10-1972

McClanahan v. Arizona State Tax Commission

Lewis F. Powell Jr.

Jay—
Please leave
wider margins
(say 1 1/4 inches
left side)

Arnold Decision
(Chief J. Rehnquist)

"State income tax" questioned
as applied to Indians. Said
to be contrary to Fed. policy
of preserving self-govt. & self-
determination of Indian Tribes.
Altho. a minn. case is
to contrary, I see no constitutional
limitation on power a state
to tax Indians (but will
defer to Rehnquist)

No.71-834 OT 1971
McClanahan v. Arizona State Tax Comm.
Appeal from Arizona Ct. of App.

Appellants, who are Navaho Indians living and working within the confines of that portion of the Navaho reservation within the state of Arizona, question the constitutionality of the Arizona state income tax as applied to them. The Arizona TC affirmed the validity of the tax as to income derived solely from sources within the reservation and the Ct. of App. affirmed. The Arizona Sup.Ct. denied a petition for review.

Appellants contend that the tax interferes with a longstanding federal policy of self government and self determination for the American Indian. The leading case on tribal self-government is that of Williams v. Lee, 358 U.S.217(1959) where the Court concluded that the basis for treaties between the Indians and the federal government was the "understanding that the internal affairs of the Indians remained exclusively within the jurisdiction of whatever tribal government existed." Appellants cite

numerous cases in which the principle of tribal self-government was affirmed, included Kennerly v. Montana District Court, 400U.S.423(1971), where this Court held that absent a vote by members of the Blackfoot Tribe and affirmative action by the state of Montana, the state could not assume jurisdiction over the Blackfeet Reservation under the Act of Congress, August 15, 1953. The Navaho tribe has an effective court system, its own police system, its own anti-poverty office, its own welfare program, which apparently are funded part with fedreal funds and part with Navaho taxes collected by the tribal unit. Appelants argue that the power to tax inheres in self government and that it would be a crippling blow to Navaho self government if the power to tax Navaho incomes were granted to ~~the state~~ a state.

Appellants second contention is that Indian relations are subject to an overall policy of federal pre-emption and that states are powerless to act in Indain affairs absent express congressional authorization. Appellants cite Warfen Trading Post Co. v. Arizona Tax Comm. 380 U.S.685(1965) where this Court held that Arizona could not tax the gross sales income of a trading post on a Navaho reservation because a comprehensive congressional scheme had been set up in order to regulate traders on reservations.

In rejecting appellants' contentions, the Arizona Ct. of App. stated that the income tax was a personal tax which affected the individual but in no way threatened tribal autonomy. It pointed out the longstanding practice of various levels of government levying taxes on another's (employees) without affecting the others basic prerogatives (e.g. state tax upon federal employees and vice-versa). It found no comprehensive federal pre-emption of the field of taxation to make the Warrem Trading Post case applicable. Finally it noted that state tax monies of the state of Arizona were being expended for educational and welfare benefits within the Navaho reservation.

My own opinion is that this case represents a fairly significant conflict between the traditonal federal interest in regulation of Indian affairs, the Indians' hopes for self government and the power of a state to tax those residing within its borders. The Minnesota Supreme Court viewed this ques-

tion and and reached exactly the opposite conclusion from the Arizona court in this case. One precedent, Leahy v. State Treas. of Oklahoma 283 U.S. 420 (1936) held that an income tax by the state of Oklahoma on moneys received by a member of the Osage tribe as his share of income from mineral resources held by the United States for the tribe was taxable by the state. Much has gone on since then, however, and even Leahy was a quick summary one page opinion.

I am inclined on balance to believe that despite the inequities and abuses in their past history and dealings with this country that Indians still should be subject to state income taxation. Indians do derive benefits from the expenditure of state tax revenues and we have allowed no other ethnic or ciltural group to escape the consequences of the taxing power. I do not believe that the state tax here poses a fundamental threat to the uniqueness of Indain civilaization or to their dreams for self determination. Still, the question seems important, and if sentiment exists elsewhere for a hearing, I would

JOIN THREE IN NOTING PROBABLE JURISDICTION

JHW

no other group escapes taxation

5/9/72 - JHW

Avait discussion
but probably Note

SG says states have no right to tax income earned by Indians on reservations.

No.71-834 Ot 1971
McClanahan v. Arizona State Tax Comm.
Appeal from Arizona Sup. Ct.

DISCUSS

At an earlier conference the views of the SG were invited. The SG has now submitted a memorandum which the salient points are as follows:

(1)- When Congress has wished the states to tax Indians within a reservation, it has done so by carefully delineated legislation. "Since Congress has passed no law authorizing state taxation of income earned within a reservation, the decision of the court below, upholding the authrity of the State to impose such a tax seems incorrect on this ground alone."

(2)-"In any event the decision below is inconsistent with the particular legal relationship that exists between Arizona and the Indians. When Arizona was admitted to the Union it agreed to "forever disclaim all right and title to Indian lands and that the same shall remain under the absolute jurisdiction and control of the Congress of the United States."

(3)-- "The question of whether and under what circumstances a State may tax income earned within a reservation by Indians who live on the reservation therefore warrants the attention of this Court.

