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Indian Law - The Validity of Tribal Severence Taxes without Secretarial Approaval - Southland Royalty Co. v. Navajo Tribe

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Indian Law—The Validity of Tribal Severance Taxes Without Secretarial Approval. *Southland Royalty Co. v. Navajo Tribe,* 715 F.2d 486 (10th Cir. 1983).

The Southland Royalty Company, along with several oil companies, has held oil and gas leases on the Navajo Indian Reservation in Utah since the 1950's.[1] In 1978, the Navajo Tribal Council adopted a Possessory Interest Tax and a Business Activities Tax.[2] The Possessory Interest Tax requires any owner of a lease granted by the Navajos to pay an annual tax on the value of the lease site and natural resources thereunder at a rate between one and ten percent.[3] The Business Activities Tax requires anyone who is engaged in productive activities on the reservation to pay a tax on the gross receipts from such activities at a rate of between four and eight percent.[4] Southland Royalty Company[5] brought suit against the tribe and tribal officials to have the Navajo taxes declared invalid.[6]

The United States District Court for the District of Utah held that the Navajo taxes were invalid without the approval of the Secretary of the Interior, which had not been obtained.[7] The district court agreed with the oil companies that the Indian Mineral Leasing Act of 1938 precluded tribes from regulating oil activities on the reservation without approval by the Secretary.[8] The district court then concluded that tribes which had organized under the Indian Reorganization Act (IRA)[9] and had adopted a constitution pursuant to that act, could retain the power to tax non-Indians, subject to secretarial review.[10] The court held that without a tribal

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1. Southland Royalty Co. v. Navajo Tribe, 715 F.2d 486, 488 (10th Cir. 1983).

2. Brief for the United States and Federal Officials, Appellees and Cross-Appellants at 6, Southland Royalty Co. v. Navajo Tribe, 715 F.2d 486 (10th Cir. 1983) [hereinafter Brief for United States].

3. *Id.* at 7.

4. *Id.*

5. Also seeking a declaration that the Navajo taxes were invalid were the Phillips Petroleum Company, Shell Oil Company, Chevron U.S.A., Inc., Superior Oil Company, Union Oil Company of California, Wilshire Oil Company of Texas, Anadarko Production Company, and Texaco, Inc. *Southland,* 715 F.2d at 486.

6. *Id.* at 488.

7. *Id.*

8. Indian Mineral Leasing Act of 1938, ch. 198, §§ 1-7, 52 Stat. 347-348 (1938) (current version at § 25 U.S.C. §§ 396a-g (1976)), *cited in Southland,* 715 F.2d at 488. In particular see section 396d which provides that all "operations under any oil, gas, or other mineral lease issued pursuant to the terms of sections 396a to 396g of this title or any other Act affecting restricted Indian lands shall be subject to the rules and regulations promulgated by the Secretary of the Interior."

9. The Indian Reorganization Act, ch. 576, §16, 48 Stat. 987 (1934) (current version at 25 U.S.C. § 476 (1976)), provides in part that:

> Any Indian tribe, or tribes residing on the same reservation, shall have the right to organize for its common welfare, and may adopt an appropriate constitution and by-laws, which shall become effective when ratified by a majority vote of the adult members of the tribe . . . at a special election authorized and called by the Secretary of the Interior under such rules and regulations as he may prescribe. Such constitution and by-laws, when ratified as aforesaid and approved by the Secretary of the Interior, shall be revocable by an election open to the same voters. . . .

10. Record, Vol. 4, at 842-43, *Southland, quoted in* Reply Brief of Plaintiff-Appellants Phillips Petroleum Company, Shell Oil Company, and Chevron U.S.A., Inc. at 5, Southland Royalty Co. v. Navajo Tribe, 715 F.2d 486 (10th Cir. 1983) [hereinafter Phillips' Brief].

constitution, comprehensive regulatory authority remained with the Secretary of the Interior.[11]

The Navajo tribe rejected adoption of the IRA by a majority vote as expressly permitted by 25 U.S.C. § 478(a).[12] Therefore, the Navajos had not subjected themselves to the provision in the Act requiring secretarial review. The district court concluded that allowing non-organized tribes an advantage over tribes that had adopted the IRA would undermine an implicit Congressional policy of encouraging tribes to organize.[13] Finally, the court concluded that the relevant statutes[14] indicated that Congress had generally intended the Secretary to review all oil and gas matters of both organized and non-organized tribes.[15] On these grounds the district court held that secretarial review of Navajo taxes was mandatory.

