10-1979


Lewis F. Powell Jr.

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PRELIMINARY MEMORANDUM

June 7, 1979 Conference
Sum. List 4, Sheet 1

No. 78-1604

CENTRAL MACHINERY CO.  v.  ARIZONA

Appeal from S. Ct. of Ariz. (Cameron, Struckmeyer, Hays, Holohan; Gordon, dissenting)

State/Civil  Timely

1. SUMMARY: Appt states the question raised by this case as follows: Did the State of Arizona have jurisdiction to tax the sale of farm machinery by an Arizona corporation to an Indian tribe where the sale took place on the tribe's reservation and was approved by the Bureau of Indian Affairs Agency Superintendent?

2. FACTS & DECISIONS BELOW: In 1973 agents of appt Central Machinery entered the Gila River Indian Reservation to solicit purchases, and held that the State had no jurisdiction to tax the transaction, relying on this Court's opinion in [citing case]. It cited that case for the proposition that 'Congress, on reservations, sovereign Indian soil, has exercised its jurisdiction to the same extent as in the states.'
of farm machinery from the Gila River Farms, an enterprise of the Gila River Indian Community. Gila River Farms agreed to purchase 11 John Deere tractors from appt at a total price of $100,137.26. A $3,000 item on the bill was Arizona's Transaction Privilege Tax. The tractors were delivered at the Indian reservation at Sacaton, Arizona. The purchase orders provided for delivery of the tractors FOB Sacaton.

Gila River Farms paid the Transaction Privilege Tax under protest, and appt in turn paid that amount to the State of Arizona under protest. Appt initiated appropriate administrative proceedings to obtain a refund and agreed to pay over any sums recovered to Gila River Farms. The administrative application was denied and appt brought this refund action in an Arizona Superior Court.

The Superior Court held that the State had no jurisdiction to tax the transaction, relying on this Court's opinion in Warren Trading Post v. Arizona Tax Commission, 380 U.S. 685 (1965). It cited that case for the proposition that "Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." Id., at 690. There is room for the operation of state laws only where those laws are specifically authorized by Acts of Congress or where they clearly do not interfere with federal policies regarding the reservations. The Court noted the extensive federal preemption of Indian commerce. 25 U.S.C. § 261 provides:

"The Commissioner of Indian Affairs shall have the sole power and authority to appoint traders to the Indian tribes and to make such rules
and regulations as he may deem just and proper specifying the kind and quality of goods and the prices at which such goods shall be sold to the Indians."

In 25 C.F.R. § 251.9(b) application procedures for obtaining a license as an Indian trader are set out for both permanent traders with premises on the reservation and for itinerant traders who only make occasional sales to the Indians. The Superior Court did not think it relevant that appt did not possess a license as an itinerant trader at the time it made the tractor sale. The State made the argument that Warren Trading Post should not apply because appt and the Bureau of Indian Affairs had failed to comply with the licensing requirements. The court concluded:

"Nowhere did the federal statutes and regulations indicate that non-compliance by a trader or the Bureau of Indian Affairs will allow imposition of state laws which would otherwise be inapplicable. It is the existence of the federal laws and accompanying regulations and not their enforcement which pre-empts the state's ability to tax the transaction in question." Petn at 6A (emphasis in original).

The Arizona Supreme Court reversed. It gave controlling weight to the fact that appt had not been licensed by the Bureau of Indian Affairs. It quoted that part of this Court's opinion in Warren Trading Post which reads:

"We think the assessment and collection of this tax would to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians on reservations except as authorized by Acts of Congress or by valid regulations promulgated under those Acts." (emphasis supplied by Arizona Supp. Ct.)
The Supreme Court concluded that the status of "Indian trader" is only conferred on those who are licensed under existing regulations. If the trader is not licensed, there is no federal preemption even though he may be doing substantial business with the Indians. It rejected app't's argument that the critical test is whether the economic burden of the tax falls upon the Indians.

Justice Gordon dissented, stating his belief that Warren Trading Post controlled this case. He saw only two meaningful differences between the cases. First, app't did not maintain a permanent place of business on the reservation. Secondly, he did not possess a trader's license. But he thought neither of those differences made the reasoning of Warren Trading Post inapposite. The applicable regulations set up a licensing scheme for itinerant traders as well as permanent traders. So the fact that a merchant is not permanently located on the reservation is of no significance as far as federal preemption is concerned. As for the lack of a trader's license, he observed first that it was unclear why a license or permit was not obtained in this case. There is no dispute that the Bureau of Indian Affairs did approve the transaction. Justice Gordon thought it illogical that the Indians were to be penalized because the Bureau of Indian Affairs decided to deviate from their own regulations. Here the burden of the tax fell directly on the Indians.

3. CONTENTIONS: App't essentially presses Justice Gordon's arguments. It adds that the reason the Bureau of Indian Affairs did not require it to go through the normal licensing procedure is because this
was a "one shot" transaction and therefore it made sense for the Superintendent to approve this one transaction rather than authorize appt to conduct business on the reservation in a continuing fashion. It also argues that the Arizona Supreme Court's very technical reading of Warren Trading Post is inconsistent with McClanahan v. Arizona Tax Commission, 411 U.S. 164 (1973), where this Court relied on Warren to invalidate a personal income tax on reservation Indians which obviously had nothing to do with trade. Finally, appt maintains that the Arizona Supreme Court's decision directly conflicts with United States ex rel. Hornell v. One 1976 Chevrolet Station Wagon, 585 F.2d 978 (CA 10 1978).

4. DISCUSSION: The CA 10 decision has little to do with this case. The CA 10 upheld imposition of a monetary penalty on a trader who sold a vehicle on an Indian reservation in violation of federal licensing provisions. However, I agree with Justice Gordon that the result here is difficult to reconcile with Warren Trading Post. There is apparently no dispute that appt would have violated federal law had it not obtained the permission of the Bureau of Indian Affairs, and therefore it is difficult to understand why the federal preemption rationale is not as strong here as it is in situations where the Bureau issues a license. If the Court thinks that the result here is inconsistent with Warren Trading Post and is not inclined to reconsider that case, this is a candidate for summary reversal. Before selecting that route, I recommend that a response be requested. Also, given the involvement of the Bureau of Indian Affairs, the views of the SG would be helpful.

There is no motion to dismiss.

5/30/79
Haar Superior Ct. & Sup. Ct ops in petn.
CENTRAL MACHINERY CO.  

vs.  

AZ. ST. TAX COMMN.  

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- SG's Response under a Noll  
- 9 will no vote  
6/20
CENTRAL MACHINERY CO.

vs.

AZ. ST. TAX COMMISSION

Also motion to dismiss.
October 26, 1979 Conference
List 5, Sheet 2
No. 78-1604CENTRAL MACHINERY CO. v. STATE TAX COMM’N., ARIZ.

Motion of appt to dispense with appendix

SUMMARY: On behalf of the parties, appt asks to dispense with the printing of a separate appendix (Rule 36(8)).

