in court as a conflict between the Cherokee Nation and the State of Georgia.

The results included two of the most important Supreme Court decisions in the history of United States-native nation relations, *Cherokee Nation v. Georgia* (30 U.S. [5 Pet. 1] 1 [1831]) and *Worcester v. Georgia* (31 U.S. [6 Pet.] 515 [1831]). Although decided only a year apart, the two cases offered different ideas of native nations' status within the United States. In *Cherokee Nation*, the Court decided that native nations were "domestic dependent nations" within the United States, subject to United States claims upon their territory. In *Worcester*, the Court said that native nations were foreign political entities, with sovereign powers of self-government (Wilkins 1997: 22, 42, 275).

Although there were differences in the decisions' findings, Justice John Marshall's opinions in these two cases formed the basis for the focus on Congress in United States policy involving Native Americans (Churchill and Morris 1992; Pevar 1992: 4; Wilkins 1997: 275). The *Worcester* decision reiterated the lack of a state role, setting up what Pommersheim (1995: 142) called an exclusive federal-tribal relationship that "bars the intrusion of any state authority in Indian country."

Despite this strong language, the stage was set for states' roles to increase in 1871, when federal treaty-making with native nations was abandoned. The areas where larger native populations survived, mostly in the West, were carved into states during the same time period. This provided another opportunity to define tribal-state relationships. Generally, the solution was provided by state enabling acts that contained "disclaimer clauses" that explicitly left states out of the federal-native nation loop. This presented little problem at the time, as reservations were still fairly well-defined chunks of land that were populated almost exclusively by Indians (Churchill and Morris 1992; Pevar 1992: 5-6; Pommersheim 1995: 143-44).

With the implementation of the 1887 Allotment Act, which led to most reservations being carved into individually-held plots of land and resulted in Native Americans' loss of two-thirds of their remaining land base, the stage was set for change. However, in the short term, the drop of Native American population to its 1900 low, combined with the isolation of reservation life, meant a continuation of limited native-state interaction (O'Brien 1989: 77-79; Hauptman 1992: 321-23; Thompson 1997; Stiffarm and Lane 1992).

When interactions did take place, as observed by the Supreme Court in its 1886 *United States v. Kagama* decision, "the people of the states where [Indians] are found are often their deadliest enemies" (118 U.S. 375). The threat from states was usually not military in this period. Instead, Native American-state conflict began to center more openly around control of land, and state policies ranged from direct appropriation of desirable acreage to repeated attempts to extend

state jurisdiction over reservation lands (Valencia-Weber 1995). And when the next era of United States policy toward Native Americans began with the 1934 Indian Reorganization Act, the new tribal governments formed under the Act were designed to formalize interaction with the federal government, not to interact with states (Deloria and Lytle 1984).

Until the post-World War II period, most Native Americans remained on federally administered reservations, attended federally sanctioned schools, received federal health care, traveled on federal roads, and lived under federal and tribal law enforcement. World War II, however, brought tremendous changes to Indian country (Cahn 1969; Nagel 1996: 117-18).

About 30 percent of adult Indian males served in World War II, and another 25 percent worked in war-related industries. Native individuals became part of the postwar rural-to-urban demographic shift, with encouragement from the federal Relocation policy. When Indians left the reservation, they left federal lands and services behind and became dependent on state governing bodies for education, law enforcement, and social services (Washburn 1995: 234; Nagel 1996: 117-20; Cahn 1969; Taylor 1972). The 1950s companion of the Relocation policy, the Termination policy, was designed to end reservation status and make native lands indistinguishable from state lands. Where that policy was implemented, even temporarily, there was also an increase in tribal-state interaction (Shames 1972; Peroff 1982).

The pattern, then, was one in which a number of events in the mid-1900s increased contact between Native Americans and states. In this environment, the modern era of tribal-federal-state relations—the Self-Determination era—developed. This era began on undefined state-tribal terrain, and this lack of definition continues. As the National Conference of State Legislatures put it:

The treaties, executive orders, agreements, and statuses that established Indian reservations were vague with regard to the role of states. In many cases where Indian treaties preceded statehood, the authority of state courts, revenue agencies, and wildlife departments has never been explicitly addressed (Reed 1995: 1).

