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Taxation and the Preservation of Tribal Political and Geographical Autonomy

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Felix Cohen defined a tribe's taxing authority as "an inherent attribute of tribal sovereignty" essential to its political survival.[1] This broad taxing power has emerged as one dimension of tribal sovereignty that has enabled a tribe to maintain its political separation from state and county governments. In addition, the extent of a tribe's assessment power applied to both tribal members and nontribal residents of a reservation, and that power alone, often prohibited a state from assessing property found inside a reservation. Today, this distinction has made complex conflicts out of tribal tax and state tax confrontations as both tribes and states compete for potential revenues from reservation sources.[2]

Problems inherent in federalism aggravated this conflict. Robert C. Brown, an attorney, identified this problem in 1931, writing, "Our dual system of state and nation rarely fails to confuse any governmental problem, and it has not been without its customary effect on this one."[3] On one hand, the United States Constitution defined a state-federal union; on the other hand, treaties created a unique tribal-federal relationship. In the former, an interacting association developed between federal, state, and county authorities that resulted in tax cooperation; in the latter, an exclusive relationship evolved between the federal and tribal governments that precluded states and counties. Within these two differing political systems, each sovereign maintained its own jurisdiction, which often intersected and crossed into the domain of another.[4]

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The absence of federal statutes delineating each government's reservation tax authority added to the controversy. In this void, federal courts have interpreted the United States Constitution and treaties. The tax conflicts between states and tribes reached the courts in the early nineteenth century. In 1832, in *Worcester v. Georgia,* Chief Justice John Marshall declared that tribes were "distinct, independent political communities, retaining their original natural rights," and that tribal lands were "completely separated from that of the states." Marshall asserted that tribes, as sovereigns, were immune from suit in state courts. That tenet, in turn, became the foundation for the tax-exempt status of both Indian property and activities from state authority and bolstered the tribes' power to assess levies against property and activities inside the reservation.[5]

Marshall applied this concept of separation to 1832 conditions. All state police and taxing powers stopped at the boundary that separated Indian Country from a state's territory, while a tribe's police and taxing authority began at that boundary. Over the years, Congress specifically limited several tribal powers, such as criminal prosecution of major crimes, permitting another sovereign to assume those duties. However, Congress did not diminish a tribe's inherent right to tax either property located or activities occurring inside a reservation, despite the fact that Congress sometimes sanctioned state levies against restricted Indian properties. For example, in 1910 and 1916, Congress passed legislation permitting Thurston County, Nebraska, to apply local real estate taxes against trust allotments on the Omaha and Winnebago reservations.[6]

Federal actions created further complications. In the late nineteenth century, Congress made some individual Indians citizens of the United States, while at the same time cloaking other tribal members under the blanket of wardship. An individual Indian's status as either a ward or a citizen had no bearing on the state's authority to tax his property, since no "intrinsic relationship" existed between citizenship and taxation. The status of the property remained the pivotal factor, and as long as an individual's land remained in trust, the state could not collect property taxes from the restricted real estate. The same held true for an individual's personal property. If treaty funds purchased a specific item (a cow, a harness, or a saddle), the state could not assess it. The evolution of the federalist system, inherent tribal sovereignty,

and Congress's refusal to relinquish its wardship over Indians created and maintained this interconnection where a tribal member was under state jurisdiction for some purposes and under tribal-federal jurisdiction for other purposes.[7]

Before the allotment of reservation lands, distinct boundaries separated Indian Country from state land. Distinct boundaries delineating tribal lands from state lands made it easier to apply Marshall's concept of separation of Indian territory from state territory and to stop state assessments inside Indian Country. After the Civil War, the United States Supreme Court ruled in two tax cases that a tribe's separate and distinct territory prohibited state assessments. *The Kansas Indians* (1866) denied the respective states the authority to tax reservation property, because the tribes were "distinct people" who enjoyed the "right of free use and enjoyment" of their lands, and that included an exemption from state taxes.[8]

Tribal sovereignty, enhanced by distinct boundaries, not only insulated a tribe from outside assessments, but also enabled the tribe to tax either property or activities that took place on the reservation. Until 1950, few tribes attempted to collect taxes from either tribal members or nontribal persons doing business within a reservation, even though the tribe's inherent sovereignty enabled it to "extract a fee from the nonmembers as a condition precedent to granting permission to remain or to operate within the tribal domain."[9]

Tribal taxation began in Indian Territory among the Five Civilized Tribes, whose several governments initiated levies late in the nineteenth century. In 1876, the Choctaws assessed the Missouri, Kansas and Texas Railroad "one and one-half per cent a year on the cash valuation of all its property." Several years later, the Cherokee levied an assessment against outside cattle grazing on Cherokee ranges.[10]

Early challenges to tribal taxes against nonmembers reached the courts at the turn of the century. The Creeks enacted a twenty-five-dollar "occupation tax." In 1900, the United States Court of Appeals of Indian Territory ruled that the Creek asserted the right of self-rule in the treaty of 1856, and that included the power to tax outsiders. Therefore, the Creek assessments against nonmembers were not "arbitrary" or in violation of the "Federal Constitution."[11]

At the same time, the Cherokee tribal government levied a

twenty-cent export tax against every ton of prairie hay that left the reservation. In 1902, United States Attorney General Philander C. Knox wrote an opinion upholding the Cherokee law. He claimed that "[u]nder the right of self-government conferred by Congress," Cherokee self-rule "carries with it the unquestionable right of taxation."[12] These early decisions upheld the tribe's pre-existing sovereignty as the foundation for tribal taxation powers. However, the defense of legal theories did not reflect popular opinion of the day, which stressed the end of tribalism. This hostility toward tribes did not escape the courts. As early as 1886, the Supreme Court noted that citizens of the states "are often . . . [the Indians'] deadliest enemies."[13]

The continual separation of the two communities was maintained until Congress removed all restrictions against Indian persons and their property. The Indians' tax exempt status created emotional separation as well as political separation between the communities, because whites viewed tribal immunity from local taxation as a special privilege. That myth escalated the antagonism between the two groups during the late nineteenth century, a time that policy makers had designated as a period of adjustment and change that would result in the Indians' eventual assimilation.

Congressmen wanted the General Allotment Act of 1887 to eliminate geographical and political boundaries separating Indian and white communities. The hastily passed act defined provisions for awarding citizenship to Indian people and appropriating their lands to whites, but the legislation provided no compensation to state governments and local communities for assimilating the former tribespeople. For example, the act provided that "all restrictions as to sale, incumbrance, or taxation of said land shall be removed" at the end of the twenty-five-year period of trust.[14] This very issue of taxation prevented the immediate blending of the communities, because the General Allotment Act preserved the tax-exempt status of the Indians' land, ensuring the segregation of tribal territory from state jurisdiction for at least twenty-five years.