It's hard to get very thrilled about the concepts in this case, and I wish the Court did not have to take it, but in good conscience I feel the problems are significant enoggh to recommend a

NOTE PROBABLE JURISDICTION JHW

Conf. 5/12/72

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No.71-834

McCLANAHAN

vs.

STATE TAX COMM'N OF ARIZONA

Note
(Set with
Marcellus)

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
.....	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Rehnquist, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Powell, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Blackmun, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Marshall, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
White, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Stewart, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Brennan, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Douglas, J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
Burger, Ch. J.	.....	.....	.....	✓	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....

9/25/72 - JHW

Grant

No. 71-834
McClanahan v. Arizona State Tax Comm.

MOTION FOR LEAVE TO PARTICIPATE IN ORAL ARGUMENT

The SG moves that the United States be allotted 15 minutes oral argument time. If the motion is granted 15 minutes must also be granted the appellee.

The question in the case is whether the state of Arizona had jurisdiction to tax the income of Indians who live and earn their income on the Navajo reservation.

GRANT???????????????? JHW

Williams v Lee 358 U.S. 217 said to state controlling principles. But Worcester v Ga 6 Pet. 515 is seminal auth.

Q - may state of Ariz. impose an income tax on Navajo Indians who live on Reservation & whose income is earned there? No

Fed Govt has Constitutional power with respect to Indians. Fed. regulation has substantially preempted the regulation of Indian affairs.

My tentative vote is with appellant

Collins (for appellant)

Suit was filed as class action, but its validity as such was not decided below.

Complaint standard entered, or it was dismissed on motion to dismiss.

There are 100,000 Indians in Ariz.

Navahos are especially protected by Acts of Congress. They have their own reservation & their own tribal government & courts (see Reply Brief).

Govt. functions on Reservation that are not Tribal are Federal - not State

Ariz. Ct. below ignored precedents - tried to distinguish bet. Tribal Govt + individual indians

[Okla. situation is different from Ariz.]

Collins (cont)

Relies on Williams v Lee

(Indians vote in Ariz. One is in State Legislature)

Basic contention is that Congress alone has power to determine the relationship bet. states & Indians. The Citizenship Act of 1924 merely recognized Indians as citizen – but relinquished none of Congress' exclusive control.

If these Indians lived off the Reservation, the issue would be different.

State of Ariz. furnishes only a few services to Tribes. Only 10% of support for education & welfare comes from State.

Sachse (for S.G.)

The Govt. agrees with Appellant & Mr Collins' argument

Sachse (cont.)

Hornbook law: State law has no application to

One sentence paraphrase of the decision in Williams v Lee in a subsequent case "under Lee on its head. Ariz. relied extensively on this paraphrase.

In response to White's Q, Sachse said that even if there were no Fed. statutes the State could not tax — on all such. It reserved to Fed. Govt (by what?) There must be express Congressional authorization.

Winter (for Ariz)

There have been 6 or 7 state cases on point & all have upheld state authority to tax income.

Under Ariz. Enabling Act, it may not — is specifically precluded from — impose a prop. tax on Reservation prop.

Lee involves jurisdiction of courts — an interference with self-govt. of Indians.

Relies primarily on Organized ~~Ed~~ Village of Rake v Egan, 369 U.S. 60, & U.S. v Martin, 326 U.S. 496

Winter (cont)

1/18/72

Court CA - Ariz, Div. One — Voted on ....., 19...

Argued ....., 19... — Assigned ....., 19... — No. 71-834

Submitted ....., 19... — Announced ....., 19...

ROSALIND McCLANAHAN, ETC., Appellant

vs.

STATE TAX COMMISSION OF ARIZONA

12/23/71 Appeal filed.

Call for views of S.G.

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING	
		G	D	N	POST	DIS	AFF	REV	AFF	G	D			
Rehnquist, J.								Order for SG views						
Powell, J.								Order for SG views						
Blackmun, J.								Ask S.G.						
Marshall, J.								Ask S.G.						
White, J.								Ask S.G.						
Stewart, J.								Ask S.G.						
Brennan, J.						✓								
Douglas, J.					✓									
Burger, Ch. J.						✓								

No. 71-834 McClanahan v. Arizona (State income tax) Reversed

Conf. 12/15/72

DOUGLAS, J. Reverse

MARSHALL, J. Reverse

BRENNAN, J. Reverse

BLACKMUN, J. Reverse

STEWART, J. Reverse originally Indian Tribes were treated as Sovereign Nations ~~abroad~~ As this concept passed, we have vacillated - in Congress & in Ct. decision - tho Indians have usually won. They have "rights" not accorded with any one else

POWELL, J. Reverse

WHITE, J. Reverse
As to on-reservation activities, Indians can't be taxed unless Congress clearly legislates to contrary.

REHNQUIST, J. Affirm
State can't come on Reservation to execute process - but should be able to impose a general state tax.
Our cases do not foreclose this.

MEMO: C.J. Reverse
* State income tax may impinge on ability of Tribe to levy its own taxes. Congress has not authorized State to tax.

Land

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: FEB 7 1973

Recirculated: _____

No. 71-834

Rosalind McClanahan, Etc., Appellant, *v.* State Tax Commission of Arizona.	On Appeal from the Court of Appeals of Arizona, Division One.