The case was heard on facts agreed by the parties and the opinions below are in the j.s.

DISCUSSION: The request appears appropriate.

10/19/79 Marsel
Motion of appellant to dispense with printing appendix.
Lewis (Pet)

Transaction was approved by Fed Gov't. But no objection was then made by Fed Gov't. The tax was paid under protest. The "tax" is a later date that sale occurred on Reservation.

Clawborne (SG)

Supports Pet.

Presumption applies to transactions on the Reservation. Relier primarily on presumption. Also think there is a Court dimension based on Indian Commerce Clause -- see brief.

Macpherson (SG & 6 Arizona)

Tax in cost of business -- just as in tax of other state taxpayer. Economic burden of all taxes influence price.

Purchase order was approved on Feb.

Only fed approval was by local Fed agt who approved expenditure of the purchase funds.
Mackenzie (cont.)

The typical sales tax is on the sale transaction of the purchaser over the tax. The seller has duty to collect it. Here tax is on privilege of doing business, measured by gross sales.

Suggests a reinterpretation of Warren Trading Post case, in Note 18. But this is not necessary to hold for State in this case.

In Warren, the seller had an Indian Trader's license & was extensively regulated. 95% of Warren Trading Co's sales went to Indians. Here, one can, that Central had never sold to Indian Tribe before.

Other state taxes are invalid.
78-1604 General Machinery v. Arizona State Conf. 1/16/80

The Chief Justice Revere

In both of these cases (78-1604 + 78-1177) see transaction was on Reservation. In 1604, Fed Act approved. Should be fly speck elements - but sale on Res. is enough. Fed Govt has preempted all trading on Res. Purpose is to protect Indians. 1604 in stronger for preemption than Warren Trade Corp.

Mr. Justice Brennan Revere

Mr. Justice Stewart Affirm

Warren should be continued confined to licensed traders.
Mr. Justice White

Mr. Justice Marshall

Mr. Justice Blackmun
Mr. Justice Powell

Affirm

Unlike situation in Warren Trading, Reh was not in bus. of trading on Reservation. No pervasive fed regulation of isolated transaction of sale of these tractors. No presumption.

Only Indian interest was not to be taken advantage of. But result here would have been same if Indians had bought tractors in Phoenix.

Mr. Justice Rehnquist

Affirm

No.

Warren is quite different.

Mr. Justice Stevens

Affirm

Agree with me.
SUPREME COURT OF THE UNITED STATES

No. 78-1604

Central Machinery Company,

Appellant,

v.

Arizona State Tax Commission.

On Appeal from the Supreme Court of Arizona.

[March --, 1980]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents the question whether a State may tax the sale of farm machinery to an Indian tribe when the sale took place on an Indian reservation and was made by a corporation that did not reside on the reservation and was not licensed to trade with Indians.

I

Appellant is a corporation chartered by and doing business in Arizona. In 1973 it sold 11 farm tractors to Gila River Farms, an enterprise of the Gila River Indian Tribe. The Tribe is federally recognized and is governed by a constitution adopted pursuant to the Indian Reorganization Act, 25 U. S. C. § 476. Gila River Farms conducts farming operations on tribal and individual trust land within the Gila River Reservation, which was established in Arizona by the Act of February 28, 1859, ch. 56, 11 Stat. 388, 401.

Appellant's salesman solicited the sale of these tractors on the reservation, the contract was made there, and payment for and delivery of the tractors also took place there. Appellant does not have a permanent place of business on the reservation, and it is not licensed under 25 U. S. C. §§ 261-264 and 25 CFR Part 251 to engage in trade with Indians on reservations. The transaction was approved, however, by the Bureau of Indian Affairs.

The tax amounts to a percentage of the gross receipts of the taxable entity. The tax is assessed against the seller of goods, not against the purchaser. In this case, appellant added the amount of this tax—$2,916.62—as a separate item to the price of the tractors, thereby increasing by that amount the total purchase price paid by Gila River Farms. Appellant paid this tax to the State under protest and instituted state administrative proceedings to claim a refund. The administrative

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1 At the time of the transaction in question, Ariz. Rev. Stat. Ann. § 42-1309 (1973 Supp.) provided:

"A. There is levied and there shall be collected ... privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales, or gross income, as the case may be, in accordance with the schedule as set forth in §§ 42-1310 through 42-1315."


"A. The tax imposed by subsection A of § 42-1309 shall be levied and collected at an amount equal to two per cent of the gross proceeds of sales or gross income from the business upon every person engaging or continuing within this state in the business of selling any tangible personal property whatever at retail."


"A. There is levied and shall be collected by the department of revenue a tax:

"1. On the privilege of doing business in this state, measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application, against values, gross proceeds or sales, or gross income, as the case may be, in accordance with the provisions and schedules as set forth in [§§ 42-1301 et seq.], at rates equal to fifty per cent of the rates imposed in such article."

It is stipulated that appellant will pay over any tax refund to Gila River Farms.
claim was denied, and appellant then filed this action in state
court, contending that federal regulation of Indian trading
pre-empted application of the state tax to the transaction in
question. The Superior Court for Maricopa County held that
the State had no jurisdiction to tax the transaction, and
accordingly it ordered a refund. The Supreme Court of Ari­
We noted probable jurisdiction, — U. S. — (1979), and
now reverse.

II
In 1790, Congress passed a statute regulating the licensing
of Indian traders. Act of July 22, 1790, ch. 33, 1 Stat. 137.
Ever since that time, the Federal Government has comprehen­sively regulated trade with Indians to prevent "fraud and
imposition" upon them. H. R. Rep. No. 474, 23d Cong., 1st
Sess., 11 (1834) (committee report with respect to Indian
In the current regulatory scheme, the Commissioner of Indian
Affairs has "the sole power and authority to appoint traders
to the Indian tribes and to make . . . rules and regulations . . .
specifying the kind and quantity of goods and the prices at
which such goods shall be sold to the Indians." 25 U. S. C.
§ 261. All persons desiring to trade with Indians are subject
to the Commissioner's authority. 25 U. S. C. § 262. The
President is authorized to prohibit the introduction of any
article into Indian land. 25 U. S. C. § 263. Penalties are
provided for unlicensed trading, introduction of goods, or
residence on a reservation for the purpose of trade. 25
U. S. C. § 264. The Commissioner has promulgated detailed
regulations to implement these statutes. 25 CFR Part 251.
In Warren Trading Post Co. v. Arizona Comm'n, 380 U. S.
685 (1965), the Court unanimously held that these "appar­ently all-inclusive regulations and the statutes authorizing
them," id., at 690, prohibited the State of Arizona from impos-
ing precisely the same tax as is at issue in the present case on the operator of a federally licensed retail trading post located on a reservation. We determined that these regulations and statutes are "in themselves sufficient to show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders." Ibid. We noted that the Tribe had been left "largely free to run the reservation and its affairs without state control, a policy which has automatically relieved Arizona of all burdens of carrying on those same responsibilities." Ibid. See White Mountain Apache Tribe v. Bracker, — U. S. —, — (1980).