The United States Court of Appeals for the Tenth Circuit reversed the district court.[16] The court of appeals held that Indian taxation of oil operations is a valid exercise of tribal authority.[17] Furthermore, the court could find no federal statute which required secretarial approval of tribal taxes.[18]

Conoco Inc. v. Shoshone and Arapahoe Tribes[19] is a case decided in the United States District Court for the District of Wyoming which raised similar issues. The *Conoco* court held that tribes on the Wind River Reservation, who had not organized under the IRA, were free to levy oil severance taxes without approval of the Secretary of the Interior.[20] Both the *Southland* and *Conoco* courts analyzed notions of tribal sovereignty in affirming the validity of these taxes.

BACKGROUND

Southland and *Conoco* are recent examples of a line of judicial opinions encouraging tribal autonomy and promoting a federal policy of favoring self government.[21] Historically, the position of the courts and the federal government has wavered between the extremes of encouraging tribal self-sufficiency while at other times promoting total assimilation of Indian tribes.[22] A review of the case law shows that the present posi-

11. *Id.*
12. *The Navajo Yearbook*, 377 (1961), *quoted in* Brief for United States, *supra* note 2, at 6.
13. *Southland*, 715 F.2d at 489.
14. 25 U.S.C. §§ 396a-g (1976).
15. *Southland*, 715 F.2d at 489.
16. *Id.* at 490.
17. *Id.* at 488 (citing Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137 (1982)).
18. *Southland*, 715 F.2d at 489.
19. 569 F. Supp. 801 (D. Wyo. 1983).
20. *Id.* at 806.
21. *See Southland*, 715 F.2d. at 489. "The purpose of the IRA was to enable and encourage Indian self-government." *See also* Cheyenne River Sioux Tribe v. Andrus, 566 F.2d 1085, 1086 (8th Cir. 1978).
22. *See generally*, Clinton, *Isolated in Their Own Country: A Defense of Federal Protection of Indian Autonomy and Self Government*, 33 STAN. L. REV. 979 (1981).

tion of the courts and of the federal government is in favor of Indian independence. For example, on the specific issue of taxation, the United States Supreme Court recently held that the power of tribes to levy taxes is not only a valid exercise of tribal sovereignty, it is necessary to effectuate self government.[23]

As early as 1832, Justice Marshall, in the landmark case of *Worcester v. Georgia*, [24] held that Indian tribes possessed powers of self-government. In 1904, the Supreme Court in *Morris v. Hitchcock*[25] held that the Indian's right to tax non-Indian activities on the reservation was a valid method of paying for the cost of self-government. While many early decisions were hostile to Indian claims,[26] the modern trend of cases is more in line with the *Morris* approach.[27] Thus, the Supreme Court in *Washington v. Confederated Tribes of the Colville Reservation*[28] held that tribes retain the power to levy taxes unless it has been taken away by Congress.

In the recent case of *Merrion v. Jicarilla Apache Tribe*,[29] the Supreme Court held that the Jicarillas had the authority to levy an oil severance tax against non-Indians. The Jicarilla tribe had organized under the IRA, which authorized the tribe to adopt a constitution, subject to the approval of the Secretary of the Interior.[30] The *Merrion* court observed that the tribe's interest in levying taxes to finance self-government is strongest when the revenues are derived from activities on the reservation and the taxpayer is receiving tribal services.[31]

Tribal sovereignty is, of course, subject to significant limitations. Congress' power over Indian affairs is plenary.[32] Indian tribes are free to act only to the extent that no Congressional limitations exist.[33] In *United States v. Wheeler*, the Supreme Court noted that because the tribes have been incorporated into the United States they have necessarily lost many of the attributes of sovereignty.[34] In *Montana v. The United States*, the Supreme Court rejected the Crow Indians' argument that they could prohibit hunting on land within the reservation owned in fee by non-members of the tribe as part of the inherent sovereignty of the tribe over the entire