Get not ruly file & Conference & Argument Notes

Join 2/9/73

[February —, 1973]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case requires us once again to reconcile the plenary power of the States over residents within their borders with the semi-autonimous status of Indians living on tribal reservations. In this instance, the problem arises in the context of Arizona's efforts to impose its personal income tax on a reservation Indian whose entire income derives from reservation sources. Although we have repeatedly addressed the question of state taxation of reservation Indians,[1] the problems posed by a state income tax are apparently of first impression in this Court.[2] The Arizona courts have held that such state taxation is permissible. See *McClanahan* v. *Arizona State Tax*

[1] See, *e. g.*, *Oklahoma Tax Commission* v. *United States*, 319 U. S. 598 (1943); *Childers* v. *Beaver*, 270 U. S. 555 (1926); *United States* v. *Rickert*, 188 U. S. 432 (1903); *The Kansas Indians*, 72 U. S. (5 Wall.) 732 (1867). Cf. *Squire* v. *Capoeman*, 351 U. S. 1 (1956).

[2] State courts have disagreed on the question. Compare *Ghahate* v. *Bureau of Revenue*, 80 N. M. 98, 451 P. 2d 1002 (1969), with *Commissioner of Taxation* v. *Brun*, 286 Minn. 43, 174 N. W. 2d 120 (1970). See *Powless* v. *State Tax Commission*, 253 N. Y. S. 2d 438 (1964); *State Tax Commission* v. *Barnes*, 178 N. Y. S. 2d 932 (1958).

Commission, 14 Ariz. App. 452, 484 P. 2d 222 (1971). We noted probable jurisdiction, 406 U. S. 916 (1972), and now reverse. We hold that by imposing the tax in question on this appellant, the State has interfered with matters which the relevant treaty and statutes leave to the exclusive province of the Federal Government and the Indians themselves. The tax is therefore unlawful as applied to reservation Indians with income derived wholly from reservation sources.

I

Appellant is an enrolled member of the Navajo tribe who lives on that portion of the Navajo reservation located within the State of Arizona. Her complaint alleges that all her income earned during 1967 was derived from within the Navajo reservation. Pursuant to Ariz. Rev. Stat. § 43–188 (f), $16.29 were withheld from her wages for that year to cover her state income tax liability.[3] At the conclusion of the tax year, appellant filed a protest against the collection of any taxes on her income and a claim for a refund of the entire amount withheld from her wages. When no action was taken on her claim, she instituted this action in Arizona Superior Court on behalf of herself and those similarly situated, demanding a return of the money withheld and a declaration that the state tax was unlawful as applied to reservation Indians.

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[3] The liability was created by Ariz. Rev. Stat. § 43–102 (a) which, in relevant part, provides: "There shall be levied, collected, and paid for each taxable year upon the entire net income of every estate or trust taxable upon this title and of every resident of this state and upon the entire net income of every non-resident which is derived from sources within this state, taxes in the following amounts and at the following rates upon the amount of net income in excess of credits against net income provided in §§ 43–127 and 43–128." Appellant conceded below that she was a "resident" within the meaning of the statute, and that question, which in any event poses an issue of state law, is not now before us.

The trial court dismissed the action for failure to state a claim, and the Arizona Court of Appeals affirmed. Citing this Court's decision in *Williams* v. *Lee,* 358 U. S. 217 (1959), the Court of Appeals held that the test "is not whether the Arizona state income tax infringes on plaintiff's right as an individual Navajo Indian, but whether such a tax infringes on the rights of the Navajo tribe of Indians to be self-governing." 14 Ariz. App., at 454, 484 P. 2d, at 223. The Court thus distinguished cases dealing with state taxes on Indian real property on the ground that these taxes, unlike the personal income tax, infringed tribal autonomy.

The Court then pointed to cases holding that state employees could be required to pay federal income tax and that the State had a concomitant right to tax federal employees. See *Helvering* v. *Gerhardt,* 304 U. S. 405 (1938); *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466 (1939). Reasoning by analogy from these cases, the Court argued that Arizona's income tax on individual Navajo Indians did not "[cause] an impairment of the right of the Navajo tribe to be self-governing." 14 Ariz. App., at 455, 484 P. 2d, at 224.

Nor did the Court find anything in the Arizona Enabling Act, 36 Stat. 569, to prevent the State from taxing reservation Indians. That Act, the relevant language of which is duplicated in the Arizona Constitution, disclaims state title over Indian lands and requires that such lands shall remain "under the absolute jurisdiction and control of the Congress of the United States." But the Arizona court, relying on this Court's decision in *Organized Village of Kake* v. *Egan,* 369 U. S. 60 (1962), held that the Enabling Act nonetheless permitted concurrent state jurisdiction so long as tribal self-government remained intact. Since an individual income tax did not interfere with tribal self-government, it followed that appellant had failed to state a claim. The Arizona

Supreme Court denied a petition for review of this decision, and the case came here on appeal. See 28 U. S. C. § 1257 (2).