There are only two distinctions between Warren Trading Post, supra, and the present case: appellant is not a licensed Indian trader, and it does not have a permanent place of business on the reservation. The Supreme Court of Arizona concluded that these distinctions indicated that federal law did not bar imposing the transaction privilege tax on appellant. We disagree.

The contract of sale involved in the present case was executed on the Gila River Reservation, and delivery and

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8It is irrelevant that the sale was made to a tribal enterprise rather than to the Tribe itself. See Mescalero Apache Tribe v. Jones, 411 U. S. 145, 157, n. 13 (1973). Nor may appellee distinguish the present case from Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U. S. 685 (1965), by contending that the tax at issue in this case falls upon the seller of goods and not the buyer because it is a tax on the privilege of doing business in Arizona rather than a sales tax. The tax at issue in the present case is precisely the same tax involved in Warren Trading Post, supra. The argument made by appellee in the present case was used by the Supreme Court of Arizona in Warren Trading Post to uphold imposition of the tax. Warren Trading Post Co. v. Moore, 95 Ariz. 110, 387 P. 2d 809 (1963). Our reversal of that decision recognized that, regardless of the label placed upon this tax, its imposition as to on-reservation sales to Indians could "disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair and unreasonable by the Indian Commission." 380 U. S., at 691. See id., at 685-686, and n. 1.
payment were effected there. Under the Indian trader statutes, 25 U. S. C. §§ 261–264, this transaction is plainly subject to federal regulation. It is irrelevant that appellant is not a licensed Indian trader. Indeed, the transaction falls squarely within the language of 25 U. S. C. § 264, which makes it a criminal offense for "any person . . . to introduce goods, or to trade" without a license "in the Indian country, or on any Indian reservation." It is the existence of the Indian trader statutes, then, and not their administration, that pre-exempts the field of transactions with Indians occurring on reservations.4

Nor is it relevant that appellant did not maintain a permanent place of business on the reservation. The Indian trader statutes and their implementing regulations apply no less to a nonresident person who sells goods to Indians on a reservation than they do to a resident trader. See 25 U. S. C. § 262 ("[a]ny person desiring to trade with the Indians or on an Indian reservation" subject to regulatory authority of Commissioner of Indian Affairs); 25 U. S. C. § 263 ("President is authorized . . . to prohibit the introduction of goods . . . into the country belonging to any Indian tribe"); 25 U. S. C. § 264 (making it an offense for "[a]ny person" to introduce goods or to trade on a reservation without a license). Indeed, an implementing regulation expressly provides for the licensing of "itinerant peddlers," 25 CFR § 251.9 (b), who are by definition nonresidents, see 25 CFR § 252.3 (i). One of the fundamental purposes of these statutes and regulations—to protect Indians from becoming victims of fraud in dealings with persons selling goods—would be easily circumvented if a seller could avoid federal regulation simply by failing to

4 In any event, it should be recognized that the transaction at issue in this case was subjected to comprehensive federal regulation. Although appellant was not licensed to engage in trading with Indians, the Bureau of Indian Affairs had approved both the contract of sale for the tractors in question and the tribal budget, which allocated money for the purchase of this machinery.
adopt a permanent place of business on a reservation or by failing to obtain a federal license.

Since the transaction in the present case is governed by the Indian trader statutes, federal law pre-empts the asserted state tax. As we held in Warren Trading Post Co., supra, at 691, n. 18, by enacting these statutes Congress "has undertaken to regulate reservation trading in such a comprehensive way that there is no room for the States to legislate on the subject." It may be that in light of modern conditions the State of Arizona should be allowed to tax transactions such as the one involved in this case. Until Congress repeals or amends the Indian trader statutes, however, we must give them "a sweep as broad as [their] language," United States v. Price, 383 U. S. 787, 801 (1966), and interpret them in light of the intent of the Congress that enacted them, see Wilson v. Omaha Indian Tribe, — U. S. —, — (1979); Oliphant v. Suquamish Indian Tribe, 435 U. S. 191, 206 (1978). 8

The decision of the Supreme Court of Arizona is

Reversed.

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8 We decline appellee's invitation to re-examine our conclusion in Warren Trading Post, 380 U. S., at 691, n. 18, that the Buck Act, 4 U. S. C. §§ 105–110, does not permit States to tax transactions on Indian reservations.
Mr. Justice,

Mr. Justice Marshall has just circulated the opinion for reversal in this case. I guess that the opinion for reversal in the companion case, No. 78-1177, White-Mountain Apache Tribe v. Bracker, will be around shortly.

The vote for reversal in this case was 5-4, with PS, LFP, WHR, and JPS in dissent. The vote for reversal in White Mountain was 6-3, since you switched sides. The files do not show whether Mr. Justice Stewart has assigned these dissents, but he certainly will not assign them to you because you are the only Justice who distinguished the two cases.

I recommend that you await the dissenting opinion in both cases. If you then continue to believe that the two cases are different, you may have to write a short opinion explaining your view. Although it would be difficult to write such an opinion until we know what the Justices who dissent in both cases have to say, I could attempt a rough draft after I've finished Cuyler v. Sullivan, a Court opinion.
March 15, 1980

78-1604 Central Machinery v. Arizona

Dear Thurgood:

In accordance with my vote at the Conference, I will await the dissent.

Sincerely,

Mr. Justice Marshall

1fp/ss

cc: The Conference
March 17, 1980

Re: 78-1604 - Central Machinery v. Arizona

Dear Thurgood:

    I shall in due course circulate a short dissenting opinion.

    Sincerely yours,

Mr. Justice Marshall

Copies to the Conference
March 18, 1980

RE: No. 78-1604 Central Machinery Co. v. Arizona State Tax Commission

Dear Thurgood:

I agree.

Sincerely,

[Signature]

Mr. Justice Marshall

cc: The Conference
March 20, 1980

Re: 78-1604 - Central Machinery Company

Dear Thurgood,

Please join me.

Sincerely yours,

Mr. Justice Marshall

Copies to the Conference

cmc
March 21, 1980

Re: No. 78-1604 - Central Machinery Company v. Arizona State Tax Commission

Dear Thurgood:

Please join me.

Sincerely,

[Signature]

Mr. Justice Marshall

cc: The Conference
April 9, 1980

Re: 78-1604 – Central Machinery v. Arizona

Dear Thurgood:

As I should have written sometime ago, I am waiting for Potter's dissent.

Respectfully,

[Signature]

Mr. Justice Marshall

Copies to the Conference
Mr. Justice,

This draft now states that you join the Court's opinion in White-Mountain-Apache. After Ellen and I discussed the similarities between Warren-Trading-Post and White-Mountain Apache, we both agreed with my original conclusion in the bench memo that there is no reasonable way to say that Warren is good law and still to hold that the federal regulations in White Mountain do not occupy the field. The regulatory scheme at issue in White-Mountain is at least as pervasive as that in Warren. Furthermore, we agreed that Mr. Justice Marshall's draft opinion does a good job of not relying exclusively on occupation-of-the-field; indeed, the first part of this opinion goes to some lengths to show that there is a need to balance competing considerations. Finally, I just found a new article on the mineral extraction problem, which I mentioned to you, that suggests the statutory pattern found in that area will present a host of issues on which the Court's opinion in White-Mountain will not bear directly. In sum, I think that White-Mountain's possible effect on the difficult mineral extraction issues will be no greater than the effect that Warren already would have if it's recognized as good law.