Policy makers and reformers realized that tribal exemption from local taxes created a barrier to the eventual assimilation of Indian people. This truth was quickly revealed when local governments refused to provide services to Indian people (including *citizen* Indians) because tribal members were exempt from paying local property taxes. Therefore, the General Allotment Act

and the assimilation policy were doomed to fail from the beginning, because Congress depended upon local communities to accept tribal people as equal and participating members of the community, even if Indians were not immediate taxpayers. That oversight offended local white residents.

Some Indian reformers criticized the General Allotment Act for failing immediately to assimilate and free the Indians. In October 1889, Charles C. Painter, secretary of the Indian Rights Association, read a paper at the Seventh Annual Lake Mohonk Conference entitled "The Indian and His Property," in which he denounced that legislation for maintaining the disparity between Indians and whites. Gabriel Renville, a tribal leader from the Sisseton Reservation in northeast South Dakota, stimulated Painter to write this paper when the Sioux leader asked the question, "What is the relation of an Indian agent to a citizen of the United States and to his property?" Since the severalty law only partially freed the Indians from the bonds of the federal government (especially the Indian Service), Painter urged those attending the Lake Mohonk Conference to further the cause of the Indians' freedom.[15]

Local taxes were part of the price an Indian had to pay for his freedom. During the discussion that followed Painter's paper, former justice of the United States Supreme Court the Honorable William Strong identified the tax exempt status of Indian properties as the source of the disputes between tribal members and local governments. Strong argued that the Indians' tax immunity limited the amount of funds available to local governments; this lack of funds prevented the building of schools and the hiring of teachers necessary to educate the Indian children who were destined to become citizens. He added that, to compensate, excessive state or county taxation of local white residents would be necessary to raise enough money to build schools for resident Indian populations. If that occurred, local governments would resent the Indians even more.[16]

Strong also blamed the General Allotment Act for this situation, because the law preserved the Indian lands' tax-exempt status from state and county assessments for another twenty-five years. Under these conditions, Strong counseled, if forced to do anything for the Indians, the states would do it "grudgingly" and that would "create a strong prejudice on the part of the whites against the Indians themselves." The former justice added

that there existed "sufficient prejudice on the part of the whites now, without encouraging more." Since the allotment policy had not accomplished assimilation, Strong claimed, "Something must be done to provide for these schools without imposing the entire burden of them upon the State."[17]

Justice Strong looked to Congress for a solution. He believed that the federal government should help local schools that were to become institutions for the assimilation of Indian children "by agreeing to pay to the State an equivalent to what would be raised out of these allotted lands by taxation, if they were liable to taxation." Strong concluded that any effort to address the taxation issue "would remove very largely the feeling of prejudice which is likely to be awakened by the law [General Allotment Act] as it now stands."[18]

The reformers' pleas went unheeded. Congress rarely acknowledged local tax complaints, but in a few cases it enacted relief legislation providing tax replacement dollars to local governments. In 1892, Congress opened the Colville Reservation in Washington State to settlement. The act authorized the secretary of the interior to provide funds to local governments from the Colville tribe's account for "the building of schoolhouses, the maintenance of schools for such Indians, for the payment of such part of the local taxation as may be properly applied to the lands allotted to such Indians, as he shall think fit, so long as such allotted lands shall be held in trust and exempt from taxation."[19]

The Oklahoma Statehood Act (1907) prohibited taxation of Indian property. The law restricted state and county assessments against Indian lands for a twenty-five-year period. To offset this tribal exemption from local taxes, Congress appropriated funds for public schools in the state, and the yearly appropriation decreased $25,000 a year until all Indian lands were taxable.[20] In 1924, Congress aided Oklahoma again by requiring the Osage to pay the state for the construction of roads within the county, using a 1 percent tax taken from Osage oil and gas royalties. The Osage tribal council protested this legislation, claiming it violated their political sovereignty, but to no avail.[21] During this same era, Congress authorized several states to apply assessments against Indian-leased mineral lands.[22]

Except on these rare occasions, Congress did not amend the severalty law, and Justice Strong's prophesies came true: Tax inequities encouraged continual community segregation which, in

turn, increased intercommunity tensions. In April 1890, Crow Creek (South Dakota) Reservation Indian agent W. W. Anderson reported that many Crow Creek Sioux requested ceded land allotments, as provided for in the Sioux Act of 1889. They wanted to keep their existing homes and improvements but were "deterred from such a course for fear of having municipal, school and other taxes to pay."[23] Notwithstanding the 1887 severalty act's twenty-five-year trust land tax exemption, tribespeople resisted outside local assessments, because such levies imposed a financial hardship and violated tribal sovereignty. As a result, they preferred living on the reservation.

On the other hand, provincial white residents resented the nontaxpaying tribal members, because they perceived the Indians as getting away with something at the whites' expense. Whites often complained that they paid higher state taxes (both real estate and personal property assessments) because of the presence of nontaxpaying reservation Indians. In 1917, local residents in western South Dakota claimed that they paid a heavy tax to finance local government, because "the Indians pay no tax on their allotments and no personal tax." To make matters worse, non-Indians complained that the Indian residents often demanded "full legal protection, the benefits of the public roads, highways, bridges and even school privileges, and as heretofore set forth they pay no share of the expenses of the County." Local officials argued that tribespeople should not enjoy these privileges without sharing the financial burden. Relations became even more volatile when South Dakota citizen Indians, who composed a majority in one county, employed the "franchise to the extent of voting bonds for the construction of [local ranch to market] bridges and roads, notwithstanding the fact that [they were] not . . . taxpayer[s]."[24]

The allotment of lands and the opening of reservations to homesteaders ended the distinct separation of reservation lands from the surrounding non-Indian territory. Boundaries became blurred as outsiders purchased ceded lands, fee patented tracts, and heirship and noncompetent properties inside the reservation boundaries. The majority of large allotted reservations were located in the Great Plains, the Great Lakes, and the Pacific Northwest regions, so most of the tax confrontations occurred in those states.[25]

Since tribal trust lands and individual trust (allotted) lands re-

mained free from state assessments, local governments sought revenues from either improvements found on Indian lands or accumulated Indian personal properties. For example, in 1897, Missoula County assessor W. R. Hamilton assessed mixed-bloods living on the Flathead Reservation in Montana a personal property tax. Hamilton claimed mixed-bloods were not tribal members. In subsequent litigation, *United States v. Higgins*, the court ruled otherwise, stating that mixed-bloods were tribal members and therefore exempt from local personal property taxes.[26]

A local government's failure in one section of the country to collect reservation taxes did not deter counties in other sections of the country from attempting reservation assessments. Since county authorities were persistent in their search for reservation taxes, litigation in lower federal court was common by the turn of the century. In 1903, the United States Supreme Court eventually heard on appeal the landmark tax case *United States v. Rickert*. The case began when officials from Roberts County, South Dakota, assessed the personal property of Charles Crawford, a Sisseton Indian, living on his allotment in the northeastern corner of the state. The Roberts County assessor added Crawford's personal property to the county tax rolls, even though his land was tax exempt and held in trust by the United States for twenty-five years beginning when the reservation was allotted in the 1890s.[27]