23. Merrion v. Jicarilla Apache Tribe, 455 U.S. 130, 137 (1982).
24. 31 U.S. (6 Pet.) 515 (1832).
25. 194 U.S. 384 (1904).
26. *See, e.g.*, United States v. Kagama, 118 U.S. 375 (1886).
27. *See generally* Newton, *Federal Power over Indians: Its Sources, Scope and Limitations*, 132 U. PA. L. REV. 195, 228-236 (1984).
28. 447 U.S. 134, 152 (1980). Referring to United States v. Wheeler, 435 U.S. 313 (1978), the *Colville* Court stated: "The power to tax transactions occurring on trust lands and significantly involving a tribe or its is a fundamental attribute of sovereignty which the tribes retain unless divested of it by federal law or necessary implication of their dependent status."
29. 455 U.S. 130 (1982).
30. *Id.* at 134.
31. *Id.* at 138.
32. *See* F. COHEN, HANDBOOK OF FEDERAL INDIAN LAW 212-16 (1982).
33. *See, e.g.*, Talton v. Mayes, 163 U.S. 376, 384 (1896); Santa Clara Pueblo v. Martinez, 436 U.S. 49, 56 (1978).
34. 435 U.S. at 326. The *Wheeler* court also noted that many specific statutes and treaties have also taken away many attributes of Indian sovereignty. *Id.* at 323.

reservation.[35] In *Oliphant v. Suquamish Indian Tribes*, the Supreme Court rejected a tribal claim of inherent sovereign authority to assert criminal jurisdiction over non-Indians.[36]

Language in both *Wheeler* and *Oliphant* speaks of an implicit divestiture of tribal sovereignty in matters concerning non-members.[37] However, in dicta in the *Montana* case, the power to levy taxes is specifically excluded from falling within the principles of the *Oliphant* case.[38]

The inconsistency of the cases that held that Indians have been implicitly divested of attributes of their sovereignty and cases such as *Santa Clara Pueblo v. Martinez*,[39] which held that any abridgment of tribal sovereignty should be clearly stated by a treaty, executive order, or act of Congress, is critical to the specific issue of the need for secretarial approval of tribal taxes examined in *Southland* and *Conoco*.

SOUTHLAND AND CONOCO

The court of appeals in *Southland* reversed that part of the district court's holding which conditioned the validity of the Navajos taxes upon receiving approval of the Secretary of the Interior.[40] The court first determined that Indian taxation of oil leases is necessary to defray the cost of self-government and is therefore a valid exercise of tribal authority.[41]

The court next considered whether there was any justification for the district court's requirement that secretarial review was necessary before the tribal taxing power could be exercised. The oil companies defended the district court's holding by citing *Wheeler*, *Oliphant*, and *Montana* for the principle that tribes have implicitly lost parts of their sovereignty

35. 450 U.S. 544 (1981).

36. 435 U.S. 191 (1978).

37. *Id.* at 208 (citing Oliphant v. Schlie, 544 F.2d 1007, 1009 (9th Cir. 1976)). The Supreme Court stated that "Indian tribes are prohibited from exercising both those powers of autonomous states that are expressly terminated by Congress and those powers 'inconsistent with their status'." *See also Wheeler*, 435 U.S. at 323, in which the Court said in dicta that tribes could lose their sovereignty "by implication as a necessary result of their dependent status."

38. Montana v. United States, 450 U.S. at 566; *see infra* text accompanying note 72.

39. 436 U.S. 49 (1978).

40. *Southland*, 715 F.2d at 490-91. The oil companies raised several other issues in *Southland* which the court rejected or upon which it refused to render a decision. The court disagreed with the oil companies that the Indian taxes offended the commerce clause, finding that the matter had been settled in *Merrion*, 455 U.S. at 130. The court also found that dual taxation by both the tribe and the State of Utah was not unconstitutional, because the oil companies had a taxable nexus with two governments. The oil companies also argued that the taxes violated equal protection and due process. The court refused to consider these issues, reasoning that because no tax had yet been collected, these issues had been raised prematurely. The court clearly preferred not to decide this case on constitutional grounds.

The *Conoco* court also rejected a commerce clause challenge to the Shoshone and Arapahoe Taxes. *Conoco*, 569 F. Supp. at 808.