Greg
Central Machinery Company,  
Appellant,  
78-1604 v.  
Arizona State Tax Commission,
White Mountain Apache Tribe  
et al., Petitioners,  
78-1177 v.  
Robert M. Bracker et al.

On Appeal from the Supreme Court of Arizona.
On Writ of Certiorari to the Court of Appeals of Arizona, Division One.

[May —, 1980]

Mr. Justice Powell, dissenting in No. 78-1604 and concurring in No. 78-1177.

I write separately because I would distinguish Central Machinery Co. v. Arizona State Tax Comm'n, ante, at — (No. 78-1604), from White Mountain Apache Tribe v. Bracker, ante, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U. S. 685 (1965). But Warren Trading Post simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court's opinion in White Mountain Apache Tribe, but I dissent from its decision in Central Machinery.

I

Central Machinery

Warren Trading Post held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The
company operated under a federal license, and it was subject to the federal regulatory scheme authorized by 25 U.S.C. §§ 261-264. "These apparently all-inclusive regulations," the Court concluded, "show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." 380 U.S., at 690.

The Court today is too much persuaded by the superficial similarity between Warren Trading Post and Central Machinery. The Court mistakenly concludes that a company having no license to trade with the Indians and no place of business within a reservation is engaged in "the business of Indian trading on reservations ...." Ibid. Although "any person" desiring to sell goods to Indians inside a reservation must secure federal approval, see 25 U.S.C. §§ 262, 264, the federal regulations—and the facts of this case—show that a person who makes a single approved sale need not become a fully regulated Indian trader. Even itinerant peddlers who engage in a pattern of selling within a reservation are merely "considered as traders" for purposes of the licensing requirement. 25 CFR § 251.9 (b). "The business of a licensed trader," in fact, "must be managed by the bonded principal, who must habitually reside upon the reservation ...." 25 CFR § 251.14. Since Warren Trading Post involved a resident trader subject to the complete range of federal regulation, the Court had no occasion to consider whether federal regulation also pre-empts state taxation of a seller who enters a reservation to make a single transaction.2

1 The regulation dealing with itinerant peddlers was promulgated after the decision in Warren Trading Post. See 30 Fed. Reg. 8267 (1965). Thus, the regulations before the Court in Warren Trading Post required all licensed Indian traders to conduct their businesses under the management of an habitual resident upon the reservation. 25 CFR § 251.14 (19-—).

2 At oral argument, counsel for Central Machinery conceded that the State could have taxed the transaction in question if it had been com-
Our most recent cases undermine the notion that 25 U. S. C. §§ 261-264 occupy the field so as to pre-empt all state regulation affecting licensed Indian traders. The unanimous Court in Moe v. Salish and Kootenai Tribes, 425 U. S. 463, 481-483 (1976), concluded that a State could require tribal retailers to prepay a tax validly imposed on non-Indian customers. Rejecting an argument based on Warren Trading Post, the Court concluded that federal laws "‘passed to protect and guard [the Indians] only affect the operation, within the [reservation], of such state laws as conflict with the federal enactments.’" 425 U. S., at 483, quoting United States v. McGowan, 302 U. S. 535, 539 (1938). Today in Washington v. Confederated Tribes, ante, at — (slip op., at 22-23), the Court holds that a State can require licensed traders to keep detailed tax records of their sales of both Indians and non-Indians. Cf. Confederated Tribes v. Washington, 446 F. Supp. 1339, 1347, 1358-1359 (ED Wash. 1978).

Finally, unlike taxes imposed upon an Indian trader engaged in a continuous course of dealing within the reservation, the tax assessed against Central Machinery does not "to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians except as authorized by Acts of Congress or by valid regulations promulgated under those Acts." Warren Trading Post, 380 U. S., at 691. In this case, the Bureau of Indian Affairs approved all aspects of the transaction at the firm's usual place of business. Tr. of Oral Arg. 7. Thus, Central Machinery's argument reduces to the proposition that the locus of the transaction is dispositive. Quite apart from the opportunities for tax evasion that it creates, this position is unsound. Persons who make an unauthorized sale to Indians upon a reservation can be prosecuted. 25 U. S. C. § 264; see United States ex rel. Hornell v. One 1976 Chevrolet Station Wagon, 585 F. 2d 978 (CA9 1978). But that certainly does not prove that all persons who make an authorized sale are subject to the pervasive regulation considered in Warren Trading Post. Criminal sanctions often define the bounds of otherwise unregulated conduct.
only sale Central Machinery made to the Gila River Indian Tribe. The contract price approved by the Bureau included costs attributable to the very tax that Central Machinery now seeks to recover. Ante, at — (slip op., at 1-2). Thus, the State's tax did not interfere with "the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable..." Warren Trading Post, supra. Since a seller not licensed to trade with the Indians must secure specific federal approval for each isolated transaction, there is no danger that ordinary state business taxes upon the seller will impair the Bureau's ability to prevent fraudulent or excessive pricing. To hold the seller immune from state taxes otherwise due upon a single transaction with the Indians gives the non-Indian seller a windfall or the Indian buyer an unwarranted advantage over all others who deal with the seller.

II

White Mountain Apache Tribe

White Mountain Apache Tribe presents a different situation. Petitioner Pinetop Logging Co. operates solely and continuously upon an Indian reservation under its contract with a tribal enterprise. Pinetop's daily operations are controlled by a comprehensive federal regulatory scheme designed to assure the Indian tribes the greatest possible return from their timber. Federal officials direct Pinetop's hauling operations down to such details as choice of equipment, selection of routes, speeds of travel, and dimensions of the loads. Ante, at — (slip op., at 10-11). Pinetop does all of the hauling at issue in this case over roads constructed, maintained, and regulated by the White Mountain Apache Tribe and the Bureau of Indian Affairs. The Bureau requires the Tribe and its contractors to repair existing roads and to construct new roads necessary for sustained logging. Pinetop exhausts a large percentage of its gross income in performing these contractual obligations. Ante, at — (slip op., at 11).
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Mr. Justice Powell, dissenting in No. 78-1604 and concurring in No. 78-1177

I write separately because I would distinguish Central Machinery Co. v. Arizona State Tax Comm’n, ante, at — (No. 78-1604), from White Mountain Apache Tribe v. Bracker, ante, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of Warren Trading Post Co. v. Arizona Tax Comm’n, 380 U. S. 685 (1965). But Warren Trading Post simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court’s opinion in White Mountain Apache Tribe, but I dissent from its decision in Central Machinery.