The United States filed suit against the county, and *United States v. Rickert* reached the Supreme Court in 1903. The Court declared that the county's attempt to tax either Indian trust lands or Indian personal property found on those lands was improper, because the Indian was free from all local taxes. The Court applied the theory that this exemption was "an instrumentality employed by the United States" in order to maintain the tax exempt status of Indian property for the Indians' benefit. By employing the doctrine of instrumentality, the Court defined the reservation as a federal reserve, which meant that it was exempt from any state assessment.[28]

The decision stopped many levies from occurring on trust lands, but the court also produced an ironic twist of law. In *Rickert*, reservations were defined as federal reserves when state or county assessments crossed into a reservation. Therefore, the doctrine of federal instrumentality limited the state's power to levy taxes inside a reservation boundary, but departed from Marshall's earlier concept of separation that was based upon a tribe's

inherent sovereignty. On the other hand, courts applied the principle of pre-existing sovereignty to support taxes that a tribe levied against the property and activities of either tribal members or nonmembers inside the reservations.[29]

Congress intended to eliminate tribalism, but that goal was not reached when the new century began. Reformers, too, wanted to end federal guardianship over Indians, but the trust provision of the General Allotment Act and subsequent court decisions prevented individual Indians from gaining complete freedom from federal control. As a result, tribes remained distinct political entities free from state tax assessments. The end of tribal autonomy was the only solution to this situation. Until Congress ended the last restriction prohibiting state assessments against Indian lands, local entities pursued the collection of taxes upon any nonrestricted Indian property found inside a reservation's borders.

At the turn of the century, local authorities had problems finding unrestricted Indian property on reservations. Simply determining who was a citizen Indian was difficult. Citizen Indians who possessed both nonrestricted and restricted property lived next to "ward Indians," who possessed only restricted property. The United States Supreme Court complicated the tax question when it liberalized Indian citizenship in the *Matter of Heff*. The Court ruled in 1905 that an individual allottee became a citizen at the time of the issuance of the trust patent for the land, even though the nation's leaders assumed that citizenship came when the federal government issued a fee patent for the land, removing restrictions against alienation.[30]

The *Heff* decision created an entire class of Indian citizens. Yet, until Congress removed the restrictions against the trust property of a citizen Indian as well as of a ward Indian, the property remained insulated from state and county assessments. Seven years after the *Heff* decision, the Office of Indian Affairs sent Circular 612, entitled "Results of Citizenship," to all reservation superintendents. Commissioner of Indian Affairs Robert Valentine wanted information describing both the successes and the failures of citizen Indians to assimilate into local communities. The Indians' tax exempt status and their ability to pay taxes were important factors determining whether or not the local community accepted Indian people.

Superintendent W. C. Kohlenburg of the Crow Creek Reservation in central South Dakota reported that "[t]here appears to

be some prejudice against Indians by white people . . . because the Indians have little or no taxable property, and it might be removed by making the untaxable property of the Indians taxable." The superintendent added that as "long as [their] lands are not taxable the State courts have very little interest in the Indians' affairs, and only when [their] lands do become taxable, my experience is that they are taxed exorbitantly."[31]

A similar response came from Fort Totten, North Dakota. Superintendent Charles M. Zieback stated, "There is considerable prejudice by the local white settlers against the Indians who are exempt from paying taxes on their lands," because Indian tax exemption "adds considerable taxes to the settlers."[32] The tax-exempt status of the trust lands of both the citizen and the ward Indians affected the attendance of their children in public school. At Fort Totten, no children of tax-exempt Indian parents went to public school.[33] On the other hand, approximately fifty children of nontaxpaying parents from Pine Ridge attended public school, but the United States paid their tuition.[34]

The answers to Circular 612 revealed that granting citizenship to individual Indians did not eliminate the United States' paternalistic contol over their land or possessions, and that prevented the state governments from collecting taxes. Despite the grant of citizenship, tax exemption maintained political separation between the Indian and white communities; white prejudice toward the Indians' tax status maintained emotional separation.

Local governments collected taxes from inside a reservation whenever possible. Superintendent Arthur E. McFatridge of the Blackfeet Reservation reported in 1911 that Glacier County, Montana, collected taxes from the Great Northern Railroad for a fifty-mile track easement crossing the reservation. McFatridge claimed "that this money should be used on the reservation where the taxable property is located."[35] When the agent asked the Indian Service for assistance, Assistant Commissioner of Indian Affairs C. F. Hauke dismissed McFatridge's request. Hauke wrote that the "question of the right of the State to tax the easement is one that does not concern this Office." Even more important, the commissioner reflected on the political separation of state and tribe, regretting that the federal government could not mandate either the state or the county "to furnish school facilities to the Indians if they do not care to do so," even when taxes were taken from the reservation.[36]

Instead of taxing reservation businesses, states and counties attempted to levy taxes against Indians' personal property, one of the most common twentieth-century taxes. That action, in turn, forced the Indian Service to draft tax regulations limiting local personal property assessment against tribal members. Prior to 8 March 1915, the Indian Service claimed "that all personal property not held in trust for the Indians is properly subject to taxation by local authorities"; but on that date the Indian Service changed its position, asserting "that all personal property belonging to Indians who are wards of the Government and sustaining tribal relations is not subject to taxation," by local government. In other words, the Indian Service's broad view dictated that an Indian's status, as either ward or citizen, determined whether or not the property was taxable.[37]

In contrast, local officials believed that ward and nonward Indians' personal property purchased with nontreaty funds was taxable. Rationalizing the collection of a tax levy was easier than actually collecting the assessment. Authorities often found it impossible to collect personal property taxes, because the "Indians invariably claimed that the property was 'issue' or 'trust fund' property and not subject to taxation." C. M. Henry, chairman of the South Dakota State Tax Commission, observed that "[t]hey are skilled in making these claims," for obvious reasons.[38]

Officials from Dewey County, which included the eastern half of the Cheyenne River Reservation in central South Dakota, circumvented tribal protests and levied a local personal property tax on all nontrust property. Superintendent James H. McGregor informed Dewey County officials that "there was no property belonging to Indians that could be taxed, except their patent in fee lands," because Congress had not removed the restrictions against the Indians' personal property, which included farming equipment, horses, and cows. Contrary to McGregor's claim, Dewey County, from 1911 to 1914, attempted to collect personal property tax from several reservation residents.[39]