This vagueness is usually a matter of practice, as states' lack of legal standing on most reservations was generally clearly established by treaties and statehood statutes. The practical problem often involves determining who has jurisdiction over whom on a specific parcel of land. Due to the "checkerboarding" of land ownership after the Allotment Act, a person's legal status may change from one piece of land to the next. Generally, Native Americans are subject to tribal or federal jurisdiction on Indian-held lands, but to state jurisdiction off-reservation, while non-Indians are beyond tribal government control (O'Brien 1989: 276-81; Wilkins 1997: 187-213; Record and Hacker 1998: 28; Pommersheim 1995: ch. 5).

The 1988 Indian Gaming Regulatory Act increased the number of situations in which native nations were forced to negotiate with states. The ongoing process of determining

gaming locations has caused both conflict and cooperation between tribal and state officials (Baker and Rosenberg 1992; McCulloch 1994; Brasher 1992; Idelson 1996; Bartlett and Steele 2002).

While conflict has historically characterized state-tribal relations, there have also been successful interactions in law enforcement, taxation, child protection, and other arenas. The tendency to focus on the most interesting case studies has not, however, provided an overall view of these relations (Lane 1995; Wilkinson 1993; Wilkins 1994). The purpose of this research is to go beyond the case studies and provide a broad snapshot of tribal-state relations around land and resource issues.

METHODOLOGY

As this historical synopsis indicates, relations between state governments and tribal governments are complex and varied. This makes a case study approach inadequate to understanding tribal-state relations, particularly when the extreme variations among native cultures and governmental forms are taken into account.

In order to get more complete and accurate information on the continent-wide situation, a survey was sent to all 50 states and to the District of Columbia in 1995. After extensive follow-up work, responses had been obtained from the District and from all states except Alaska by mid-1997. The survey was modeled after a 1971 survey by Theodore Taylor, with additional questions that were specific to land and resource issues.

A survey was also sent to tribal governments on all 282 federally recognized reservations in 1994. The 27 percent response rate, while low by Social Science standards, was the highest response rate to date among attempts to get this type of tribal government information (National Tribal Environmental Council 1993; 1994; Reed 1995). The 77 responding reservations were representative of reservation populations on variables of importance in this context (Jarding 2001: ch. 5).

Several of the questions on the two surveys mirrored each other, allowing for comparisons of native and state views of the same situations. The survey results of importance to defining tribal-state relations in the land and natural resource arena can be divided into three general categories: capacity on issues related to Native Americans, state-tribal government relations, and state activities related to reservation environment and natural resource issues.

STATE AND TRIBAL GOVERNMENT CAPACITY

State capacity for dealing with issues involving Native Americans was measured by gathering information on the presence and time commitment of gubernatorial and/or legislative staff; presence and position of a commission on Indian issues; governor's representation on interstate groups; and state contact with federal officials about reservation natural resource issues. These variables were then combined to create an overall measure of each state's administrative capacity on these issues.

Thirty-one states reported that there was an individual reporting to the Governor on issues concerning Native Americans, with that individual spending an average of 36 percent of his or her work time on those issues. Twelve states had at least one staff position in addition to the primary employee, with two as the average number of additional employees. Not surprisingly, in the 39 states contiguous to at least one reservation, the mean work time was higher (45 percent).

Legislatures were less likely to commit resources to dealing with native issues. Only 16 states had an individual who reported to the legislature on those issues; all were contiguous to at least one reservation. On average, the staff person spent only 14 percent of their work time in that arena.

The results were similar for the presence of a commission or similar organization concerned with issues related to Native Americans. Twenty-six states had such a body. Only one-third of states without reservations had a commission dedicated to native issues, compared to 61 percent of states with reservations.