Central Machinery

Warren Trading Post held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The
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Our most recent cases undermine the notion that 25 U. S. C. §§ 261–264 occupy the field so as to pre-empt all state regulation affecting licensed Indian traders. The unanimous Court in Moe v. Salish and Kootenai Tribes, 425 U. S. 463, 481–483 (1976), concluded that a State could require tribal retailers to prepay a tax validly imposed on non-Indian customers. Rejecting an argument based on Warren Trading Post, the Court concluded that federal laws “‘passed to protect and guard [the Indians] only affect the operation, within the [reservation], of such state laws as conflict with the federal enactments.’” 425 U. S., at 483, quoting United States v. McGowan, 302 U. S. 535, 539 (1938). Today in Washington v. Confederated Tribes, ante, at — (No. 78–630) (slip op., at 22-23), the Court holds that a State can require licensed traders to keep detailed tax records of their sales of both Indians and non-Indians. Cf. Confederated Tribes v. Washington, 446 F. Supp. 1339, 1347, 1358–1359 (ED Wash. 1978).

Finally, unlike taxes imposed upon an Indian trader engaged in a continuous course of dealing within the reservation, the tax assessed against Central Machinery does not “to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians except as authorized by Acts of Congress or by valid regulations promulgated under those Acts.” Warren Trading Post, 380 U. S., at 691. In this case, the Bureau of Indian Affairs approved all aspects of the

Central Machinery’s argument reduces to the proposition that the locus of the transaction is dispositive. Quite apart from the opportunities for tax evasion that it creates, this position is unsound. Persons who make an unauthorized sale to Indians upon a reservation can be prosecuted. 25 U. S. C. § 264; see United States ex rel. Hornell v. One 1976 Chevrolet Station Wagon, 585 F. 2d 978 (CA9 1978). But that certainly does not prove that all persons who make an authorized sale are subject to the pervasive regulation considered in Warren Trading Post.
only sale Central Machinery made to the Gila River Indian Tribe. The contract price approved by the Bureau included costs attributable to the very tax that Central Machinery now seeks to recover. Ante, at — (slip op., at 1–2). Thus, the State's tax did not interfere with "the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable. . . ." Warren Trading Post, supra. Since a seller not licensed to trade with the Indians must secure specific federal approval for each isolated transaction, there is no danger that ordinary state business taxes upon the seller will impair the Bureau's ability to prevent fraudulent or excessive pricing. To hold the seller immune from state taxes otherwise due upon a single transaction with the Indians gives the non-Indian seller a windfall or the Indian buyer an unwarranted advantage over all others who deal with the seller.

II

White Mountain Apache Tribe

White Mountain Apache Tribe presents a different situation. Petitioner Pinetop Logging Co. operates solely and continuously upon an Indian reservation under its contract with a tribal enterprise. Pinetop's daily operations are controlled by a comprehensive federal regulatory scheme designed to assure the Indian tribes the greatest possible return from their timber. Federal officials direct Pinetop's hauling operations down to such details as choice of equipment, selection of routes, speeds of travel, and dimensions of the loads. Ante, at — (slip op., at 10–11). Pinetop does all of the hauling at issue in this case over roads constructed, maintained, and regulated by the White Mountain Apache Tribe and the Bureau of Indian Affairs. The Bureau requires the Tribe and its contractors to repair existing roads and to construct new roads necessary for sustained logging. Pinetop exhausts a large percentage of its gross income in performing these contractual obligations. Ante, at — (slip op., at 11).
Since the Federal Government, the Tribe, and its contractors are solely responsible for the roads that Pinetop uses, I "cannot believe that Congress intended to leave to the State the privilege of levying" road use taxes upon Pinetop's operations. See *Warren Trading Post*, 380 U.S., at 691. The State has no interest in raising revenues from the use of Indian roads that cost it nothing and over which it exercises no control. See *Washington v. Confederated Tribes*, ante, at — (slip op., at 25–27). The addition of these taxes to the road construction and repair expenses that Pinetop already bears also would interfere with the federal scheme for maintaining roads essential to successful Indian timbering. See 380 U.S., at 691. The Tribe or its contractors would pay twice for use of the same roads. This double exaction could force federal officials to reallocate work from non-Indian contractors to the tribal enterprise itself or to make costly concessions to the contractors. I therefore join the Court in concluding that this case "is in all relevant respects indistinguishable from *Warren Trading Post*." *Ante*, at — (slip op., at 16).

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SUPREME COURT OF THE UNITED STATES  

No. 78-1604  

Central Machinery Company,  
Appellant,  
v.  
Arizona State Tax Commission.  

[May —, 1980]  

Mr. Justice Stewart, dissenting.  

The question before us is whether the appellant is immune from a state tax imposed on the proceeds of the sale by it of farm machinery to an Indian tribe. The Court concludes that an affirmative answer is required by the rationale of Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U. S. 685, a case that is similar in some respects to this one. While I agree that Warren Trading Post, supra, states the relevant legal principles, I cannot agree that those principles lead to the result reached by the Court in this case. Accordingly, I dissent.

In Warren Trading Post, supra, the Court held that the State of Arizona may not impose the same tax involved here on the operator of a federally licensed retail trading business located on an Indian reservation. The Court determined that the “apparently all-inclusive [federal] regulations and the statutes authorizing them,” id., at 690, under which the trader in that case had been licensed, were “in themselves sufficient to show that Congress has taken the business of trading on reservations so fully in hand that no room remains for state laws imposing additional burdens on traders,” ibid.

As the Court recognizes, the circumstances of this case differ from those presented by Warren Trading Post, supra. Specifically, the appellant here is not a licensed Indian trader and does not have a permanent place of business on the
reservation. See ante, at 4. The Court considers these differences immaterial, however, apparently because, as it reads the relevant statutes, the appellant could have been subjected to regulation somewhat like that in Warren Trading Post, though in fact it was not. Thus the Court relies on 25 U. S. C. § 264, which makes it unlawful for "any person . . . to introduce goods, or to trade" without a license "in the Indian country, or on any Indian reservation."