This aggressive action eventually forced the United States to file suit in 1916 in federal district court against the county, since Indian residents claimed that Dewey officials were improperly taxing "issue" property. In the subsequent benchmark case, *United States v. Pearson,* the court reaffirmed the *Rickert* decision that the reservation was a federal instrumentality. In addition, the court created seven categories of Indian property, based upon

the origin of the actual money that purchased the property, that were tax exempt from state levies. For example, equipment purchased with treaty funds and the offspring of "issue" cows were all exempt from county assessments. The defendants claimed that only stock carrying an "ID" brand, not the calves, were tax exempt. The court ruled otherwise. So long as the source of funds that purchased the existing cattle or machinery was known, there was no need either to brand new offspring or to mark new machinery. The court described this as a case of mistaken identity, because the county was unable to identify "issue" and "nonissue" property, even though the Indians refused to brand the stock.[40]

The court also identified taxable personal property in the *Pearson* decision. Anything that the Indian possessed "that cannot be so traced and identified as issue property, the increase of issue property, [or] property purchased with the proceeds of the sale of the increase of issue property," was liable to local assessments. In other words, any property or real estate that was not tied to the United States trust responsibility was subject to local taxation.[41]

Despite losing the case, Dewey County officials continued to collect illegal personal property taxes when an Indian attempted to sell his or her land. The personal property taxes were listed as encumbrances against the sale of the real estate and were noted on the title abstract, but the "prospective purchaser" often refused "to go on with the transaction unless the Indian pays this tax." As McGregor noted, "The Indians are in a way being illegally forced to pay taxes that they do not owe," and that violated the restricted status of the individual Indians' personal property.[42]

After the *Pearson* decision, Commissioner of Indian Affairs Cato Sells suggested that a citizen Indian's nonissue property, especially livestock, be branded differently to distinguish it from a ward Indian's property. The federal government would pay for the cost of the roundup, and the county would receive the taxes. McGregor described this as a waste of time and realistically surmised that "[a]ssessors may ascertain from time to time its taxable status," and the "expense . . . would be far greater than the revenue derived from the taxes."[43]

When automobiles became popular on reservations after World War II, the vehicles were treated like any other property. The source of funds used to purchase the motor vehicle determined

whether or not the tribal member had to purchase a state license. Instead of the Bureau of Indian Affairs helping the owner to convince the county of the vehicle's tax-exempt status, each "Indian has the burden of establishing his exemption." In 1949, on the Crow Reservation of Montana, for example, "[t]he County Assessor must tax all automobiles and can only exempt property from taxation upon receipt of conclusive proof of non-taxability."[44] Likewise, the county commissioners of Fall River County in western South Dakota required Indians living within the county to prove, on a case-by-case basis, that their stock was tax exempt. Forcing individual tribal members to prove tax exemptions placed the burden of proof on the Indians. That simply made it easier for Indians to pay the taxes than to fight the improper assessments.[45]

The source of funds used to purchase the goods and the origin of land determined whether an individual's personal property or real estate had restricted or unrestricted status. The assimilation policy removed the Indian person, when possible, from restricted status; thus government officials were able to claim that they were forcing Indians to reside in local communities. For example, Assistant Commissioner of Indian Affairs Edgar Meritt reiterated the government's position of freeing Indians and their property from government control. In 1919, he claimed that the Indian Service was removing "the white Indians out from our jurisdiction. We think that they should bear the burdens as well as receive the benefits of citizenship." Meritt added that the "property [of able-bodied Indians] should be taxable and they should not be wards of the Government."[46] The government's policy of rapidly removing Indians and their real estate from restricted status added tracts of land to the local tax base. Yet personal property was not included in these so-called liberating acts. In addition, the growing group of citizen Indians often did not possess the capital required to pay the new assessments. These new poor then became a local responsibility. As local governments dealt with a growing Indian problem, state leaders advocated the continuation of the status quo, claiming Indians were a national problem, not a local problem.

Prejudice against the tax-exempt ward Indians, as well as the citizen Indians who could not pay real estate assessments, increased as the results of the government's policy became known. By 1920, state and local governments were in a no-win situation,

because neither the ward Indians nor the poor citizen Indians contributed revenues to the local treasury. Secretary of the Interior Hubert Work described this predicament in 1924 when he wrote, "State governments complain that the Indian pays no taxes, anticipating with forebodings the time when he may be a public charge."[47] The message was clear: Local communities maintained many levels of separation from the Indian communities, and the tribespeople's tax status was one factor contributing to white discrimination against tribal people.

The Indian reform movement of the 1920s culminated in the publication of several reports on the condition of the Indians in America. *The Problem of Indian Administration* (the *Meriam Report*) was the most important, and the editors observed that it was "a serious mistake suddenly to change the status of an Indian from that of a tax exempt person to a person subject to the full burden of state and county taxes." This was particularly true "where the general property tax is in force, the brunt of which falls on land."[48] The assimilation policy failed to produce taxpaying Indians, and, in fact, by 1930, nontaxpaying ward Indians were less of an economic burden to local governments than citizen Indians who were unable to pay local assessments.

Because local officials perceived citizen Indians as a financial burden, white leaders near reservations advocated the continued separation of Indian and non-Indian communities by continuing the tax restrictions on Indian people and their lands.[49] When the nation's assimilationist policy changed in the 1930s, states, counties, and public school districts supported the Johnson-O'Malley Act and the Indian Reorganization Act (IRA) of 1934, even though the legislation continued to exempt tribal land and property from local assessment. Despite the rhetoric of the Indian New Deal proclaiming the revitalization of tribal cultures, state and county governments defended legislation designed to minimize local financial obligations to nontaxpaying citizen Indians.[50]

The intent of the Indian Reorganization Act was "to rehabilitate the Indian's economic life and to give him a chance to develop the initiative destroyed by a century of oppression and paternalism." The Indian Reorganization Act disavowed the assimilationist policy found in the General Allotment Act. Instead the legislation encouraged tribes to formulate new tribal constitutions, and many tribes adopted constitutions containing provisions affirming their inherent taxing authority over both Indians and non-Indians on the reservation.[51]

In the Indian Reorganization Act, Congress changed the tone and intent of tribal assessments. The legislation advocated strengthening the concept of tribal governments' levying taxes inside the reservation. The IRA constitution of the Cheyenne River Sioux tribe contained some typical phrases defining the tribe's authority to tax tribal members and nonmembers. Article IV, Powers of Self-Government, Section 1, subsection (i) authorized the tribal council to tax qualified tribal voters "and to levy taxes and license fees subject to review by the Secretary of the Interior, upon non-members doing business with the reservation."[52]

It is doubtful whether anyone knew the extent to which tribal governments would eventually employ their inherent taxing powers; several decades passed before tribal leaders throughout Indian Country tested this broad authority.

