McCLANAHAN V. ARIZONA

STATE TAX COMMISSION

411 U.S. 164 (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-autonomous 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...

... 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, supra; Metlakatla Indian Community v. Egan,* 369 U.S. 45 (1962); *Oklahoma Tax Comm'n 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. Gay* , 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., Mescalero Apache Tribe v. Jones, ante,* p. 145. 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 141 years ago when Mr. 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 guarantied by the United States." *Worcester v. Georgia*, 6 Pet. 515, 557 (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." *Id*., 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, [fn-4] the rationale of the case plainly extended to state taxation within the reservation as well. Thus, in *The Kansas Indians* , 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." *Id*., at 755. See also *The New York Indians*, 5 Wall. 761 (1867).

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

fn-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).

income tax. [fn-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 Comm'n*, 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." *Id*., at 686-687. [fn-6] As a leading text on Indian problems 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." U.S. Dept. of the Interior, Federal Indian Law 845 (1958) (hereafter 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 141 years since Worcester was decided. Not surprisingly, the doctrine has undergone considerable evolution in response to changed circumstances. As noted above, the doctrine

fn-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 Comm'n v. United States, 319 U.S. 598 (1943).*

fn-6The 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. *14 Ariz. App. 452, 455, 484 P. 2d 221, 224.* But although the Court was, no doubt, influenced by the federal licensing requirements, 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 Comm'n, 380 U.S. 685, 690 (1965).*

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 Comm'n 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 essential tribal relations were not involved and where the rights 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 infringed on the right of reservation Indians to make their own laws and be ruled by them." *Id*., at 219-220 (footnote omitted).

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. [fn-7] See *Mescalero Apache Tribe v. Jones*, ante, p. 145. 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). [fn-8]

fn-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 (1959); Perrin v. United States, 232 U.S. 478, 482 (1914);* Federal Indian Law 3.

fn-8The 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.[fn-9] They have the right to vote,[fn-10] to use state courts,[fn-11] and they receive some state services. [fn-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 resided." *United States v. Kagama*, 118 U.S., at 381-382...

... 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-

fn-9 See 8 U. S. C. § 1401 (a)(2).

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

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

fn-12 The court below pointed out that Arizona was expending tax monies for education and welfare within the confines of the Navajo Reservation. 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. Moreover, "conferring rights and privileges on 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*, 5 Wall., at 757.

determination. But even if the State's premise were accepted, we reject the suggestion that the *Williams* test was meant to apply in this situation. It must be remembered that cases applying the *Williams* test have dealt principally with situations involving non-Indians. See also *Organized Village of Kake v. Egan, 369 U.S., at 75-76.* 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 protect its interest 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 treaty 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.[fn-20] On the contrary, this Court expressly rejected such a position only two years ago. [fn-21] In *Kennerly v. District Court*, 400 U.S. 423 (1971), the Blackfoot 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." *Id., 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.

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 Comm'n, supra,* wherein we invalidated an income tax which Arizona had attempted to impose

fn-20 *Organized Village of Kake v. Egan*, 369 U.S. 60 (1962), is not such a case. See n. 15, supra.

fn-21 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).

within the Navajo Reservation. However relevant, the land-income distinction may be in other contexts, it is plainly irrelevant when, as here, the tax is resisted because the State is totally lacking in jurisdiction over both the people and the lands it seeks to tax. In such a situation, the State has no more jurisdiction to each income generated on reservation lands than to tax the land itself.

Finally, we cannot accept the notion that it is irrelevant "whether the . . . state income tax infringes on [appellant's] rights as an individual Navajo Indian," as the State Court of Appeals maintained. 14 Ariz. App., at 454, 484 P. 2d, at 223. 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 (emphasis added). 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.

QUESTIONS AND COMMENTS

1. To what extent does this case turn upon the existence of a reservation?

2. Does Worcester v. Georgia have any importance in determining the applicability of state law to lands allocated to Indians upon the break-up of a reservation?