The next measure of state capacity was the participation of the Governor on interstate bodies that deal with matters involving Native Americans. Participation is considered a measure of state capacity because it is assumed that by taking part in such an organization, a Governor would gain allies and information on the activities of other states and of tribal and federal governments. Eighteen states reported gubernatorial involvement in an interstate organization, including the Governor's Interstate Indian Council and the Western Governors' Association. All but one of them were from states that bordered a reservation.¹

The final measure of state capacity was the presence of state-federal contact on natural resource issues involving Native Americans. Twenty-six states reported some contact, all of them contiguous to one or more reservations. While some did not provide information on the nature of such contact, six each reported that contact was "sporadic and informal" or "regular and informal." When asked about the channels used, the largest number (9) reported that contact took place through formal channels. The most common federal agency dealt with was the Environmental Protection Agency (EPA) with 13 mentions, followed by the Bureau of Indian Affairs (BIA) with 4.

The variables considered in this section were combined to create a general measure of states' administrative capacity to deal with reservation environmental and resource issues. The higher the number of institutional arrangements a state had to deal with these issues, the higher its administrative capacity. While this measure is rough, it provides a basis for comparison among the states. The results ranged from zero capacity in ten states (Arkansas, Delaware, Florida, Hawaii, Illinois, Kansas, Kentucky, Missouri, Ohio, and South Carolina) to a value of 19 in two states (Arizona and North

¹ A number of respondents misunderstood this question and listed an intrastate body, so participation may actually be higher.

Dakota). As might be expected, states contiguous to reservations had a higher capacity, with a mean of 10.2, while those without reservations averaged 1.9. This indicates that states have more incentives to develop administrative capacity when they are more likely to deal with federally recognized tribal governments.

Clearly, states have a wide variety of abilities to deal with reservation issues. Overall, however, most states devote few resources to issues involving Native Americans and their lands. This indicates that within the United States framework, federal actors are still more likely to take the lead on reservation environmental matters, rather than state governments.

When tribal governments were asked about staff working on environmental and natural resource issues, 12 percent reported that no staff worked in those areas, and about half reported having four or fewer staff. The 66 reservations that reported their environmental budgets spent an average of about \$150,000 per year. Federal agencies provided about two-thirds of this amount, indicating that the average reservation government probably spent around \$50,000 per year from non-federal sources on environment-related activities. For the vast majority of native governments, this source was not natural resource income. While a few reservations did receive significant income from their resource bases, the mean annual combined income for reservation governments from minerals, forestry, fisheries, grazing, agriculture, and other resources was \$1,000.

Taken together, these data indicate that tribal governments lack adequate staff or funding to deal with natural resource matters. State capacity for dealing with land and resource issues on reservations is also generally low.

TRIBAL-STATE RELATIONS

The second category of survey results measured general aspects of state-tribal relations. Data collected included information on states' recent legislative and gubernatorial policies and on court cases decided in the past five years. More specific results on how tribal-state relationships play out in the natural resource arena will be covered in the next section.

The states were split evenly on whether any legislation involving Native Americans had passed in the prior five years. Not surprisingly, 22 of the 24 states passing bills were contiguous to a reservation. Where information was provided and where land or resources were at stake, an attempt was made to sort the bills according to subject matter. There was some overlap, with ten bills dealing with treaty rights, three with fishing rights, four with hunting, three with water, and eight with land claims.² Twenty-seven percent of

this legislation was characterized as pro-Indian interests, 55 percent as anti-Indian interests, and 5 percent as mixed.³

Governors were somewhat more likely to have been involved in policymaking on issues involving Native Americans than legislatures. Thirty-one states indicated that their governors had taken some action on matters specific to Native Americans in the preceding five years, with 29 of them being contiguous to reservations. The most common forms of action were issuance of executive orders and taking a public stand, each of which was identified by eight states. Five states indicated that their governors had been active in negotiations on native issues.

When gubernatorial actions were sorted according to subject matter, 10 actions were concerned with treaty rights, 5 with fishing rights, 4 with hunting, 5 with water, and 17 with land claims. When content was analyzed, 5 percent were pro-Indian interests, 44 percent were anti-Indian interests, and 20 percent were characterized as mixed.⁴ The rest were unclear.

From these results, it appears that neither governors nor legislatures see state interests as synonymous with Native American interests, particularly in the land and resource arena. When these issues are the subject of legislative and executive action, there is a fair amount of conflict.