In subsequent gasoline tax legislation, the federal government maintained the prohibition of state assessments on tribal lands. Congress, in the Federal Highway Act of 1936 (Hayden-Cartwright Act), excused states from providing matching funds for the construction of roads in national forests. The law also authorized states to collect a state gasoline tax on fuel sold in federal reserves, except when the commodity was used solely for federal purposes. Indian tribes were not mentioned in the law. In 1940, however, Congress passed the Buck Act permitting states to extend their sale, use, and income taxes onto federal reserves, but not inside Indian reservations.[53]

During Senate hearings on the Buck Act, New Mexico Representative John Dempsey testified that the bill should be amended to permit states to assess non-Indians' businesses located on reservations. On the other hand, acting Secretary of the Interior Ebert K. Burlew stated, "It is clearly apparent that the grant of authority to levy state taxes on Indian reservations is not within the purpose of the bill." Burlew claimed that reservations were exempt from state taxes,[54] and that position became section V, that "[n]othing in sections 1 and 2 of this Act shall be deemed to authorize the levy or collection of any tax on or from any Indian not otherwise taxed."[55]

Tribal exemption from state sale, use, and income taxes, however, did not prohibit states from collecting levies from reservation populations. In 1952, the Bureau of Indian Affairs stated that the Montana reservation populations were "subject to the payment of all other forms of taxes; such as Federal and state income taxes . . . gasoline, excise, automobile, personal property and

chattels'' as well as ''other taxes generally paid by non-Indians.'' Even more important, the Montana tax situation was not the exception but was repeated across the country.[56]

In 1976, the American Indian Policy Review Commission opposed the continuing collection of state gasoline taxes on reservations. The commission proclaimed that ''[t]here is nothing in the legislative history of the [Buck] Act which would indicate why Congress should authorize the states to impose gasoline taxes on reservation Indians but not other taxes.'' These state assessments violated the intent of the New Deal and of later self-determination policies. To correct the problem, the review commission stressed that ''Congress should amend the Buck Act to exempt Indians from the imposition of state gasoline taxes on the reservation.''[57]

Despite Congress's intention to maintain tribal immunity from state taxes, past tax conflicts did not easily die. Representative Usher L. Burlick of North Dakota summarized but misinterpreted the decades-old conflict between local government and nontax-paying Indians in 1949. During Standing Rock Reservation economic rehabilitation loan hearings, Burlick stated, ''An Indian does not object to paying taxes, providing he has the privileges of any other taxpayer. . . . They become a part of the whole white system when they pay a tax.'' In other words, Burlick declared that tax issues either segregated or merged Indian-white communities. As in the past, taxation prevented Congress from completing the termination policy.[58]

The issue of tax-exempt tribal members was prominent during early termination hearings. Testifying before the 1944 House Committee on Indian Affairs, Walter Woehlke, Chief, Resources Branch, Office of Indian Affairs, said that tribal ''objection to taxation—and it is a pretty universal objection—is based not so much upon the fear of this taxation in itself, but rather upon the fear that taxation will involve the removal of the restrictions and the breaking up of the reservation and the subsequent loss of their economic base.'' Besides economic considerations, tribal leaders generally opposed termination, fearing that the loss of tribal exemptions from local assessments would eliminate tribal political autonomy over their own territory.[59]

Despite tribal opposition to termination, Congress ended its relationships with many tribes during the 1950s. In doing so, Congress enacted specific legislation to terminate each tribe, and the law generally included a provision for placing former reservation

lands into nonrestricted tax status, enabling the states to levy taxes. Nonterminated federally recognized tribes continued their tax-exempt status. Congress even preserved the prior tax exemption from the Buck Act in the passage of Public Law 280 in 1953, which delegated broad criminal and civil powers to several states over specific reservations' populations. Despite this grant of authority, the law stipulated that "[n]othing . . . shall authorize the alienation, encumbrance, or taxation of any real or personal property, . . . belonging to any Indian or any Indian tribe. . . ." Generally, Public Law 280 was concerned with reservation law and order problems, not tax issues.[60]

Cuts in federal funds for tribal programs accompanied the government's termination policy. That, in turn, forced several tribes to exercise their own taxing powers to supplement traditional but declining revenues. Following federal reductions in 1947, the Pine Ridge Tribal Council passed Tribal Ordinance 34–49, enacting a three-cent-an-acre lease tax on grazing land held in trust and a fifteen-cent-an-acre tax on farming lands held in trust on the reservation. This was a discriminatory tax levied against trust lands that primarily non-Indians leased. In the following year, the council passed Tribal Ordinance 147–50, redefining these assessments.[61]

Both tribal members and nonmembers opposed the lease tax. That brought another lawsuit, one of the first in the post-World War II era reaffirming tribal taxing powers. In subsequent litigation, *Iron Crow v. Ogallala Sioux Tribe,* the federal court upheld the tribe's assessments despite the plaintiffs' claims that tribal taxes violated their Fifth Amendment and Fourteenth Amendment rights. The court rejected that argument, writing that the tribe was not a state, and therefore, the Pine Ridge Tribal Council was not bound by the United States Constitution. Instead, the court ruled that the tribe was exercising an inherent right that the United States recognized. In addition, the tax status of property did not depend upon the residence of the owner or user; thus the tribe was able to assess lands that nonmembers used. The court also reaffirmed the existence of two systems of federal relations in the decision, maintaining the political and geographical separation of the different sovereigns.[62]

The Pine Ridge lease tax was a precursor to the tribal tax codes enacted two decades later as federal funds declined again. In the 1970s, tribal leaders were cautious when implementing these tax

codes; they planned carefully to avoid business flight from economically depressed areas.[63] Caution was important, because tribal taxation of outsiders disrupted the pattern of paternalism and dependency. The tribe, in exercising its right of taxation, encouraged self-sufficiency, which also encouraged "the potential of equivalence with state governments." Tribes moved slowly in the area of taxation, because "a legal victory may lead to a political [and economical] defeat."[64] As a result, tribal councils initially enacted levies on land leases and coal and oil production, which were taxes on tribal resources that outsiders had to obtain from the reservation.

States again sought revenues from inside reservations at this time. In the early 1970s, the North Dakota attorney general claimed that Indian people, as state citizens who received state social services, should pay state taxes as compensation. This state-tribal competition for limited reservation revenues spawned another series of tax battles.[65]

These tax challenges, *Mescalero Apache Tribe v. Jones* and *McClanahan v. Arizona State Tax Commission*, reached the federal courts in the 1970s, and the courts once again delivered judgments prohibiting state levies on reservations. These opinions followed an avenue known as federal preemption, replacing the former concept of federal instrumentality defined in the *Rickert* decision seventy years before.[66] The courts reaffirmed the separate alliances that the federalist system created, but reasoned that the United States Constitution granted Congress the power to make treaties with tribes, and that prohibited the states from entering into any Indian relations.[67] In these decisions, the courts added a new twist to the preservation of tribal sovereignty. A state had the authority to levy taxes inside a reservation, providing the state demonstrated that its taxes did not "infringe against self-government of the tribe." The earlier case, *Williams v. Lee* (1959), articulated Congress's encouragement of tribal self-rule and developed the infringement test that later courts argued had to be applied, in tax cases, against congressional intent.[68]