II

It may be helpful to begin our discussion of the law applicable to this complex area with a brief statement of what this case does not involve. We are not here dealing with Indians who have left or never inhabited reservations set aside for their exclusive use or who do not possess the usual accoutrements of tribal self-government. See, *e. g., Organized Village of Kake* v. *Egan,* 369 U. S. 60 (1962); *Metlakatla Indian Community* v. *Egan,* 369 U. S. 45 (1962); *Oklahoma Tax Commission* v. *United States,* 319 U. S. 598 (1943). Nor are we concerned with exertions of state sovereignty over non-Indians who undertake activity on Indian reservations. See, *e. g., Thomas* v. *Gray,* 169 U. S. 264 (1898); *Utah Northern R. Co.* v. *Fisher,* 116 U. S. 28 (1885). Cf. *Surplus Trading Co.* v. *Cook,* 281 U. S. 647, 651 (1930). Nor, finally, is this a case where the State seeks to reach activity undertaken by reservation Indians on nonreservation lands. See, *e. g., The Mescalaro Apache Tribe* v. *Jones, post.* Rather, this case involves the narrow question whether the State may tax a reservation Indian for income earned exclusively on the reservation.

The principles governing the resolution of this question are not new. On the contrary, "[t]he policy of leaving Indians free from state jurisdiction and control is deeply rooted in the Nation's history." *Rice* v. *Olson,* 324 U. S. 786, 789 (1945). This policy was first articulated by this Court 140 years ago when Chief Justice Marshall held that Indian nations were "distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only

acknowledged but guaranteed by the United States." *Worcester* v. *Georgia,* 31 U. S. (6 Pet.) 515 (1832). It followed from this concept of Indian reservations as separate, although dependent nations, that state law could have no role to play within the reservation boundaries. "The Cherokee nation . . . is a distinct community occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our Constitution and laws, vested in the government of the United States." *Worcester* v. *Georgia, supra,* at 561. See also *United States* v. *Kagama,* 118 U. S. 375 (1886); *Ex parte Crow Dog,* 109 U. S. 556 (1883).

Although *Worcester* on its facts dealt with a State's efforts to extend its criminal jurisdiction to reservation lands,[4] the rationale of the case plainly extended to state taxation within the reservation as well. Thus, in *The Kansas Indians,* 72 U. S. (5 Wall.) 737 (1867), the Court unambiguously rejected state efforts to impose a land tax on reservation Indians. "If the tribal organization of the Shawnees is preserved intact, and recognized by the political department of the government as existing, then they are a 'people distinct from others,' capable of making treaties, separated from the jurisdiction of Kansas, and to be governed exclusively by the government of the Union. If under the control of Congress, from necessity there can be no divided authority." 72 U. S., at 755. See also *The New York Indians,* 72 U. S. (5 Wall.) 761 (1866).

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[4] See also *Williams* v. *United States,* 327 U. S. 711 (1946); *United States* v. *Chavez,* 290 U. S. 357 (1933); *United States* v. *Ramsey,* 271 U. S. 467 (1926).

It is true, as the State asserts, that some of the later Indian tax cases turn not on the Indian sovereignty doctrine, but on whether or not the State can be said to have imposed a forbidden tax on a federal instrumentality. See, *e. g., Leahy* v. *State Treasurer of Oklahoma,* 297 U. S. 420 (1936); *United States* v. *Rickert,* 188 U. S. 432 (1903). To the extent that the tax exemption rests on federal immunity from state taxation, it may well be inapplicable in a case such as this involving an individual income tax.[5] But it would vastly oversimplify the problem to say that nothing remains of the notion that reservation Indians are a separate people to whom state jurisdiction, and therefore state tax legislation, may not extend. Thus, only a few years ago, this Court struck down Arizona's attempt to tax the proceeds of a trading company doing business within the confines of the very reservation involved in this case. See *Warren Trading Post Co.* v. *Arizona Tax Commission,* 380 U. S. 685 (1965). The tax in no way interfered with federal land or with the National Government's proprietary interests. But it was invalidated nonetheless because "from the very first days of our Government, the Federal Government had been permitting the Indians largely to govern themselves, free from state interference." 380 U. S., at 687.[6] As a leading text on Indian problems

[5] The federal instrumentality doctrine does not prohibit state taxation of individuals deriving their income from federal sources. See *Graves* v. *New York ex rel. O'Keefe,* 306 U. S. 466 (1939). Cf. *Leahy* v. *State Treasurer of Oklahoma,* 297 U. S. 420 (1936). The doctrine has, in any event, been sharply limited with respect to Indians. See *Oklahoma Tax Commission* v. *United States,* 319 U. S. 598 (1943).

[6] The Court below distinguished *Warren Trading Post* as limited to cases where the Federal Government has pre-empted state law by regulating Indian traders in a manner inconsistent with state taxation. See 14 Ariz. App., at 455, 484 P. 2d, at 224. But although the Court was, no doubt, influenced by the federal licensing require-

summarizes the relevant law "State laws generally are not applicable to tribal Indians on an Indian reservation except where Congress has expressly provided that state laws shall apply. It follows that Indians and Indian property on an Indian reservation are not subject to state taxation except by virtue of express authority conferred upon the State by act of Congress." United States Department of Interior, Federal Indian Law 845 (1958) (hereinafter cited as Federal Indian Law).