41. *Id.* at 488, (quoting Merrion v. Jicarilla Apache Tribe, 455 U.S. at 137). The *Southland* court agreed that the tribal taxing power derived from "the tribe's general authority, as sovereign, to control economic activity within its jurisdiction, and to defray the cost of providing governmental services by requiring contributions from persons or enterprises engaged in economic activities within that jurisdiction.

because of their dependent status.[42] They argued that no Congressional action was necessary to place limitations on the Navajos because they have been implicitly divested of any authority over non-Indians.[43] Therefore, the oil companies suggested that it was absolutely necessary for the Secretary of the Interior to supervise these taxes to protect their Constitutional rights.[44]

It is not clear from the *Southland* opinion how much consideration the court gave to this "implicit divestiture" argument, but it was clearly rejected.[45] The court held that anyone attacking the Navajo's taxing power must show that the taxing power had been modified or divested by Congressional action.[46]

The court then searched the federal statutes to determine if secretarial approval was expressly required. The oil companies advanced a two-tiered argument based on the provisions of the Indian Mineral Leasing Act of 1938[47] and the Indian Reorganization Act of 1934[48]. The thrust of this argument was that the Indian Mineral Leasing Act preempted the Navajos' power to tax oil operations and gives such power to the Secretary.[49] The oil companies then pointed out that section 396b of the Mineral Leasing Act does not restrict the right of any tribe organized under the IRA to lease lands for mining purposes.[50] The argument followed that because the Navajos had rejected the IRA, the tribal taxes should be subject to the provisions concerning secretarial review found in the Mineral Leasing Act.[51]

The court of appeals found no authority for this position. The court noted that the same preemption argument had been rejected in the *Merrion* case.[52] The *Southland* court followed *Merrion* in holding that Congress had expressly allowed for the possibility of Indian severance taxes in the Natural Gas Policy Act of 1978.[53] Furthermore, the court noted that

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42. *See, e.g.*, Reply Brief of Plaintiff-Cross-Appellant, Texaco, Inc. at 32-36, *Southland* 715 F.2d at 486 [hereinafter Texaco Brief]. *See also* Phillips' Brief, *supra* note 10, 13.
43. Texaco Brief, *supra* note 42, at 32.
44. *Id.*
45. 715 F.2d at 488.
46. *Id.*
47. 25 U.S.C. §§ 396a-g (1976).
48. 25 U.S.C. § 476 (1976).
49. 25 U.S.C. § 396d (1976). *See supra* text accompanying note 8.
50. Phillips Brief, *supra* note 10, at 4.
51. The district court agreed with the oil companies:

> [W]ith a tribal constitution approved by the Secretary, comprehensive regulatory authority over oil and gas leasing on the reservation passes to the tribe. Without a tribal constitution, that comprehensive regulatory authority remains with the Secretary under 25 U.S.C. §§ 396a-g. It appears to the court that Congress intended to require Secretarial approval of tribal tax resolutions, passed without benefit of a tribal constitution, if such resolutions could have a significant effect on reservation oil and gas leases.

Record of the District Court, Vol. 4 at 842-43, *quoted in* Phillips Brief, *supra* note 10, at 4-5.
52. *Southland*, 715 F.2d at 489.
53. Natural Gas Policy Act, § 110, 15 U.S.C. § 3320(a), (c)(1) (1982), *cited in Southland*, 715 F.2d at 489.

the Natural Gas Policy Act makes no distinction between organized tribes like the Jicarillas and non-organized tribes like the Navajos.[54]

The district court feared that the differing treatment of organized and non-organized tribes might result in an advantage to tribes like the Navajos who have not adopted a constitution under the IRA.[55] The Navajos would be able to levy taxes free from secretarial approval while tribes like the Jicarillas would be subject to this self-imposed requirement. The district court felt this contravened a general Congressional intent that tribes should be organized.[56] The court of appeals disagreed, finding that the purpose of the IRA was to encourage self-government.[57] The court reasoned that allowing the tribes the choice of not organizing under the IRA is itself an act of self-government. Requiring secretarial approval of taxes impairs this policy of encouraging tribal independence.[58]

Furthermore, recognizing that the language of the Indian Mineral Leasing Act of 1938 is ambiguous, the court of appeals cited *Merrion* for the proposition that ambiguities in federal law are to be construed in such a way as to further the federal policy of encouraging tribal self-sufficiency.[59]

The Wyoming District Court in *Conoco v. Shoshone and Arapahoe Tribes* entertained many of the same arguments asserted by the oil companies in *Southland* and found further reasons to reject them. The *Conoco* court found that the requirement of secretarial approval asserted in *Merrion* was self-imposed by the Jicarillas, and therefore the case did not hold that all tribal taxes be subject to review by the Secretary.[60] While the Shoshones and Arapahoes are not organized under the IRA, the court found that sufficient restraints existed on the tribe to protect the oil companies.[61] The court reasoned that Congress has the power to take away tribal authority to tax if it is abused and that federal law insures that those under tribal jurisdiction have constitutional protections.[62] Also, the court placed some credence in the fact that, as a practical matter, the tribe is restrained by economic and political considerations.[63]

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54. *Southland*, 715 F.2d at 489. The statute defines "Indian Tribe" for the purpose of the Natural Gas Policy Act: "The term 'Indian tribe' means any Indian tribe recognized as eligible for services provided by the Secretary of the Interior to Indians." Natural Gas Policy Act, § 106, 15 U.S.C. § 3316(b)(2)(C)(ii) (1976).