The courts in the 1970s recognized that a tribe's ability to assess and collect taxes, and the prohibition of state assessments on reservation property, were cornerstones to the success of the government's policy of self-determination. In the Indian Tribal Government Tax Status Act of 1982, Congress continued to affirm in theory the importance of a tribe's tax power.[69] First, this law corrected the omission in the 1967 Internal Revenue Code,

which did "not specifically exempt Indian tribal governments from Federal taxation," even though "Indian tribes are not taxable entities."[70] Second, the Tribal Government Tax Status Act exempted tribes from paying federal excise taxes on commodities tribes purchased for tribal use. This was an admission of the tribe's inherent sovereignty. Third, the legislation authorized the tribes to issue tribal tax-exempt bonds. Not willing to relinquish completely its paternalistic role in tribal affairs, Congress limited tribes to issuing only "public activity bonds" and "private activity bonds." In an effort to preserve a facade of tribal self-rule, the report on the legislation noted that the "requirement of consultation between the Secretary of the Treasury and the Secretary of the Interior is not to be construed as requiring the consent of the Secretary of the Interior before adoption of any regulation, ruling, or other determination by the Secretary of the Treasury."[71]

Despite the new financial avenues the Tribal Government Tax Status Act presented, few tribes had the resources to finance a bonding program. Instead, tribes relied upon tax levies, which aggravated the existing emotional separation between Indian and non-Indian. In March 1987, the Blackfeet Tribal Council enacted a comprehensive tax ordinance (with the approval of the secretary of the interior, as stipulated by their IRA constitution), which included a possessory interest tax against utilities located on the reservation.[72]

The Blackfeet tax ordinance aggravated an old wound. Nonmembers living on the reservation argued that they had no voice in tribal decisions and wanted to maintain the political separation between themselves and the tribe by remaining outside tribal civil authority. (Approximately 74 percent of the Blackfeet Reservation lands are in trust status.) Montana Representative Ron Marlenee supported these constituents. He introduced H.R. 2185 on 28 April 1987, entitled the "Indian Nondiscriminatory Tax Act," seeking congressional restrictions against a tribe's inherent right to assess reservation activities. Marlenee claimed that tribal levies against nonmembers created "double taxation" (paying taxes on the same property to two different sovereigns), and "taxation without representation." Passage of his bill would have affected every tribe in the United States by forcing them to "submit a tribal taxation ordinance to the Secretary [of the Interior] for approval . . . [outlining] the governmental service to be rendered pursuant to the tax," even if their constitution did not require secretarial approval.[73]

Montana Senator John Melcher introduced a companion tribal tax bill in the Senate. His bill provided a two-year moratorium on the enactment of any tribal tax ordinance. In addition, it provided that, during the tax interlude, "[t]he President shall appoint a Commission to review the economic impact which tribal taxes have upon Indian reservations." Even more to the point, Melcher's bill reflected the philosophy of restricting tribal sovereignty, stating that "it is essential and necessary that Congress review Indian tribal authority to impose taxes on non-tribal persons [residing] on Indian reservations."[74]

The 100th Congress did not pass this restrictive legislation, but both bills symbolized the emotion associated with tribal taxation and the nonmembers' desire to maintain complete separation from tribal jurisdiction. Whites claimed that they had no representation in tribal governments and were taxed without representation; they also asserted that tribes did not provide them with services equal to the taxes they paid to the tribe. These protesters declared that they were victims of double taxation and that tribal possessory taxes on utilities were simply passed on to the consumers. Tribal leaders countered with the argument that state law must yield to tribal law and that tribes do provide services to all reservation residents.[75]

This proposed legislation threatened the tribes' inherent right to tax all reservation property and activities, both Indian and non-Indian. The fact that the tribes' authority is subordinate to federal authority remains an important political hole that outsiders exploit to prevent tribal assessment of their activities. That political opening remains an important breach in the government's policy of encouraging tribal self-rule, and it constitutes a weakness in the political separateness of tribal taxation, because "questions of sovereignty are ones of politics."[76]

Despite the threat these bills posed to tribal sovereignty, courts have continued to reaffirm the separation between tribal and state tax powers on the reservation. Judge Allan A. McDonald, United States Eastern District of Washington, ruled in May 1988 that the County of Yakima had "no jurisdiction to impose ad valorem property tax upon fee patent land held by members of the Yakima Indian Nation." The Indian Reorganization Act of 1934 and subsequent court decisions nullified the General Allotment Act and prohibited state assessments of individual Indian and tribal fee patented lands located inside a reservation's boundaries.[77]

This lower court decision continued the affirmation of tribal tax authority inside a reservation's boundaries and the denial of state taxing power against Indian-owned fee patent land inside a reservation. On petition from the defendants, however, the United States Court of Appeals, Ninth Circuit, heard the case in the fall of 1989 and eventually reversed the lower court's decision, returning the dispute to the court of origin for further deliberations.[78] In contrast to the current real estate taxation litigation, the Yakima Nation imposes tribal assessments on both members and nonmembers, which include building permits to comply with zoning ordinances, business license fees, hunting and fishing permits, and filing fees for corporation activities.

The tax conflicts of today were largely avoided in the past, because tribes relied upon federal dollars and lease incomes to provide the necessary funds for their operating budgets. Therefore, tribes and states did not compete for the same dollars. Yet, in the last twenty years, both states and tribes have fought for the same reservation revenues and in the process have challenged each other's sovereignty. In this situation, tax cooperation between states and tribes has become difficult, since neither is part of the same federalist system and both must defend challenges to their authority.

Generally, reservation governments have not imposed either land or property taxes, preferring instead to enact tribal lease, severance, and business assessments. That decision forces reservation resource users, who generally are non-Indian, to pay tribal taxes, which escalates existing hostility between different constituents and their respective sovereigns. Changing reservation demography will not alter this state of affairs in the future, and reservations with both high and low nontribal populations and associated individual land holdings ratios will experience tax conflicts.

NOTES

1. Felix Cohen, *Handbook of Federal Indian Law* (1942; reprint, Albuquerque: University of New Mexico Press, 1971), 142.

2. Tax problems between states/counties and the federal government have been discussed in many sources. For instance, see *Tax Relations Among Governmental Units* (New York: Tax Policy League, Inc., 1937) and *Federal-State-Local Tax Correlation* (Princeton: Tax Institute Inc., 1954).

3. Robert C. Brown, "The Taxation of Indian Property," *Minnesota Law Review* 15 (1930–31): 182.

4. Mary Shepardson, *Navajo Ways In Government*, American Anthropological Association, memoir 96, vol. 65 (1963), 70–73. Russel Lawrence Barsh and James Youngblood Henderson describe the tribal-United States relationship as treaty federalism. See *The Road: Indian Tribes and Political Liberty* (Berkeley: University of California Press, 1980), xii, 59.

5. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515 (1832).

6. Richmond L. Clow, "Taxing the Omaha and Winnebago Trust Land, 1910–1971: An Infringement of the Tax Immune Status of Indian Country," *American Indian Culture and Research Journal* 9:4 (1985): 1–22.