Moving to the third branch of government, 15 states indicated that there had been a decision in an important federal court case concerning Native Americans and their relations to the state in the past five years. All of them were in states with contiguous reservations. Sixteen states indicated that there had been important state court decisions, 14 of them in reservation-border states. There was not enough information on these decisions to determine their overall place in tribal-state relations. However, the fact that half the states that border reservations ended up in court during a five-year period indicates the presence of conflict that was not resolved by less formal or more cooperative methods.

The legislative and gubernatorial data were combined to form a measure of the level of formal state government actions against Native American interests for each state. This measure was composed of the total number of instances in which a legislative or gubernatorial action was designated as being against Native American interests. A state action against native interests could be either offensive or defensive in nature: both an action that asserted state jurisdiction over tribal lands and one that reacted against a federal affirmation

² Gaming may or may not be a matter of treaty rights and/or land rights. Due to lack of information on the specific situations involved, gaming legislation was not included in treaty rights calculations. However, it was included in land rights calculations where tribal governments had purchased land for gaming sites and sought to have it transferred to federal trust status.

³ Examples of legislation categorized as "anti-Indian interests" included a Wisconsin resolution against Anishinabe fishing rights and a South Dakota law designating a sacred site as a State Park. Examples of legislation categorized as "pro-Indian interests" included Utah and Colorado laws permitting practice of Native American religions in prison and a Wisconsin law reinforcing the federal Indian Child Welfare Act.

⁴ Examples of gubernatorial actions categorized as "anti-Indian interests" include Wisconsin Governor Tommy Thompson filing a lawsuit to stop treaty-based fishing and South Dakota Governor William Janklow's verbal opposition to treaty-based land claims. An example of a gubernatorial action categorized as "pro-Indian interest" is South Dakota Governor George Mickelson's declaration of October 12 as "Native American Day."

of native nation treaty rights were categorized as “against Native American interests.” In states with anti-Indian policies, the number of anti-Indian actions varied from one to eight, with a mean of 0.97. When this measure was used in bivariate correlations, some interesting results were obtained. These results are displayed in Table 1.

Moderate correlations were obtained between the level of a state’s activity against Indian interests and both the number of reservations contiguous to that state and the growth in contiguous reservations’ population from 1970-1990. The correlations were strong with state capacity on Indian issues, growth in a state’s Indian population from 1970-1990, and the population of contiguous reservations.

Here is evidence that state government action against Native American interests coincides with a higher potential for both individual and intergovernmental native–non-native contact. The highest correlation involved the number of Native Americans living on contiguous reservations. While growth in the native population within a state was important, the reservation population level was more important. This suggests that state governments are most adversarial when reservation Native Americans are present, rather than simply when Native Americans are present. In other words, the negativity is linked to the presence of tribal governments and a native land base, not just to native people.

These correlations, while not indicating direction, also support the idea that states in which Native American populations have grown the most during the Self-Determination era react more strongly. There is probably some validity to state officials feeling uncomfortable about higher native populations, as states’ elected officials generally represent the non-Indian status quo in situations where population numbers can be translated into votes. Nationally, as well as on the state level, Native American population has grown substantially in recent years (Associated Press 2001: 1; Walker 2001).

Increased native populations are not the only reasons that state officials might feel concerned for their electoral futures. In some states with high Native American populations, such as North and South Dakota, the non-Indian population is shrinking in rural areas, while the native population is growing (Associated Press 2001; Thiessen 2001; Walker 2001; U.S. Department of Commerce 1991). These changes could lead to more districts with a majority of Native American voters whose needs and aspirations are often in conflict with the non-native population that many officials have catered to in past elections.

The idea that state officials have taken a self-protective stance in relation to Native American concerns is reinforced by the strong correlation between state capacity to deal with native issues and anti-Indian policy activities. This indicates that when states have administrative capacity, it is either used to protect states from Native American claims or to make claims on native nation resources.

Another possibility suggested by these results is that Native American issues provide a more politically safe arena for Eastern governors than for Western governors. To the

≡ TABLE 1
STATES’ LEVELS OF ANTI-INDIAN POLICY: SIGNIFICANT
CORRELATION COEFFICIENTS OVER 0.50

Variable	Level of Anti-Indian Policy
Number of Contiguous Reservations	0.55
Growth in Reservation Population: 1970-90	0.56
State Capacity on Indian Issues	0.77
Growth in States’ Indian Population: 1970-90	0.77
Contiguous Reservation Population	0.83

extent that those far from reservations are less antagonistic toward Native Americans, gubernatorial attention would be both politically safer and more expedient in Eastern states.