Even assuming that the Court correctly reads the statutory language to reach anybody who sells goods "on any Indian reservation," I cannot understand why the Court ascribes to that fact the significance that it does. The question, after all, is not whether the appellant may be required to have a license, but rather, as the Arizona Supreme Court correctly believed, whether the state tax "runs afoul of any congressional enactment dealing with the affairs of reservation Indians," Arizona Tax Comm'n v. Central Machinery Co., 589 P. 2d 426, — (1978). This Court has consistently recognized that "'[e]nactments of the federal government passed to protect and guard its Indian wards only affect the operation, within the [reservation,] of such state laws as conflict with the federal enactments,'" Moe v. Confederated Salish and Kootenai Tribes, 425 U. S. 463, 483, quoting United States v. McGowan, 302 U. S. 535, 539.1 With regard to the determinative issue whether Arizona's tax in this case is inconsistent with federal law, the Court says only that "[i]t is the existence of the Indian trader statutes . . . that pre­empts the field of transactions with Indians occurring on reservations," ante, at 5 (footnote omitted), and that those statutes must be given "a sweep as broad as [their] lan-

1 As Mr. Justice Powell observes in his dissenting opinion, post, at 3, the Court in Moe v. Salish & Kootenai Tribes, 425 U. S. 463, rejected the contention that the Indian trader statutes occupy the field so completely as to pre-empt all state laws affecting those who trade on the reservation with reservation Indians.
guage," ante, at 6, quoting United States v. Price, 383 U. S. 787, 801.²

But the rationale of the decision in Warren Trading Post, supra, was not so simple as this. The grounds of that decision were twofold. First, as the Court today reiterates, a tax on the gross income of a licensed trader residing on the reservation could “disturb and disarrange the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable,” id., at 691. Second, the Court saw in that case no governmental justification to support the State’s “put[ting] financial burdens on [the trader] or the Indians with whom it deals in addition to those Congress or the tribes have prescribed,” ibid. Because Congress for nearly a century had “left the Indians . . . free to run the reservation and its affairs without state control,” Arizona had been “automatically relieved . . . of all burdens for carrying on those same responsibilities,” id., at 690. That being so, the Court did not “believe that Congress intended to leave to the State the privilege of levying this tax,” id., at 691.

Neither of these considerations is present here. First, although the appellant was obliged to obtain federal approval of the sale transaction in this case, see 25 U. S. C. §§ 262 and 264, it was not subjected to the much more comprehensive regulation that governs licensed traders engaged in a continuous course of dealing with reservation Indians. See 25 CFR Part 251. In these circumstances, the Court’s expressed belief that the minimal regulation to which the appellant was subject “leaves no room” for the state tax in this case strikes me as hyperbolic. Even were the appellant administratively required to possess a license, taxation of an isolated sale by it to the Indians simply would not jeopardize those federal

²The Court’s construction of the trader statutes, in fact, sweeps far more broadly than their language, no portion of which indicates a congressional intention to immunize anybody from state taxation.
and tribal interests involved in the thorough regulation of on-reservation merchants trading continuously with the Indians—the situation dealt with in Warren Trading Post, supra. There the financial burdens of state taxation would have impaired the Commissioner's ability to prescribe "the kind and quantity of goods and the prices at which such goods shall be sold to the Indians," 25 U. S. C. § 261, and might have threatened the very existence of the resident trader's enterprise, on which the tribe depended for its essential commerce. No similar risks exist in a case such as this one, involving an isolated sales transaction. The viability of the seller may be assumed from its willingness to trade, and the reasonableness of the terms of sale may be guaranteed, as they were in this case, by the Commissioner's review of them. It is true that the prices paid by the Indians might be lower if the appellant is immune from the tax. But that is hardly relevant. The Court has on more than one occasion sustained state taxation of transactions occurring on Indian reservations, notwithstanding the fact that the economic burden of the tax fell indirectly on the Indian Tribe or its members. See Washington v. Confederated Tribes, — U. S. —, —; Moe v. Salish & Kootenai Tribes, 425 U. S. 463. Cf. Mescalero Apache Tribe v. Jones, 411 U. S. 145, 148.

Second, the Court inexplicably ignores the State's wholly legitimate purpose in taxing the appellant, a corporation that does business within the State at large and presumably derives substantial benefits from the services provided by the State at taxpayer's expense.9 Aside from entering the reservation to solicit and execute the contract of sale and to re-
ceive payment, circumstances that are certain to characterize all sales to reservation Indians after today's decision, the appellant conducts its affairs in all respects like any other business to which the State's nondiscriminatory tax concededly applies. Thus, quite unlike the circumstances in Warren Trading Post, supra, the State in this case has not been relieved of all duties or responsibilities respecting the business it would tax. Yet, despite the settled teaching of the Court's decisions in this area that every relevant state interest is to be given weight, see Washington v. Confederated Tribes, supra; McClanahan v. Arizona State Tax Comm'n, 411 U. S. 164, 171; cf. White Mountain Apache Tribe v. Bracker, — U. S. —, —, the Court does not even consider the State's valid governmental justification for taxing the transaction here involved.

It is important to recognize the limits inherent in the principles of federal pre-emption on which the Warren Trading Post decision rests. Those limits make necessary in every case such as this a careful inquiry into pertinent federal, tribal, and state interests, without which a rational accommodation of those interests is not possible. Had such an inquiry been made in this case, I am convinced the Court could not have concluded that Arizona's exercise of the sovereign power to tax its non-Indian citizens had been pre-empted by federal law.
Mr. Justice Powell, dissenting and concurring.

I write separately because I would distinguish Central Machinery Co. v. Arizona State Tax Comm'n, ante, at — (No. 78-1604), from White Mountain Apache Tribe v. Bracker, ante, at — (No. 78-1177). I agree with the Court that a non-Indian contractor continuously engaged in logging upon a reservation is subject to such pervasive federal regulation as to bring into play the pre-emption doctrine of Warren Trading Post Co. v. Arizona Tax Comm'n, 380 U. S. 685 (1965). But Warren Trading Post simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore join the Court’s opinion in White Mountain Apache Tribe, but I dissent from its decision in Central Machinery.

I

Central Machinery

Warren Trading Post held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The
company operated under a federal license, and it was subject
to the federal regulatory scheme authorized by 25 U. S. C.
§§ 261–264. “These apparently all-inclusive regulations,” the
Court concluded, “show that Congress has taken the business
of Indian trading on reservations so fully in hand that no
room remains for state laws imposing additional burdens upon
traders.” 380 U. S., at 690.

The Court today is too much persuaded by the superficial
similarity between Warren Trading Post and Central Ma­
chinery. The Court mistakenly concludes that a company
having no license to trade with the Indians and, no place of
business within a reservation is engaged in “the business of
Indian trading on reservations. . . .” Ibid. Although “any
person” desiring to sell goods to Indians inside a reservation
must secure federal approval, see 25 U. S. C. §§ 262, 264, the
federal regulations—and the facts of this case—show that a
person who makes a single approved sale need not become a
fully regulated Indian trader. Even itinerant peddlers who
engage in a pattern of selling within a reservation are merely
“considered as traders” for purposes of the licensing require­
ment. 25 CFR § 251.9 (b). “The business of a licensed
trader,” in fact, “must be managed by the bonded principal,
who must habitually reside upon the reservation. . . .” 25
CFR § 251.14.1 Since Warren Trading Post involved a resi­
dent trader subject to the complete range of federal regula­
tion, the Court had no occasion to consider whether federal
regulation also pre-empts state taxation of a seller who enters
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all licensed Indian traders to conduct their businesses under the manage­
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2 At oral argument, counsel for Central Machinery conceded that the
State could have taxed the transaction in question if it had been com­
pleted at the firm’s usual place of business. Tr. of Oral Arg. 7. Thus,
Our most recent cases undermine the notion that 25 U. S. C. §§ 261–264 occupy the field so as to pre-empt all state regulation affecting licensed Indian traders. The unanimous Court in Moe v. Salish and Kootenai Tribes, 425 U. S. 463, 481–483 (1976), concluded that a State could require tribal retailers to prepay a tax validly imposed on non-Indian customers. Rejecting an argument based on Warren Trading Post, the Court concluded that federal laws “‘passed to protect and guard [the Indians] only affect the operation, within the [reservation], of such state laws as conflict with the federal enactments.’” 425 U. S., at 483, quoting United States v. McGowan, 302 U. S. 535, 539 (1938). Today in Washington v. Confederated Tribes, ante, at — (No. 78–610) (slip op., at 22–23), the Court holds that a State can require licensed traders to keep detailed tax records of their sales to both Indians and non-Indians. Cf. Confederated Tribes v. Washington, 446 F. Supp. 1339, 1347, 1358–1359 (ED Wash. 1978) (three-judge court).