This is not to say that the Indian sovereignty doctrine, with its concomitant jurisdictional limit on the reach of state law, has remained static during the 140 years since *Worcester* was decided. Not surprisingly, the doctrine has undergone considerable evolution in response to changed circumstances. As noted above, the doctrine has not been rigidly applied in cases where Indians have left the reservation and become assimilated into the general community. See, *e. g., Oklahoma Tax Commission* v. *United States,* 319 U. S. 598 (1943). Similarly, notions of Indian sovereignty have been adjusted to take account of the State's legitimate interests in regulating the affairs of non-Indians. See, *e. g., New York ex rel. Ray* v. *Martin,* 326 U. S. 496 (1946); *Draper* v. *United States,* 164 U. S. 240 (1896); *Utah & Northern R. Co.* v. *Fisher,* 116 U. S. 28 (1885). This line of cases was summarized in this Court's landmark decision in *Williams* v. *Lee,* 358 U. S. 217 (1959): "Over the years this Court has modified [the *Worcester* principle] in cases where

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ments, the reasoning of *Warren Trading Post* cannot be so restricted. The Court invalidated Arizona's tax in part because "Congress has, since the creation of the Navajo Reservation nearly a century ago, left the Indians on it largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens for carrying on those same responsibilities." *Warren Trading Post Co.* v. *Arizona Tax Commission, supra,* at 690.

essential tribal relations were not involved and where the right of Indians would not be jeopardized. . . . Thus, suits by Indians against outsiders in state courts have been sanctioned . . . . And state courts have been allowed to try non-Indians who committed crimes against each other on a reservation. . . . But if the crime was by or against an Indian, tribal jurisdiction or that expressly conferred on other courts by Congress has remained exclusive. . . . Essentially, absent governing Acts of Congress, the question has always been whether the state action infringes on the right of reservation Indians to make their own laws and be ruled by them." 358 U. S., at 220.

Finally, the trend has been away from the idea of inherent Indian sovereignty as a bar to state jurisdiction and toward reliance on federal pre-emption.[7] See *The Mescalaro Apache Tribe* v. *Jones, post.* The modern cases thus tend to avoid reliance on Platonic notions of Indian sovereignty and to look instead to the applicable treaties and statutes which define the limits of state power. Compare, *e. g., United States* v. *Kagama,* 118 U. S. 375 (1886), with *Kennerly* v. *District Court,* 400 U. S. 423 (1971).[8]

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[7] The source of federal authority over Indian matters has been the subject of some confusion, but it is now generally recognized that the power derives from federal responsibility for regulating commerce with Indian tribes and for treaty making. See U. S. Const. Art. I, § 8, cl. 3; Art. II, § 2, cl. 2. See also *Williams* v. *Lee,* 358 U. S. 217, 219 n. 4; *Perrin* v. *United States,* 232 U. S. 478, 482 (1914); Federal Indian Law 3.

[8] The extent of federal pre-emption and residual Indian sovereignty in the total absence of federal treaty obligations or legislation is therefore now something of a moot question. Cf. *Organized Village of Kake* v. *Egan,* 369 U. S. 60, 62 (1962); Federal Indian Law 846. The question is generally of little more than theoretical importance, however, since in almost all cases, federal treaties and statutes define the boundaries of federal and state jurisdiction.

The Indian sovereignty doctrine is relevant, then, not because it provides a definitive resolution of the issues in this suit, but because it provides a backdrop against which the applicable treaties and federal statutes must be read. It must always be remembered that the various Indian tribes were once independent and sovereign nations, and that their claim to sovereignty long predates that of our own Government. Indians today are American citizens.[9] They have the right to vote,[10] to use state courts,[11] and they receive some state services.[12] But it is nonetheless still true, as it was in the last century, that "The relation of the Indian tribes living within the borders of the United States [is] an anomalous one and of a complex character. . . . They were, and always have been, regarded as having a semi-independent position when they preserved their tribal relations; not as states, not as nations, not as possessed of the full attributes of sovereignty, but as a separate people, with the power of regulating their internal and social relations, and thus far not brought under the laws of the Union or of the State within whose limits they

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[9] See 8 U. S. C. § 1401 (a)(2).

[10] See, *e. g., Harrison* v. *Laveen,* 67 Ariz. 337, 196 P. 2d 456 (1948).

[11] See, *e. g., Felix* v. *Patrick,* 145 U. S. 317, 332 (1892).

[12] The Court below pointed out that Arizona was expending tax monies for education and welfare within the confines of the Navajo reservation. See 14 Ariz. App., at 456–457, 484 P. 2d, at 225–226. It should be noted, however, that the Federal Government defrays 80% of Arizona's ordinary social security payments to reservation Indians, see 25 U. S. C. § 639, and has authorized the expenditure of more than $88 million for rehabilitation programs for Navajos and Hopis living on reservations. See also 25 U. S. C. §§ 13, 309, 309a (federal support for Indian education). Moreover, "[c]onferring rights and privileges upon these Indians cannot affect their situation, which can only be changed by treaty, stipulation, or a voluntary abandonment of their tribal organization." *The Kansas Indians,* 72 U. S. (5 Wall.) 737, 757 (1867).

reside." *United States* v. *Kagama,* 118 U. S. 375, 381–382 (1886).