7. F. Cohen's *Handbook of Federal Indian Law* (Charlottesville, VA: Michie Bobbs-Merrill, 1982), 142–43.

8. Jay Vincent White, *Taxing Those They Found Here: An Examination of the Tax-Exempt Status of the American Indian* (Albuquerque: Institute for the Development of Indian Law, 1973), 23–29; *The Kansas Indians*, 5 Wall. 737 (1866); *The New York Indians*, 5 Wall. 761 (1866).

9. Cohen, *Handbook of Federal Indian Law* (1942), 267.

10. H. Craig Miner, *The Corporation and the Indian: Tribal Sovereignty and Industrial Civilization in Indian Territory, 1865–1907* (Columbia: University of Missouri Press, 1976), 52–53, 119–20.

11. White, *Taxing Those They Found Here*, 20 n. 20; *Maxey v. Wright*, 105 F. 1003 (1900).

12. *Opinions of the Attorney General* (Washington, DC: U.S. Government Printing Office, 1902), vol. 23, 528–29.

13. *United States v. Kagama*, 118 U.S. 375 (1886); also quoted in Brown, "Taxation of Indian Property," 182.

14. 25 U.S.C. 349.

15. Proceedings of the Lake Mohonk Conference, 2–3 October 1889, published in the *Annual Report of the Commissioner of Indian Affairs for 1889* (Washington, DC: U.S. Government Printing Office, 1890), 899–900.

16. Proceedings, 901–902.

17. Proceedings, 902.

18. Proceedings, 903.

19. 27 *Stat.*, 62–63.

20. *Indians of the United States, Hearings before the Committee on Indian Affairs, House of Representatives*, Sixty-sixth Congress, 1st session, vol. 1 (Washington, DC: U.S. Government Printing Office, 1919), 250–51.

21. *Opinions of the Attorney General* (1924), vol. 33, 60–61. Act of 3 March 1921, 40 *Stat.* 1251, sec. 5.

22. *American Indian Policy Review Commission, Final Report, Task Force, No. 9* (Washington, DC: U.S. Government Printing Office, 1976), 140.

23. W. W. Anderson to the Commissioner of Indian Affairs, 7 April 1890, Letters Sent to the Commissioner of Indian Affairs, Crow Creek, RG 75, National Archives, Kansas City.

24. Superintendent of the Pierre School et al., to the Commissioner of Indian Affairs, 23 March 1917, Tax File 1917, 518444, Cheyenne River, RG 75, National Archives, Kansas City. The South Dakota experience was not an isolated

example of nontaxpaying tribespeople controlling bond elections. In 1981, Navajo voters elected Navajos to the Apache County Planning and Zoning Board, controlling the board and passing bonds for construction projects. See Glenn A. Phelps, "Representation Without Taxation: Citizenship and Suffrage in Indian Country," *American Indian Quarterly* 9:2 (1985): 137.

25. For a discussion of this problem of blurred boundaries and the overall result of that question, see Imre Sutton, "Sovereign States and the Changing Definition of the Indian Reservation," *Geographical Review* 66:3 (1976): 281–95.

26. *United States v. Higgins*, 105 F. 348–52 (1900).

27. For a short discussion of this case, see White, *Taxing Those They Found Here*, 33–34.

28. Ibid.; *United States v. Rickert*, 188 U.S. 432 (1903).

29. Brown, "Taxation of Indian Property," 197.

30. Michael T. Smith, "The History of Indian Citizenship," in *The American Indian: Past and Present*, ed. Roger L. Nichols (New York: John Wiley and Sons, 2d ed. 1981), 198–200; *Matter of Heff*, 197 U.S. 488 (1905).

31. Superintendent to Commissioner of Indian Affairs, 8 May 1912, Copies of Letters Sent to the Commissioner, 1896–1914, 1943–1944, vol. 32, box 40, Crow Creek, RG 75, National Archives, Kansas City.

32. Superintendent to the Commissioner of Indian Affairs, 29 April 1912, Copies of Letters Sent to the Commissioner of Indian Affairs, 1893–1937, vol. 9, box 8, Fort Totten, RG 75, National Archives, Kansas City.

33. Ibid.

34. John R. Brennan to Commissioner of Indian Affairs, 9 April 1912, Copies of Correspondence Sent to the Commissioner of Indian Affairs, 11 August 1875–4 June 1916, vol. 45, box 48, RG 75, Pine Ridge, National Archives, Kansas City.

35. Superintendent's Annual Narrative and Statistical Reports, Blackfeet Reservation, 1911, M-1011, roll 5, frame 53, RG 75, NA.

36. C. F. Hauke to Arthur McFatridge, 26 September 1911, 5-1, Blackfeet, Townsites, part 1, Indian Office, Letters Received, Records of the Secretary of the Interior, RG 48, NA. This changed in 1987 when both reservation councils of the Blackfeet tribe and the Assiniboine and Sioux tribes of the Fort Peck Reservations enacted railroad right-of-way taxes, forcing the Burlington Northern Railroad to pay tribal assessments. See *Burlington Northern Railroad v. Fort Peck Tribal Executive Board, et al.*, 16 ILR 3021–3029.

37. Edgar B. Meritt to E. D. Mossman, 18 March 1915, Law and Order—Decisions and Opinions, 14988, Sisseton, RG 75, National Archives, Kansas City.

38. C. M. Henry to Thomas Sterling, 8 March 1915, Law and Order—Decisions and Opinions, 14088, Sisseton, RG 75, National Archives, Kansas City.

39. James McGregor, to Commissioner of Indian Affairs, 7 June 1917, Tax File 1917, 518444, Cheyenne River, RG 75, National Archives, Kansas City; Commissioners Record One, Dewey County, 5 March 1913, Records of Dewey County, p. 64.

40. *United States v. Pearson*, in the District Court of the United States, South Dakota, Central District, transcript copy, pp. 3, 4, 14, 18–19, Tax File 1916, 518444, Cheyenne River, RG 75, National Archives, Kansas City. See also, *United States v. Pearson*, 231 F. 270 (D.C.S.D. 1916).

41. Ibid.

42. James McGregor to the Commissioner of Indian Affairs, 26 October 1918, Tax File 1917, 518444, Cheyenne River, RG 75, National Archives, Kansas City. These later actions resulted in further litigation against Dewey County.

43. James McGregor to Commissioner of Indian Affairs, 7 June 1917, Tax File 1917, 518444, Cheyenne River, RG 75, National Archives, Kansas City.

44. Paul L. Fickinger to all superintendents, region 2, 2 June 1949, Personal Taxes, Indians, 1949, File 173.0 Decisions, Crow Agency, Box 119, RG 75, National Archives, Seattle.

45. Daniel H. Israel and Thomas L. Smithson, "Indian Taxation, Tribal Sovereignty, and Economic Development," *North Dakota Law Review* 49 (Winter 1973): 268, 281–85.