Finally, unlike taxes imposed upon an Indian trader engaged in a continuous course of dealing within the reservation, the tax assessed against Central Machinery does not “to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians except as authorized by Acts of Congress or by valid regulations promulgated under those Acts.” Warren Trading Post, 380 U. S., at 691. In this case, the Bureau of Indian Affairs approved all aspects of the

Central Machinery's argument reduces to the proposition that the locus of the transaction is dispositive. Quite apart from the opportunities for tax evasion that it creates, this position is unsound. Persons who make an unauthorized sale to Indians upon a reservation can be prosecuted. 25 U. S. C. § 264; see United States ex rel. Hornell v. One 1978 Chevrolet Station Wagon, 585 F. 2d 978 (CA9 1978). But that certainly does not prove that all persons who make an authorized sale are subject to the pervasive regulation considered in Warren Trading Post.
only sale Central Machinery made to the Gila River Indian Tribe. The contract price approved by the Bureau included costs attributable to the very tax that Central Machinery now seeks to recover. Ante, at — (slip op., at 1–2). Thus, the State's tax did not interfere with "the statutory plan Congress set up in order to protect Indians against prices deemed unfair or unreasonable. . . ." Warren Trading Post, supra. Since a seller not licensed to trade with the Indians must secure specific federal approval for each isolated transaction, there is no danger that ordinary state business taxes upon the seller will impair the Bureau's ability to prevent fraudulent or excessive pricing. To hold the seller immune from state taxes otherwise due upon a single transaction with the Indians gives the non-Indian seller a windfall or the Indian buyer an unwarranted advantage over all others who deal with the seller.

II

White Mountain Apache Tribe

White Mountain Apache Tribe presents a different situation. Petitioner Pinetop Logging Co. operates solely and continuously upon an Indian reservation under its contract with a tribal enterprise. Pinetop's daily operations are controlled by a comprehensive federal regulatory scheme designed to assure the Indian tribes the greatest possible return from their timber. Federal officials direct Pinetop's hauling operations down to such details as choice of equipment, selection of routes, speeds of travel, and dimensions of the loads, Ante, at — (slip op., at 10–11). Pinetop does all of the hauling at issue in this case over roads constructed, maintained, and regulated by the White Mountain Apache Tribe and the Bureau of Indian Affairs. The Bureau requires the Tribe and its contractors to repair existing roads and to construct new roads necessary for sustained logging. Pinetop exhausts a large percentage of its gross income in performing these contractual obligations. Ante, at — (slip op., at 11).
Since the Federal Government, the Tribe, and its contractors are solely responsible for the roads that Pinetop uses, I "cannot believe that Congress intended to leave to the State the privilege of levying" road use taxes upon Pinetop's operations. See Warren Trading Post, 380 U. S., at 691. The State has no interest in raising revenues from the use of Indian roads that cost it nothing and over which it exercises no control. See Washington v. Confederated Tribes, ante, at — (slip op., at 25-27).\(^8\) The addition of these taxes to the road construction and repair expenses that Pinetop already bears also would interfere with the federal scheme for maintaining roads essential to successful Indian timbering. See 380 U. S., at 691. The Tribe or its contractors would pay twice for use of the same roads. This double exaction could force federal officials to reallocate work from non-Indian contractors to the tribal enterprise itself or to make costly concessions to the contractors. I therefore join the Court in concluding that this case "is in all relevant respects indistinguishable from Warren Trading Post." Ante, at — (slip op., at 16).

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May 19, 1980

Re: 78-1604 - Central Machinery v. Arizona State Tax Comm'n

Dear Potter:

Please join me.

Respectfully,

Mr. Justice Stewart

Copies to the Conference
May 20, 1980

Re: No. 78-1604 Central Machinery Co. v. Arizona State Tax Commission

Dear Potter:

Please join me in your dissent in this case.

Sincerely,

Mr. Justice Stewart

Copies to the Conference
May 21, 1980

RE: 78-1604 - Central Machinery Co. v. Arizona State Tax Commission

Dear Thurgood:

I join.

Regards,

Mr. Justice Marshall

Copies to the Conference
May 21, 1980

78-1604 Central Machinery v. Arizona State Tax Commission

Dear Potter:

Please add my name to your dissenting opinion.

Sincerely,

Mr. Justice Stewart

1fp/ss

cc: The Conference
|----------|---------|------|---------|------|---------|---------|---------|--------|

78-1604 Central Machinery v. Ariz. State Tax
MR. JUSTICE POWELL, dissenting in No. 78-1604 and concurring in the judgment in No. 78-1177.

I write separately to explain my reasons for distinguishing *Central Machinery Co. v. Arizona State Tax Comm’n*, ante, at ---- (No. 78-1604), from *White Mountain Apache Tribe v. Bracker*, ante, at ---- (No. 78-1177). My view is that the preemption analysis in *Warren Trading Post Co. v. Arizona Tax Comm’n*, 380 U.S. 685 (1965), while brought into play by the federal regulation of a non-Indian company continuously engaged in hauling over reservation roads, simply does not apply to routine state taxation of a non-Indian corporation that makes a single sale to reservation Indians. I therefore dissent from the judgment in *Central Machinery* and concur in the judgment in *White Mountain Apache Tribe*.
regularly engaged in retail trading with the Indians upon a reservation. The company operated under a federal license, and it was subject to the federal regulatory scheme authorized by 25 U.S.C. §§ 261-264. "These apparently all-inclusive regulations," the Court concluded, show that "Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." 380 U.S., at 690.

The Court today is too much persuaded by the superficial similarity between Warren Trading Post and Central Machinery. In the first place, the Court mistakenly concludes that a company having no license to trade with the Indians and no place of business within a reservation is engaged in "the business of Indian trading on reservations." Ibid. Although "any person" desiring to sell goods to Indians inside a reservation must secure a federal license, see 25 U.S.C. §§ 262, 264, the federal regulations—and the facts of this case—clearly show that not every person who makes a single approved sale is a fully regulated Indian trader. Even itinerant peddlers who engage in a pattern of selling within a reservation are merely "considered as traders" for purposes of the licensing requirement. 25 C.F.R. § 251.9(b). "The business of a licensed trader," in fact, "must be managed by the bonded principal, who
must habitually reside upon the reservation.