In general, however, these results indicate that many state-tribal relationships are less than harmonious, as has been the case historically. While there are certainly instances of state action designed to benefit Native Americans, these are more likely to take place in states where there are fewer direct beneficiaries. The specifics of interactions in the environmental and natural resource arena will now be considered.

ENVIRONMENTAL AND NATURAL RESOURCE ISSUES

Survey results on tribal-state interactions around environmental and natural resource issues centered on three topics: the natural resources with which state and tribal governments were involved, tribal and state views of the amount of reservation pollution, and the nature of state-tribal interactions. Each of these topics will be considered separately.

State and Tribal Involvement

State governments were asked whether they were involved in any activities specially oriented toward Native Americans in the environmental arena. Thirty states answered that they were involved in such activities; 28 of these were contiguous to a reservation. State respondents were then asked to list their activities according to the categories seen in Table 2.⁵ Tribal governments were asked whether they had staff active in the same environmental topic areas.

One of the most immediately obvious things about this list is that tribal governments are most active on two of the same issues as state governments: wildlife protection/management and water contamination and supply. Water received the most mentions on both the state and tribal surveys. Energy production and mining received the least

⁵ There was substantial mention of two categories that states were not asked about: recreation/tourism (other than fishing and hunting) and historical/archeological sites.

≡ TABLE 2
TRIBAL AND STATE MENTIONS OF AREAS OF ENVIRONMENTAL
ACTIVITY

Area of Activity	Percent of Responding Reservations	Percent of Responding States
Air Contamination	25	12
Water Contamination/Supply	75	30
Solid Waste	55	12
Hazardous/Nuclear Waste	31	16
Forestry/Forest Products	47	8
Fisheries	49	16
Wildlife Protection/ Management	60	20
Agriculture/Plant Foods	44	10
Grazing	34	6
Mining	21	6
Energy Production	12	6
Wastewater	55	12
Public Education/Planning	62	12

reservation staff attention and were two of the three areas that received the fewest state mentions.

Correlations were calculated in an attempt to explain the conditions under which a state might be involved in a higher number of resource issue areas. There was a moderate relationship between the number of issue areas on which a state was involved and the number of reservations contiguous to a state (0.32), the number of state government actions taken against Indian interests (0.36), and the reservation population within a state (0.44). The presence of a larger number of reservations and a higher native population are obvious reasons that states would pay attention to more Native American resource issues. The correlation with state actions against Indian interests indicates that when states take action on reservation resource issues, they are likely to be in conflict with their native neighbors.

One reason states might be antagonistic when reservation resource issues arise would be that those issues are perceived as "problems." To get at this type of situation, both states and tribes were asked for their views on the severity of environmental problems originating on reservations. Among states that responded, the most common answer (14) was that nearby reservation environmental problems were "average." Three states said there were no environmental problems on nearby reservations, while two considered such problems "mild" and seven considered them "severe."

From the other side of the border, 78 percent of reservation governments reported their pollution problems as being "mild" or "average," compared to other reservations. Twelve percent reported no pollution problems, and only three percent reported "severe" problems.

Taken alone, this would not seem to indicate that trans-boundary pollution is seen as a major problem in state-tribal relations, although a higher percentage of responding

states considered problems severe than did tribal governments. However, there was a moderate correlation (0.64) between state governments' perceptions of the severity of reservation environmental problems and the number of state government policies that were taken against Native American interests. While correlation does not indicate direction, these findings indicate a link between states' perceptions that reservations are the source of environmental problems and state legislative and executive branches taking action against Native American interests. This will be explored in future sections.

Comparisons of Tribal Views and State Views

Tribal governments' and state governments' views of reservation environmental problems were then compared. The responses given by tribal governments regarding the severity of problems on their reservations were compared with the responses provided by their contiguous states using a t-test for paired samples. The results indicated that tribal governments viewed their problems as being significantly less severe than did the contiguous states.