46. *Indians of the United States, Hearings before the House of Representatives*, vol. 1, 742.

47. Hubert Work, "Our American Indians," *The Saturday Evening Post* 31 May 1924, 98.

48. Brookings Institution for Government Research, *The Problem of Indian Administration* (Baltimore: Johns Hopkins University Press, 1928), 43.

49. For a discussion of the various tax problems associated with the tribal exemption and county fiscal issues, see *Nontaxable Indian Lands, Hearings before a Subcommittee of the Committee on Indian Affairs, United States Senate*, Seventy-second Congress, 1st session, Pursuant to S. Res. 282 and S. Res. 432 (Washington, DC: U.S. Government Printing Office, 1932).

50. For example, the Board of County Commissioners of Rolette County, North Dakota, supported the Indian Reorganization Act. See *To Grant to Indians Living Under Federal Tutelage the Freedom to Organize for Purposes of Local Government and Economic Enterprise, Hearings Before the Committee on Indian Affairs, United States Senate*, Seventy-third Congress, 2d session, April–May 1934, 309, 348–51.

51. For a short discussion of this change of tribal tax authority, see Felix Cohen, *Handbook of Federal Indian Law* (1942), 266–67, 267n.

52. Constitution and By-Laws of the Cheyenne River Sioux tribe, South Dakota, approved 27 December 1935, amended 11 February 1966, amended 18 June 1980.

53. See "Application of State Sales, Use, and Income Taxes to Transactions in Federal Areas," Senate Report No. 1625, Seventy-sixth Congress, 3d session, Serial 10429, 1–5; "To Authorize Levy of State, Territory, and District of Columbia Taxes in United States National Parks, Military and Other Reservations," House of Representatives Report No. 1267, Seventy-sixth Congress, 1st session, Serial 10301, 1–3.

54. *Application of State Sales and Use Taxes to Transactions in Federal Areas, Hearings before a Subcommittee of the Committee on Finance, United States Senate*, Seventy-sixth Congress, 3d session, on H.R. 6687, 23 April 1940 (Washington, DC: U.S. Government Printing Office, 1940), 20, 40.

55. 54 *Stat.* 1060.

56. *Taxable Value and Potential Tax Revenue Restricted Indian Property, Montana*, Missouri River Basin Investigations, Report No. 133, Bureau of Indian Affairs, 1 December 1952, 6–8.

57. American Indian Policy Review Commission, *Final Report, Task Force No. 9, Law Consolidation, Revisions, and Codification* (Washington, DC: U.S. Government Printing Office, 1976), vol. 1, 139–40. It should be noted that corrective legislation has not been passed.

58. *Standing Rock Indians, Hearings before a Subcommittee of the Committee on Public Lands, House of Representatives*, Eighty-first Congress, 1st session, March–April 1949, 3.

59. *Investigate Indian Affairs, Hearings before a Subcommittee of the Committee on Indian Affairs, House of Representatives*, Seventy-eighth Congress, 2d session, Pursuant to H.R. 166, part 4, December 1944, 107.

60. *F. Cohen's Handbook of Federal Indian Law*, 364n.

61. *Iron Crow v. Ogallala Sioux Tribe of Pine Ridge Reservation*, 231 F. 2d 89; *Iron Crow v. Ogallala Sioux Tribe of the Pine Ridge Reservation, South Dakota*, 129 F. Supp. 15; *Barta v. Ogallala Sioux Tribe of Pine Ridge Reservation*, 289 F. 2d 553.

62. Ibid.

63. Russel Lawrence Barsh, "Issues in Federal, State, and Tribal Taxation of Reservation Wealth: A Survey and Economic Critique," *Washington Law Review* 54 (June 1979): 582.

64. Carole E. Goldberg, "A Dynamic View of Tribal Jurisdiction to Tax Non-Indians," in *American Indians and the Law*, ed. Lawrence Rosen (New Brunswick, NJ: Transaction Books, 1976), 167–69.

65. Thomas Hamlin, "State Taxation on Sales to Reservation Indians: A Comment on the North Dakota Attorney General's Position," *North Dakota Law Review* 49 (Winter 1973): 345.

66. Clydia J. Cuykendall, "State Taxation of Indians—Federal Preemption of Taxation Against the Backdrop of Indian Sovereignty," *Washington Law Review* 49 (November 1973): 193, 198; *McClanahan v. Arizona State Tax Commission*, 411 U.S. 164 (1973): *Mescalero Apache Tribe v. Jones*, 411 U.S. 145 (1973).

67. Patricia A. Ihnat, "Tribal Sovereignty and the States' Power to Tax Indians," *Arizona Law Review* 22 (Spring 1980): 251–52.

68. Cuykendall, "State Taxation of Indians," 193–98; Ihnat, "Tribal Sovereignty and the States' Power to Tax Indians," 251–52; *Williams v. Lee*, 358 U.S. 217 (1959).

69. Vine Deloria, Jr. and Clifford Lytle, *The Nations Within: The Past and Future of American Indian Sovereignty* (New York: Pantheon Books, 1984), 225–26.

70. "Periodic Payment Settlement Act of 1982," Ninety-seventh Congress, 2d session, Senate Report No. 97–646, Serial 13455, 2–3, 8–17.

71. "Tax Treatment of Periodic Payments," Ninety-seventh Congress, 2d session, House of Representatives, Report No. 97–984, Serial 13493, 16–17. For a discussion of the Indian Tribal Government Tax Status Act of 1982, see Robert A. Williams, "Small Steps on the Long Road to Self-Sufficiency for Indian Nations: The Indian Tribal Government Tax Status Act of 1982," *Harvard Journal on Legislation* 22 (1985): 315–97.

72. For a public utility's perspective of the recent Blackfeet Tribal Tax Ordinance, see "Who Has What Rights? Indian Tribes vs. Consumer-Owned Utilities," *Rural Montana* 35 (November 1988): 4,30.

73. H.R. 2185, 100th Congress, 1st session, in the House of Representatives, 28 April 1987.

74. S. 1039, 100th Congress, 1st session, in the Senate, 30 March 1987.

75. "Indian Tribal Taxation," Hearing before the Select Committee on Indian Affairs, United States Senate, 100th Congress, 1st session, on S. 1039, 12 November 1987 (Washington, DC: U.S. Government Printing Office, 1988), 5–7, 10–12, 16, 36.

76. William V. Vetter, "Tribal and State Taxation of Property and Activities Within the Exterior Boundaries of Indian Reservations," *South Dakota Law Review* 31 (Summer 1986): 626.

77. *Confederated Tribes and Bands of the Yakima Nation vs. County of Yakima and Dale A. Gray, Yakima County Treasurer,* United States District Court, Eastern District of Washington, 10 May 1988, 6–7.

78. *Confederated Tribes and Bands of the Yakima Nation vs. County of Yakima.* F.2d 1990 WL 850 (9th Circuit).