Since Warren Trading Post involved a resident trader subject to the complete range of federal regulation, the Court had no occasion to consider whether the federal scheme also preempts state taxation of a seller that enters a reservation to make a single transaction.

In the second place, our most recent cases undermine the notion that 25 U.S.C. §§ 261-264 occupy the field so as to preempt all state regulation affecting licensed Indian traders. The unanimous Court in Moe v. Salish and Kootenai Tribes, 425 U.S. 463, 482-483 (1976), concluded that a state could require tribal retailers to prepay a tax validly imposed on non-Indian customers. Rejecting an argument based on Warren Trading Post, the Court concluded that federal laws "'passed to protect and guard [the Indians] only affect the operation, within the [reservation], of such state laws as conflict with the federal enactments.'" 425 U.S., at 483, quoting United States v. McGowan, 302 U.S. 535, 539 (1938). Today in Washington v. Confederated Tribes, ante, at ---, ---, the Court holds that a state can require licensed traders to keep detailed tax records of their sales to both Indians and non-Indians. Cf. Confederated Tribes v. Washington, 446 F. Supp. 1339, 1347, 1358-1359 (ED Wash. 1978).
Finally, unlike taxes imposed upon an Indian trader engaged in a continuous course of dealing within the reservation, the tax assessed against Central Machinery does not "to a substantial extent frustrate the evident congressional purpose of ensuring that no burden shall be imposed upon Indian traders for trading with Indians except as authorized by Acts of Congress or by valid regulations promulgated under those Acts." Warren Trading Post, 380 U.S., at 691. In this case, the Bureau of Indian Affairs approved all aspects of the only sale Central Machinery made to the Gila River Indian Tribe. The contract price approved by the Bureau included costs attributable to the very tax that Central Machinery now seeks to recover. Ante, --- (slip op., at 1-2). Thus, the State's tax obviously did not interfere with "the statutory plan Congress established in order to protect Indians against prices deemed unfair or unreasonable. . . ." 380 U.S., at 691. Since a seller not licensed to trade with the Indians must secure specific federal approval for each isolated transaction, there is no danger that ordinary state business taxes upon the seller will impair the Bureau's ability to prevent fraudulent or excessive pricing. To hold that a seller immune from state taxes otherwise due upon a single transaction with the Indians gives the non-Indian seller a windfall or the Indian buyer an unwarranted advantage over all others who deal with the seller.
solely and continuously upon an Indian reservation. It has contracted with a tribal enterprise to perform logging operations that the Indians could not accomplish as economically. Pinetop's daily operations are controlled by an extensive federal regulatory scheme designed to assure the Indian tribes the greatest possible return from their timber. Federal officials direct Pinetop's hauling operations down to such details as choice of equipment, selection of routes, speeds of travel, and dimensions of the loads. Ante, at -- (slip op., at 10-11). More importantly, Pinetop does all of the hauling at issue in this case over roads constructed, maintained, and regulated by the White Mountain Apache Tribe and the Bureau of Indian Affairs. The Bureau requires the Tribe and its contractors to repair existing roads and to construct new roads necessary for sustained logging. Pinetop exhausts a large percentage of its receipts in performing these contractual obligations. Ante, at -- (slip op., at 11).

Since the Federal Government, the Tribe, and its contractors are solely responsible for the roads that Pinetop uses, I "cannot believe that Congress intended to leave to the
State the privilege of levying road use taxes upon Pinetop's operations. See Warren Trading Post, 380 U.S., at 691. The State simply has no interest in raising revenues from the use of Indian roads that cost it nothing and over which it exercises no control. See Washington v. Confederated Tribes, ante, at --- (slip op., at 25-27). Furthermore, the addition of such taxes to the road construction and repair expenses that Pinetop already bears would interfere with the federal scheme for maintaining the roads essential to successful Indian timbering. See 380 U.S., at 691. The Tribe or its contractors would pay twice for use of the same roads. This double exaction would force federal officials to reallocate work from non-Indian contractors to the tribal enterprise itself or to make costly concessions to the contractors. To the extent that the Tribe ultimately bears the additional burden, the state tax undercuts the federal policies designed to assure the Indians "the benefit of whatever profit [their forest] is capable of yielding. . . ." 25 C.F.R. § 141.3(a)(3).
MR. JUSTICE POWELL, dissenting in No. 78-1604 and concurring in No. 78-1177.

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Warren Trading Post held that Arizona could not levy its transaction privilege tax against a company regularly engaged in retail trading with the Indians upon a reservation. The company operated under a federal license, and it was subject to the federal regulatory scheme authorized by 25 U.S.C. §§ 261-264. "These apparently all-inclusive regulations," the Court concluded, "show that Congress has taken the business of Indian trading on reservations so fully in hand that no room remains for state laws imposing additional burdens upon traders." 380 U.S., at 690.

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Since the Federal Government, the Tribe, and its contractors are solely responsible for the roads that Pinetop uses, I "cannot believe that Congress intended to leave to the State the privilege of levying" road use taxes upon Pinetop's operations. See Warren Trading Post, 380 U.S., at 691. The State has no interest in raising revenues from the use of Indian roads that cost it nothing and over which it exercises no control. See Washington v. Confederated Tribes, ante, at --- (slip op., at 25-27). The addition of these taxes to the road construction and repair expenses that Pinetop already bears also would interfere with the federal scheme for maintaining roads essential to successful Indian timbering. See 380 U.S., at 691. The Tribe or its contractors would pay twice for use of the same roads. This double exaction could force federal officials to reallocate work from non-Indian contractors to the tribal enterprise itself or to make costly concessions to the contractors. I therefore join the Court in concluding that this case "is in all relevant respects indistinguishable from Warren Trading Post." Ante, at --- (slip op., at 16).
1. The regulation dealing with itinerant peddlers was promulgated after the decision in *Warren Trading Post*. See 30 Fed. Reg. 8267 (1965). Thus, the regulations before the Court in *Warren Trading Post* required all licensed Indian traders to conduct their businesses under the management of an habitual resident upon the reservation. 25 C.F.R. § 251.14 (19--).

2. At oral argument, counsel for Central Machinery conceded that the State could have taxed the transaction in question if it had been completed at the firm's usual place of business. Tr. of Oral Arg. 7. Thus, Central Machinery's argument reduces to the proposition that the locus of the transaction is dispositive. Quite apart from the opportunities for tax evasion that it creates, this position is unsound. Persons who make an unauthorized sale to Indians upon a reservation can be prosecuted. 25 U.S.C. § 264; see *United States ex rel. Hornell v. One 1976 Chevrolet Station Wagon*, 585 F.2d 978 (CA9 1978). But that certainly does not prove that all persons who make an authorized sale are subject to the pervasive
regulation considered in Warren Trading Post. Criminal sanctions often define the bounds of otherwise unregulated conduct.