

CAPTURED JUSTICE

CAPTURED JUSTICE
NATIVE NATIONS AND
PUBLIC LAW 280

SECOND EDITION

Duane Champagne

PROFESSOR EMERITUS
UCLA, SOCIOLOGY DEPARTMENT

Carole Goldberg

RESEARCH PROFESSOR
UCLA SCHOOL OF LAW



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PREFACE TO THE SECOND EDITION

Since we conducted the research for *Captured Justice* in 2002–2005, legislation and government policy at all levels—tribal, federal, state, and local—have affected the operation of Public Law 280. The federal government has also recognized several Native Nations in Public Law 280 states, and some Native Nations have successfully exited the Public Law 280 regime. Other Public Law 280 tribes have found ways to establish law enforcement and criminal justice systems of their own, despite the continuing absence of funding from the Bureau of Indian Affairs, or to find new and better ways of cooperating with state and local agencies. Furthermore, new writings on criminal justice, both general in nature and Indian country-specific, have suggested additional grounds for questioning the efficacy of Public Law 280 and additional ways of mitigating its adverse impacts on tribal communities. To take account of all of these developments, we have produced this new edition.

The underlying empirical research could not be updated, so those findings must be understood within their own time period. However, despite changes in policy, institutional developments at the tribal level, intergovernmental initiatives, and new findings by government inquiries and researchers, the fundamental problems associated with Public Law 280, as a nonconsensual, underresourced regime, remain. Thus, while the research presented in this book remains unchanged, its findings remain relevant to policy considerations going forward.

An especially important development postdating the first edition of *Captured Justice* is the work of the Indian Law and Order Commission, a bipartisan body created by Congress through the Tribal Law and Order Act of 2010. One of us (Carole Goldberg) was one of President Barack Obama's three appointees to the nine-person Commission, which also included six Congres-

sional appointees. Another of us (Duane Champagne) served as a consultant to the Commission. Because Congress could not agree on specific measures to address the perceived crisis of justice and community safety on reservations nationwide, it established the Commission to investigate conditions and recommend improvements. After conducting extensive hearings and receiving input from tribal communities and criminal justice personnel throughout the country, the Commission issued its unanimous report to the President and Congress in 2013. Unlike many previous inquiries into Indian country criminal justice, the Commission's report did not marginalize or ignore Public Law 280. This new edition of *Captured Justice* highlights the Commission's recommendations bearing on Public Law 280, many of which, perhaps not surprisingly, echo or extend proposals found in our first edition.

This new edition is also informed by research we performed in connection with the Tribal Law and Policy Institute (TLPI) in West Hollywood, California. With funding from the Bureau of Justice Assistance of the U.S. Department of Justice, TLPI produced a series of "Promising Strategies" publications designed to spread successful models for Indian country criminal justice, with "success" judged according to preset criteria including replicability, cultural compatibility, fairness, and respect for and enhancement of tribal authority. TLPI charged us with writing a report on "Promising Strategies: Public Law 280," which was published in March 2013 and is available at [https://www.walkingoncommonground.org/files/Promising%20Strategies%20280%20Final%203-13\(1\).pdf](https://www.walkingoncommonground.org/files/Promising%20Strategies%20280%20Final%203-13(1).pdf). Some of the case studies featured in that report augment case studies presented in *Captured Justice*.

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A study of this scope and complexity could not have been completed without the contributions of many dedicated individuals. We are especially grateful to Winnie Reed, our Program Officer at the National Institute of Justice (NIJ), who believed in this project throughout, and never discouraged us as we expanded it beyond the original plans.

Heather Valdez Singleton, our Project Director, was the engine that enabled the project to move forward. NIJ support for the research derived from a strategic planning session that NIJ held in 1998 to determine the most important directions for research on crime in Indian country. Heather Valdez Singleton and Carole Goldberg produced a paper for that session, which NIJ later published as “Public Law 280 and Law Enforcement in Indian Country— Research Priorities,” December 2005. After UCLA was awarded the project and Heather became its Director, she made certain that all administrative and ethical requirements were met, arranged all the permissions and logistics for research trips, collected data and relevant published sources, and conducted many of the individual interviews with reservation residents, as well as with law enforcement and criminal justice personnel. When she left the Project Director position to continue her studies at the John F. Kennedy School of Government at Harvard, she wrote up results of our research on retrocession for her thesis; some of that work is incorporated into Chapter 7 of this book.

Other researchers and students made significant contributions to the study. Linda Deacon, an independent statistician, performed the statistical analysis of our quantitative data. We enlisted Prof. Donald Green, University of Wisconsin-Milwaukee, and Jerry Gardner, Executive Director of the Tribal Law & Policy Institute, to conduct some of the interviews, as well as former students Michele Fahley, Cynthia Morales, Elton Naswood, Sal Perez, Mark Vezzola, and Lambert Yazzie. Former student Jay Shapiro provided invaluable research assistance for several of the chapters. And we also wish to thank the Justice Research and Statistics Association for providing us with extremely helpful statistical data, as well as the UCLA American Indian Studies Center for providing books as gifts to our interviewees.

In addition to the financial support we received from NIJ, we also benefited from summer research support granted by our respective deans. Duane Champagne wants to express his gratitude to former UCLA Dean of Social Sciences and Executive Vice Chancellor Scott Waugh, and Carole Goldberg wants to express hers to former UCLA School of Law Deans Jonathan Varat and Michael Schill. UCLA School of Law's Native Nations Law and Policy Center provided the institutional home and support for the project.

Finally, much of the work of transforming a 500-page NIJ research report into this book took place in the idyllic setting of the Rockefeller Foundation's Bellagio Center, a scholarly retreat center that afforded us workspace and uninterrupted time to devote to writing. We are grateful to the Rockefeller Foundation for providing us that opportunity.

This research was supported under award number: 2001-IJ-CX-0031 from the National Institute of Justice, Office of Justice Programs, U.S. Department of Justice. All points of view expressed in this book are those of the authors and do not necessarily represent those of the U.S. Department of Justice or the University of California, Los Angeles.