III

When the relevant treaties and statutes are read with this tradition of sovereignty in mind, we think it clear that Arizona has exceeded its lawful authority by attempting to tax appellant. The beginning of our analysis must be with the treaty which the United States Government entered with the Navajo nation in 1868. The agreement provided, in relevant part, that a prescribed reservation would be set aside "for the use and occupation of the Navajo tribe of Indians" and that "no persons except those herein authorized to do, and except such officers, soldiers, agents, and employes of the government, or of the Indians, as may be authorized to enter Indian reservations in discharge of duties imposed by law, or the orders of the President, shall ever be permitted to pass over, settle upon, or reside in, the territory described in this article." 15 Stat. 667, 668 (1868).

The treaty nowhere explicitly states that the Navajo were to be free from state law or exempt from state taxes. But the document is not to be read as an ordinary contract agreed upon by parties dealing at arms length with equal bargaining positions. We have had occasion in the past to describe the circumstances under which the agreement was reached. "At the time this document was signed the Navajos were an exiled people forced by the United States to live crowded together on a small piece of land on the Pecos river in eastern New Mexico, some 300 miles east of the area they had occupied before the coming of the white man. In return for their promise to keep peace, this tretay 'set apart' for 'their permanent home' a portion of what had been their native country." *Williams* v. *Lee,* 358 U. S. 217, 221 (1959).

It is circumstances such as these which have led this Court in interpreting Indian treaties, to adopt the general rule that "Doubtful expressions are to be resolved in favor of the weak and defenseless people who are wards of the nation, dependent upon its protection and good faith." *Carpenter* v. *Shaw,* 280 U. S. 363, 367 (1930). When this canon of construction is taken together with the tradition of Indian independence described above, it cannot be doubted that the reservation of certain lands for the exclusive use and occupancy of the Navajo and the exclusion of non-Navajos from the prescribed area was meant to establish the lands as within the exclusive sovereignty of the Navajos under general federal supervision. It is thus unsurprising that this Court has interpreted the Navajo treaty to preclude extension of state law—including state tax law—to Indians on the Navajo reservation. See *Warren Trading Post Co.* v. *Arizona Tax Commission,* 380 U. S. 685, 687, 690 (1965); *Williams* v. *Lee, supra,* at 221–222 (1959).

Moreover, since the signing of the Navajo treaty, Congress has consistently acted upon the assumption that the States lacked jurisdiction over Navajos living on the reservation.[13] Thus, when Arizona entered the Union, its entry was expressly conditioned on the promise that the State would "forever disclaim all right and title to . . . all lands lying within said boundaries owned or held by any Indian or Indian tribes, the right or title to which shall have been acquired through and from the United States or any prior sovereignty, and that until

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[13] "Congress has . . . acted consistently upon the assumption that the States have no power to regulate the affairs of Indians on a reservation. . . . Significantly, when Congress has asked the States to exercise this power it has expressly granted them the jurisdiction which *Worcester* v. *Georgia* had denied." *Williams* v. *Lee,* 358 U. S. 217, 220–221 (1959).

the title of such Indian or Indian tribes shall have been extinguished the same shall be and remain subject to the disposition and under the absolute jurisdiction and control of the United States." Arizona Enabling Act, 36 Stat. 557, 560 (1910).[14]

Nor is the Arizona Enabling Act silent on the specific question of tax immunity. The Act expressly provides that "nothing herein, or in the ordinance herein provided for, shall preclude the said State from taxing as other lands and other property are taxed any lands and other property *outside of an Indian reservation* owned or held by an Indian." *Ibid.* (emphasis added). It is true, of course, that exemptions from tax laws should, as a general rule, by clearly expressed. But we have in the past construed language far more ambiguous than this as providing a tax exemption for Indians. See, *e. g., Squire* v. *Capoeman,* 351 U. S. 1, 6 (1956), and we see no reason to give this language an especially crabbed or restrictive meaning.[15]

Indeed, Congress' intent to maintain the tax exempt status of reservation Indians is especially clear in light of the Buck Act, 4 U. S. C. § 104 *et seq.,* which provides comprehensive federal guidance for state taxation of those

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[14] This language is duplicated in Arizona's own constitution. See Ariz. Const., Art. 20, ¶ 4. It is also contained in the Enabling Acts of New Mexico and Utah, the other States in which the Navajo Reservation is located. See New Mexico Enabling Act, 36 Stat. 558–559; Utah Enabling Act, 28 Stat. 108.

[15] There is nothing in *Organized Village of Kake* v. *Egan,* 369 U. S. 60 (1962), to the contrary. In *Egan,* we held that " 'absolute' federal jurisdiction is not invariably exclusive jurisdiction," and that this language in federal legislation did not preclude the exercise of residual state authority. See 369 U. S., at 68. But that holding came in the context of a decision concerning the fishing rights of *nonreservation* Indians. See 369 U. S., at 62. It did not purport to provide guidelines for the exercise of state authority in areas set aside by treaty for the exclusive use and control of Indians.