55. *Southland*, 715 F.2d at 489.

56. *Id.*

57. *Id.*

58. *Id.*

59. *Id.* at 490 *citing Merrion*, 455 U.S. at 152 (quoting White Mountain Apache Tribe v. Bracker, 448 U.S. 136, 143-44 (1980): "Ambiguities in federal law have been construed generously in order to comport with . . . traditional notions of sovereignty and with the federal policy of encouraging tribal independence").

60. *Conoco*, 569 F. Supp. at 806.

61. *Id.*

62. *Id. citing* the Indian Civil Rights Act, § 202, 25 U.S.C. § 1302 (1976).

63. *Conoco*, 569 F. Supp. at 806. The court noted that economic restraints "prevent the Tribes from total arbitrary 'confiscation,' and this case itself is evidence that challenge to the tax is possible."

Finally, the *Conoco* court considered the argument that Congress must have intended tribes to organize. Otherwise, no tribe would adopt the IRA and impose upon themselves the constraint of secretarial approval.[64] The court explained that there were many benefits offered under reorganization and it was not merely a choice between self-imposed secretarial review and non-organization free of such a burden.[65] The court noted that adoption of the IRA was clearly optional and, at any rate, the tribes already had many of the attributes of sovereignty expressly provided for in the Act.[66]

SOUTHLAND AND CONOCO CONTINUE THE TREND OF ENCOURAGING TRIBAL SELF-SUFFICIENCY

Both *Southland* and *Conoco* are consistent with the great weight of modern authority which upholds Indian sovereignty unless it has been divested by an act of the federal government.[67] Specifically, the Supreme Court in *Merrion v. Jicarilla Apache Tribe*, held that the power to levy taxes is essential to self-government.[68]

The current trend of promoting tribal self-government is not only found throughout the case law, but is reflected in a number of Congressional enactments indicating a firm policy of encouraging tribal self-sufficiency and economic development.[69] In the area of oil and gas activities specifically, the Secretary's control is not all-inclusive.[70] The lower court's requirement in *Southland* of secretarial review of tribal taxes runs contrary to both common and statutory law regarding Indian sovereignty and the court of appeals correctly recognized that no support for this position could be found in the statutes.[71]

The oil companies' argument in *Southland*, that the Navajo have been implicitly divested of the authority to tax, is simply without merit. The

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64. *Id.* at 807.
65. *Id.*
66. *Id.*
67. *See, e.g.*, Babbitt Ford, Inc. v. Navajo Indian Tribe, 710 F.2d 587 (9th Cir. 1983).
68. 455 U.S. at 130.
69. For example, The Indian Financing Act of 1974 provides:
> It is hereby declared to be the policy of Congress to provide capital on a reimbursable basis to help develop and utilize Indian resources, both physical and human, to a point where the Indians will fully exercise responsibility for the utilization and management of their own resources and where they will enjoy a standard of living from their own productive efforts comparable to that enjoyed by non-Indians in neighboring communities.

Indian Financing Act of 1974, § 2, 25 U.S.C. §1451 (1976).*See also* H. R. REP. No. 1804, 73rd Cong., 2d Sess. 6 (1934), which declares the policy of the Indian Reorganization Act. "[B]roadly the measure proposes 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."

70. *See, e.g.*, Poafybitty v. Skelly Oil Co., 390 U.S. 365 (1968), which held that nothing in the regulatory scheme for supervision by the Secretary of the Interior of oil and gas leases impedes an Indian's right to maintain an action to protect his lease.