This might be explained in several ways. First, those who live with chronic environmental problems where there is low administrative capacity to deal with them may minimize the risks. Considering the low level of formal education and low capacity for environmental education on reservations, people simply may not know that a problem exists. In addition, people may accept chronic environmental problems as normal because they are used to them, or because they are seen as an unavoidable cost of an activity that brings economic benefits. If people are educated to environmental risks and aware of their presence, they may still minimize them as a psychological defense against what is perceived as an unsolvable problem.

A second potential explanation for the different perceptions of tribal and state governments arises from other data gathered here. States may couple the belief that reservations are the source of environmental problems with attempts to gain jurisdiction over reservation lands. In other words, states may attempt to assert jurisdiction over Indian lands by focusing on solving perceived reservation environmental problems.

A third potential explanation is that there may be varying perceptions of what constitutes a "reservation" environmental problem. For example, one state respondent mentioned the Prairie Island nuclear power plant and its associated nuclear waste storage as a reservation pollution problem. Actually, the plant and storage sites are on private land adjacent to a reservation (Bauerlein 1995). There could be other situations in which reservation residents see a problem as off-reservation, while state governments see them as reservation problems.

Tribal-State Interactions

The surveys asked states whether their employees or officials had contact with contiguous reservations on

environmental and natural resource issues and asked tribal officials a similar question about contact with states. When asked about the role of neighboring states in reservation environmental matters, 14 percent of reservation governments reported no contact with state actors, while 40 percent reported “occasional contact.” The remaining 43 percent reported either “regular contact” or a “regular working relationship.”

On the other side of the border, 23 states reported having no contact with tribal governments, including four states that were contiguous to reservations. Of the 27 states that reported being in touch with reservations, 10 considered their contact “occasional,” 9 considered it “regular,” and 8 reported a “regular working relationship.”

State governments and the contiguous reservation governments were paired, and a t-test was performed. This time, tribes and states viewed the situation in a similar enough manner that the differences were not statistically significant.

These responses seemed to contradict the relatively high level of conflict identified when legislative and gubernatorial policies were considered. While many official state policy statements showed conflict between native and state interests, it appeared that day-to-day relationships were more cooperative. This finding could be a result of differences between higher-conflict public displays by political officials and lower-conflict interactions among bureaucratic personnel.

The environmental administrative capacity of tribal governments contiguous to a state was then considered in light of the state survey results.⁶ Correlations were calculated for several variables, and the results are shown in Table 3.

The administrative capacity of tribal governments was moderately correlated to state administrative capacity and to the number of state policies characterized as being against Indian interests. Higher tribal government capacity was strongly correlated with a larger reservation population and with a contiguous state’s views that reservation environmental problems were worse.

These correlation results provide a dynamic picture. For example, the number of state policies that can be characterized as anti-Indian is moderately correlated to tribal governments’ capacity, but it is hard to say which came first: tribes becoming able to push their natural resource agendas to state attention, or states’ attacks on Native American natural resources leading to tribal governments administratively defending themselves. Here, the relationship between state capacity and contiguous tribal governments’ capacity provides a clue. A scatterplot of this relationship indicates that the ability of native nations to deal with environmental

⁶ The reservation capacity measure included the number of tribal government staff working on natural resource issues, the presence or absence of tribal environmental regulations, the presence of any resource income, and the amount of money budgeted for reservation natural resource matters. These measures were totaled for all reservation governments that returned surveys which were contiguous to each state, then divided by the number of reservations. Because state government capacity and reservation government capacity were created using different variables, they cannot be compared.

≡ TABLE 3
CONTIGUOUS RESERVATIONS’ ADMINISTRATIVE CAPACITY:
SIGNIFICANT CORRELATION COEFFICIENTS OVER 0.45

Variable	Contiguous Reservations’ Capacity
State Administrative Capacity	0.47
Number of Anti-Indian Policies	0.66
Reservation Population Within State	0.74
State View of Reservation Environmental Problems	0.84

issues is negatively related to contiguous states’ capacity. This suggests that tribes are in a defensive posture.