living within federal areas. Section 106 (a) of Title 4 grants to the States general authority to impose an income tax on residents of federal areas, but § 109 expressly provides that "Nothing in sections 105 and 106 of this title shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed." To be sure, the language of the statute itself does not make clear whether the reference to "any Indian not otherwise taxed" was intended to apply to reservation Indians earning their income on the reservation. But the legislative history makes plain that this proviso was meant to except reservation Indians from coverage of the Buck Act, see S. Rep. No. 1625, 76th Cong., 3d Sess., 2, 4; 84 Cong. Rec. 10685 (1939), and this Court has so interpreted it. See *Warren Trading Post Co.* v. *Arizona Tax Commission,* 380 U. S. 685, 691 n. 18 (1965). While the Buck Act itself cannot be read as an affirmative grant of tax exempt status to reservation Indians, it should be obvious that Congress would not have jealously protected the immunity of reservation Indians from state income taxes had it thought that the States had residual power to impose such taxes in any event. Similarly, narrower statutes authorizing States to assert tax jurisdiction over reservations in special situations are explicable only if Congress assumed that the States lacked the power to impose the taxes without special authorization.[16]

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

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[16] See, *e. g.,* 25 U. S. C. § 398 (congressional authorization for States to tax mineral production on unallotted tribal lands). Cf. 18 U. S. C. § 1161 (state liquor laws may be applicable within reservations); 25 U. S. C. § 231 (state health and education laws may be applicable within 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),[17] and must "appropriately amend [its] constitution or statutes." Once again, the Act cannot be read as expressly conferring tax immunity upon Indians. But we cannot believe that Congress would have required the consent of the Indians affected and the amendment of the state constitution if the States were free to accomplish the same goal unilaterally by simple legislative enactment. See *Kennerly* v. *District Court*, 400 U. S. 423 (1971).

Arizona, of course, has neither amended its constitution to permit taxation of the Navajos nor secured the consent of the Indians affected. Indeed, a startling aspect of this case is that appellee apparently concedes that, in the absence of compliance with 25 U. S. C. § 1322 (a), the Arizona courts can exercise neither civil nor criminal jurisdiction over reservation Indians. See

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[17] As passed in 1953, Pub. L. 280, 67 Stat. 588, delegated civil and criminal jurisdiction over Indian reservations to certain States, although not to Arizona. See 18 U. S. C. § 1162; 28 U. S. C. § 1360. The original Act also provided a means whereby other States could assume jurisdiction over Indian reservations without the consent of the tribe affected. See 67 Stat. 590. However, in 1968, Congress passed the Indian Civil Rights Act which changed the prior procedure to require the consent of the Indians involved before a State was permitted to assume jurisdiction. See 25 U. S. C. § 1322 (a). Thus, had it wished to do so, Arizona could have unilaterally assumed jurisdiction over its portion of the Navajo Reservation at any point during the 15 years between 1953 and 1968. But although the State did pass narrow legislation purporting to require the enforcement of air and water pollution standards within reservations, see 36 Ariz. Rev. Stat. (Cum. Supp.) § 1801; 36 Ariz. Rev. Stat. (Cum. Supp.) § 1865, it declined to assume full responsibility for the Indians during the period when it had the opportunity to do so.

appellee's brief, at 24–26.[18] But the appellee nowhere explains how, without such jurisdiction, the State's tax may either be imposed or collected. Cf. Transcript of oral argument, at 38–39. Unless the State is willing to defend the position that it may constitutionally administer its tax system altogther without judicial intervention, cf. *Ward* v. *Love,* 253 U. S. 17 (1920), the admitted absence of either civil or criminal jurisdiction would seem to dispose of the case.

IV

When Arizona's contentions are measured against these statutory imperatives, they are simply untenable. The State relies primarily upon language in *Williams* v. *Lee* stating that the test for determining the validity of state action is "whether [it] infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U. S., at 220. Since Arizona has attempted to tax individual Indians and not the tribe or reservation as such, it argues that it has not infringed on Indian rights of self-government.

In fact, we are far from convinced that when a State imposes taxes upon reservation members without their consent, its action can be reconciled with tribal self-determination. But even if the State's premise is accepted, we reject the suggestion that the *Williams* test was meant to apply in this situation. It must be remembered that *Williams,* and the cases following it, have all dealt either with non-Indians or with activity outside the reservation. In these situations, both the Tribe and the State could fairly claim an interest in asserting their respective jurisdictions. The *Williams* test was designed to resolve this conflict by providing that the State could

[18] In light of our prior cases, appellee has no choice but to make this concession. See, *e. g., Kennerly* v. *District Court, supra; United States* v. *Kasama,* 118 U. S. 375 (1886).

protect its interests up to the point where tribal self-government would be affected.

The problem posed by this case is completely different. Since appellant is an Indian and since her income is derived wholly from reservation sources, her activity is totally within the sphere which the relevant treaties and statutes leave for the Federal Government and for the Indians themselves. Appellee cites us to no cases holding that this legislation may be ignored simply because tribal self-government has not been infringed.[19] On the contrary, this Court expressly rejected such a position only two years ago.[20] In *Kennerly* v. *District Court,* 400 U. S. 423 (1971), the Blackfeet Indian Tribe had voted to make state jurisdiction concurrent within the reservation. Although the State had not complied with the procedural prerequisites for the assumption of jurisdiction, it argued that it was nonetheless entitled to extend its laws to the reservation since such action was obviously consistent with the wishes of the Tribe and, therefore, with tribal self-government. But we held that the *Williams* rule was inapplicable and that "the unilateral action of the Tribal Council was insufficient to vest Montana with jurisdiction." 400 U. S., at 427. If Montana may not assume jurisdiction over the Blackfeet by simple legislation even when the Tribe itself agrees to be bound by state law, it surely follows that Arizona may not assume such jurisdiction in the absence of tribal agreement.

