

Sec. 8—Powers of Congress

Cl. 3—Power to Regulate Commerce

governance, denominated these as “policy” arguments properly presented to Congress rather than the Court.⁷³⁰

Since *Worcester v. Georgia*,⁷³¹ the Court has recognized that Indian tribes are unique aggregations possessing attributes of sovereignty over both their members and their territory.⁷³² They are, of course, no longer possessed of the full attributes of sovereignty,⁷³³ having relinquished some part of it by their incorporation within the territory of the United States and their acceptance of its protection. By specific treaty provision, they yielded up other sovereign powers, and Congress has removed still others. “The sovereignty that the Indian tribes retain is of a unique and limited character. It exists only at the suf-

⁷³⁰ *County of Yakima v. Confederated Tribes & Bands of the Yakima Indian Nation*, 502 U.S. 251, 265 (1992). To be sure, this response was in the context of the reading of statutory texts and giving effect to them, but the unqualified designation is suggestive. For recent tax controversies, see *Oklahoma Tax Comm’n v. Sac & Fox Nation*, 508 U.S. 114 (1993); *Department of Taxation & Finance v. Milhelm Attea & Bros.*, 512 U.S. 61 (1994); *Oklahoma Tax Comm’n v. Chickasaw Nation*, 515 U.S. 450 (1995).

⁷³¹ 31 U.S. (6 Pet.) 515 (1832). See also *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831). Under this doctrine, tribes possess sovereign immunity from suit in the same way that the United States and the states do. *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 58 (1978); *United States v. United States Fidelity & Guaranty Co.*, 309 U.S. 506, 512–13 (1940). The Court has repeatedly rejected arguments to abolish tribal sovereign immunity or at least to curtail it. *Oklahoma Tax Comm’n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 510 (1991).

⁷³² *United States v. Wheeler*, 435 U.S. 313 (1978) (inherent sovereign power to punish tribal offenders). Compare *California v. Cabazon Band of Mission Indians*, 480 U.S. 202 (1987) (state regulation of on-reservation bingo is preempted as basically civil/regulatory rather than criminal/prohibitory), with *Brendale v. Confederated Tribes & Bands of the Yakima Indian Nation*, 492 U.S. 408 (1989) (extensive ownership of land within “open areas” of reservation by nonmembers of tribe precludes application of tribal zoning within such areas). See also *Hagen v. Utah*, 510 U.S. 399 (1994). Among the fundamental attributes of sovereignty which a tribe possesses unless divested of it by federal law is the power to tax non-Indians entering the reservation to engage in economic activities. *Washington v. Confederated Colville Tribes*, 447 U.S. 134 (1980); *Merrion v. Jicarilla Apache Tribe*, 455 U.S. 130 (1982).

⁷³³ *United States v. Kagama*, 118 U.S. 375, 381 (1886); *United States v. Wheeler*, 435 U.S. 313, 323 (1978).