Because tribal government capacity is strongly correlated to states’ views of reservation environmental problems, it may be that when tribal governments begin to develop the capacity to deal with environmental problems, their neighboring states perceive it as an indicator that there are problems to which they need to react. Alternatively, states may simply become more aware of the reservations’ existence or of pollution issues and take political action, or tribal governments may take actions that threaten state interests when they develop greater capacity.

So as tribal governments develop the ability to deal with reservation environmental issues, often with federal encouragement, states may interpret this as either an indicator that reservations are the source of environmental problems or that native nations are becoming more assertive. The data indicate that states react either bureaucratically by working cooperatively with tribal governments or politically by asserting state jurisdictional claims. The result is a mix of elected politician conflict and bureaucratic cooperation that varies from place to place.

For state politicians in all but a few places, their stance on Indian issues is of little electoral importance. In addition, when they issue anti-Indian statements and legislation, they are catering to a non-Indian, majority audience. They face little political danger from these actions but can use them as an opportunity to show leadership. In other words, anti-Indian activities by most state politicians can easily become grandstanding.

On the other hand, these data support the observation by other authors that native nations perceive state policies as real threats and react accordingly (Churchill 1993: Part II; Whaley and Bresette 1994; Gedicks 1993; Matthiessen 1983). Native Americans accurately perceive that where states are most involved on issues related to Native Americans, they are also most hostile. Thus, tribal governments develop greater administrative capacity when they border more hostile states.

This suggests that native and non-native leaders view the situation through different lenses. What state politicians may treat as opportunities to get attention and votes, tribal officials treat as threats to their land base and cultural survival. The

result was characterized by Monette (1996: 113) as, "When Indians and the environment intersect, the most mundane legal and political arguments evoke deep emotional charges."

Despite this highly-charged atmosphere, the survey results suggest that the majority of state governments deal with Native American land and resource issues sporadically and commit few administrative resources to them. States that are contiguous to reservations do more, perhaps in reaction to the perception that there are reservation environmental problems, and they are involved in more conflict. When state governments do become involved, they are most concerned about the same resource issues as tribal governments. When they engage with each other, the two types of governments appear to be as likely to be in conflict over resources as to be cooperating to solve environmental problems.

CONCLUSION

These data provide little comfort for those who crave simplicity in intergovernmental relations. Instead, it is clear that considering state governments' roles in Native American natural resource issues adds a complex and interesting element to the discussion of federalism in North America.

In the Self-Determination era, tribal governments remain under-equipped to deal with the many land and resource issues they face, and state governments' administrative capacity is also generally low in this arena. The majority of evidence suggests that states take a back seat to the federal government when it comes to Native American resource issues. This is in line with the historical focus on a federal role in dealing with Indian policy. Although most tribal governments and contiguous states are in contact, the focus of these relationships is often conflict over control of land and resources.

Clearly, the presence of Native American populations and of reservation land bases plays an important role in how state government actors behave when facing issues involving native lands. For states that encompass higher Native American populations, there is evidence that elected officials act both offensively and defensively in their dealings with Native American resource issues. State officials both create anti-Indian policies and appear to react to native population growth. Whether acting offensively or reacting defensively, the role of state elected officials in reservation resource issues primarily involves conflict when states are contiguous to reservations. State bureaucratic officials, on the other hand, appear more likely to work cooperatively with tribal government officials.

While tribal-state relations are clearly not uniform, the data analyzed here do provide some clues. Most basically, states' relationships with tribal governments are not like states' relationships with other types of government actors. States do not treat tribes as if they were other states or as if they were subservient local governments. Similarly, tribal governments do not treat states as co-actors within a national-subnational framework. Conflicts between tribes and states have historically been—and often remain—over territorial boundaries and jurisdiction.

In this situation, the most accurate way of looking at interactions involving state governments and tribal governments is through Elazar's concept of relational federalism, a concept that focuses on relationships among government entities that share power without limiting the nature of those relationships. Tribal and state governments clearly have relationships that are ongoing—and becoming more important over time. While this research begins to define those relationships more precisely in the critical policy arena involving land and resources, scholars have much work to do before this complex set of interactions is as thoroughly understood as relationships among actors within the United States governmental system.

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Received: May 1, 2003

Accepted for Publication: July 15, 2003

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