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[19] *Organized Village of Kake* v. *Egan,* 369 U. S. 60 (1962) is not such a case. See n. 15, *supra.*

[20] Indeed, the position was expressly rejected in *Williams,* itself, upon which appellee so heavily relies. *Williams* held that *"absent governing Acts of Congress,* the question has always been whether the state action infringed on the right of reservation Indians to make their own laws and be ruled by them." 358 U. S., at 220 (emphasis added).

Nor is the State's attempted distinction between taxes on land and on income availing. Indeed, it is somewhat surprising that the State adheres to this distinction in light of our decision in *Warren Trading Post Co.* v. *Arizona Tax Commission, supra,* wherein we invalidated an *income tax* which Arizona had attempted to impose within the Navajo Reservation. The land-income distinction may have some bearing on the validity of a tax resisted as an illegal levy on a federal instrumentality. Compare *Childers* v. *Beaver,* 270 U. S. 555 (1926), with *Leahy* v. *State Treasurer of Oklahoma,* 297 U. S. 420 (1936). See generally *Oklahoma Tax Commission* v. *United States,* 319 U. S. 598 (1943). But the distinction is plainly irrelevant when the tax is resisted because the State is totally lacking in jurisdiction over both the people and the lands which it seeks to tax.

Finally, we cannot accept the notion that it is irrelevant "whether the . . . state income tax infringes on [appellant's] right as an individual Navajo Indian," as the State Court of Appeals maintained. *McClanahan* v. *Arizona State Tax Commission,* 14 Ariz. App. 452, 454, 484 P. 2d 221, 223 (1970). To be sure, when Congress has legislated on Indian matters, it has, most often, dealt with the tribes as collective entities. But those entities are, after all, composed of individual Indians, and the legislation confers individual rights. This Court has therefore held that "the question has always been whether the state action infringed on the right of *reservation Indians* to make their own laws and be ruled by them." *Williams* v. *Lee, supra,* at 220. In this case, appellant's rights as a reservation Indian were violated when the state collected a tax from her which it had no jurisdiction to impose. Accordingly, the judgment of the court below must be

Reversed.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 7, 1973

RE: No. 71-834 McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 7, 1973

Dear Thurgood:

Please join me in your opinion in

No. 71-834 - McClanahan v. Arizona Tax Commission.

W. O. D.

Mr. Justice Marshall

cc: Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 7, 1973

Re: No. 71-834 - McClanahan, Etc.
v. Arizona State Tax Comm'n

Dear Thurgood,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.
P. S.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 7, 1973

RE: No. 71-834 McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

February 8, 1973

Re: No. 71-834 McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 13, 1973

Re: No. 71-834 - McClanahan v. State Tax Comm'n

Dear Thurgood:

With the changes effected on page 14 by your circulation of today, I am glad to join your opinion proposed for this case.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

February 14, 1973

Re: No. 71-834 - McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 21, 1973

Re: No. 71-834 - McClanahan v. State Tax Comm'n of Arizona

Dear Thurgood:

I agree with the result and with most of what you have said in your opinion in this case. In light of the opinion in Mescalero, which I have circulated today, you will understand that I have some difficulty with what you say about the land-income distinction on page 17. I understand our clerks have discussed this and perhaps have reached a solution.

The other problem appears on pages 15-16 where you indicate that the no-interference-with-tribal-government test must be satisfied before the State may regulate or tax activities outside the reservation. The Mescalero circulation makes no effort to satisfy that standard, for I had thought the test had arisen in connection with efforts to control reservation-based activities.

Of course, since you voted against the state income tax in Mescalero, perhaps there are limits to how far we should attempt to accommodate these opinions, one to the other.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 23, 1973

Re: No. 71-834 - McClanahan v. State Tax Commission

Dear Thurgood:

I voted the other way at Conference, but do not plan to write a dissenting opinion. I do, however, have at least the same reservations as those expressed by Byron in his note to you in this case; if you take care of them to his satisfaction, I will reluctantly climb aboard.

Sincerely,

Bill

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 5, 1973

Re: No. 71-834 - McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

Please join me.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 5, 1973

Re: No. 71-834 - McClanahan v. State Tax Commission of Arizona

Dear Thurgood:

As you have already done, I am joining Byron's opinion in No. 71-738, Mescalero Apache Tribe v. Jones.

I am presumptuous in making this suggestion, but I wonder if any tension between your opinion in McClanahan and Byron's opinion in Mescalero would be further alleviated if the second sentence in the first full paragraph on page 17 of your opinion were to be omitted. I must leave to you and Byron, however, the working out of details.

Sincerely,

Harry

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 7, 1973

Re: No. 71-834 - McClanahan v. State Tax Commission

Dear Thurgood:

Please join me.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

THE C. J.	W. O. D.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.
					12/15/72			
join TM 2/14/73	join TM	join TM 2/9/73	join TM 2/8/73	join TM 3/6/73	2nd draft 2/13/73 3rd draft 2/22/73 4th draft 2/28/73	join TM 2/13/73	join TM 2/9/73	reluctantly 2/23/73 join TM 3/7/73
					5th draft 3/5/73			
					No. 71-834	McClanahan v. Arizona		