71. *Southland*, 715 F.2d at 489.

case of *Montana v. United States*, relied on by the oil companies, is clearly not applicable to Indian taxation of non-members.[72]

The principle that only the federal government may limit a tribe's exercise of its sovereign authority, is well-established.[73] Therefore, if the requirement of secretarial approval of tribal taxes is valid, such a requirement must be found in the federal statutes. A 1964 report of the Subcommittee on Constitutional Rights found:

> Although the Secretary's power to approve tribal ordinances and resolutions might be authorized by Federal law, regulation and by provision in a tribe's constitution or charter, the subcommittee, in its research and consultation with officials in the Bureau of Indian Affairs, has failed to uncover any Federal statute which specifically requires secretarial approval of tribal ordinances. The most clearly defined authority for secretarial approval of tribal ordinances is contained in the tribal constitutions.[74]

Tribes such as the Jicarilla Apache have imposed secretarial review on themselves by organizing under the IRA. To argue that the *Merrion* decision imposes secretarial review on tribes like the Navajos, Shoshones, and Arapahoes, who are not organized, indicates a faulty understanding of the IRA. The IRA was clearly optional and the Navajos are free to reject adoption of it.[75] Nothing in the IRA imposes a penalty of secretarial review on those tribes who choose not to adopt the Act.[76]

Finally, no support for the requirement of secretarial approval of taxes can be found in the Indian Mineral Leasing Act of 1938.[77] To argue that the delegation of regulatory authority over oil and gas leases preempts the power of tribes to tax in favor of the Secretary ignores the express language of the Natural Gas Policy Act of 1978, which allows for Indian severance taxes.[78] At the very least, to ask the court to conclude that Congress, without mentioning the word "tax," somehow meant to limit the power to tax, requires the court to resolve an ambiguity. The great weight

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72. Montana v. United States, 450 U.S. at 566. Referring to *Oliphant*, which divested tribes of criminal jurisdiction over non-members, the court in *Montana* said in dicta:

> Though *Oliphant* only determined inherent tribal authority in criminal matters, the principles on which it relied support the general proposition that the inherent sovereign powers of an Indian tribe do not extend to the activities of non-members of the Tribe. To be sure, Indian tribes retain inherent sovereign power to exercise some forms of civil jurisdiction over non-Indians. . . . A Tribe may regulate, through taxation, . . . the activities of non-members who enter consensual relationships with the tribe. . . .

73. *See, e.g.*, Merrion v. Jicarilla Apache Tribe, 455 U.S. 130 (1982). For a further example of the extent to which recent decisions have upheld tribal sovereignty, see Donovan v. Navajo Forest Products Indus., 692 F.2d 709 (10th Cir. 1982). In *Donovan* the court concluded that unless Congress expressly commanded otherwise, the Occupational Health and Safety Act (OSHA) did not apply to Navajo business.

74. SENATE SUBCOMMITTEE ON THE JUDICIARY, SUMMARY REPORT OF HEARINGS AND INVESTIGATIONS BY THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS, 88th Cong., 2d Sess. 3 (1964).

75. 25 C.F.R. § 81.7 (1984).

76. 25 U.S.C. § 476 (1976).

77. 25 U.S.C. §§ 396a-g (1976).

78. 15 U.S.C. § 3320(a)(c)(1) (1976).

of authority compels a court to resolve ambiguities in federal statutes in favor of the Indians.[79]

CONCLUSION

Both the *Southland* and *Conoco* courts correctly recognized that the fate of Navajo and Shoshone and Arapahoe severance taxes lies in the hand of Congress and not in the hands of the Secretary of the Interior. In future years, Congress may well impose limits on Indian taxing power if our energy needs dictate that it must. Until Congress acts, such taxes are valid.

Tribes must recognize that their sovereignty is always in danger of complete divestment. Historically, federal Indian policy has fluctuated between eras which favored total assimilation of tribes, and eras such as the present one, which encourage tribal independance.[80] The recent successes of Indians in asserting tribal rights has prompted proposals in Congress from those who oppose Indian autonomy.[81] Therefore, when drafting taxes, tribal leaders and tribal attorneys should not interpret *Southland* and *Conoco* as giving them free rein to disregard practical political and economic limitations on the taxing power. All tribal taxes must be levied with a concern for what is reasonable, and an eye to the prevailing national energy policy. In this way the tribes can assure themselves that Congress will not invoke its plenary power.

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79. *See, e.g.*, White Mountain Apache Tribe v. Bracker, 448 U.S. 136 (1980).

80. Clinton, *supra* note 22, at 979.

81. *See, e.g.*, H.R. 13329, 95th Cong., 2d Sess., 124 CONG. REC. 19,433 (1978). Representative Cunningham proposed (never enacted) a bill "to direct the President to abrogate all treaties entered into by the United States with Indian Tribes in order to accomplish the purposes of recognizing that in the United States no individual or group possesses subordinate or special rights. . . ."