

CONGRESSIONAL POWER POST-BRACKEEN

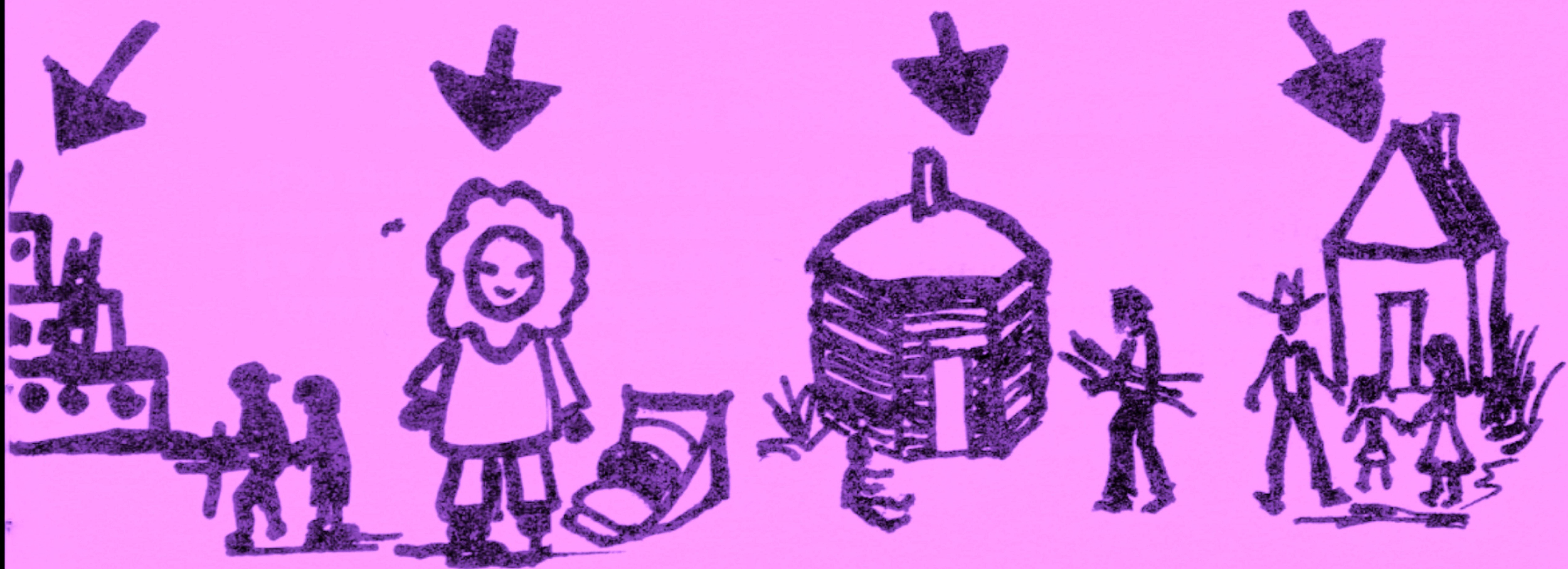
TAXES

WASHINGTON
(U.S. GOVERNMENT)

BUREAU OF INDIAN AFFAIRS
(BIA)

BIA WELFARE PROGRAM

BIA GENERAL ASSISTANCE CHECKS



THE LAW OF CONGRESSIONAL POWERS

HAALAND V. BRACKEEN—"WE HAVE CHARACTERIZED CONGRESS'S POWER TO LEGISLATE WITH RESPECT TO THE INDIAN TRIBES AS 'PLENARY AND EXCLUSIVE.' " 599 U.S. 255, 272 (2023)

"OUR CASES LEAVE LITTLE DOUBT THAT CONGRESS'S POWER IN THIS FIELD IS MUSCULAR, SUPERSEDING BOTH TRIBAL AND STATE AUTHORITY." ID. AT 273.

"TO BE CLEAR, HOWEVER, 'PLENARY' DOES NOT MEAN 'FREE-FLOATING.' A POWER UNMOORED FROM THE CONSTITUTION WOULD LACK BOTH JUSTIFICATION AND LIMITS. SO LIKE THE REST OF ITS LEGISLATIVE POWERS, CONGRESS'S AUTHORITY TO REGULATE INDIANS MUST DERIVE FROM THE CONSTITUTION, NOT THE ATMOSPHERE." ID.

"CONGRESS POSSESSES BROAD AUTHORITY TO LEGISLATE IN RESPECT TO INDIAN TRIBES AND INDIVIDUAL INDIANS." RESTATEMENT § 7

THE MARSHALL MODEL

... AND ITS
PERVERSIONS

INDIAN COMMERCE CLAUSE* = PLENARY POWER

ONLY LIMITS ARE
TAKINGS
CLAUSE,
FREEDOM OF
RELIGION/PRESS
(MAYBE), AND ...
YEAH THAT'S IT

INCLUDES
POWER TO
REGULATE
TRIBES
DIRECTLY

*PLUS TREATY POWER + SUPREMACY
CLAUSE + DUTY OF PROTECTION

THEORIES TO BEAT A THEORY

CONSENT THEORY – F.P.I.C.



TRIBAL SOVEREIGNTY APOCALYPSE –
JUSTICE THOMAS

TREATY ERA REDUX –
JUSTICE GORSUCH

CONSENT THEORY

U.N.D.R.I.P. – INDIGENOUS
FREE PRIOR + INFORMED
CONSENT REQUIRED ON
NATIONAL LEGISLATION

U.N.D.R.I.P. AS MODERN MANIFESTATION
OF DUTY OF PROTECTION

MODELS:

- * I.R.A.
- * P.L. 638
- * I.C.R.A. (POST-MARTINEZ)
- * V.A.W.A. 2013/2022

NEW TREATY ERA

BESPOKE INDIAN LAW?



CONGRESSIONAL POWER LIMITED TO
"COMMERCE" "WITH" "INDIAN TRIBES"

ALL OTHER FEDERAL INDIAN
AFFAIRS LAWS MUST BE
NEGOTIATED BY TREATY

SOVEREIGNTY APOCALYPSE

TRIBAL SOVEREIGNTY
ENDED IN 1871

CONGRESSIONAL POWER LIMITED TO
"COMMERCE" "WITH" "INDIAN TRIBES"

INDIANS AND TRIBES PRESUMPTIVELY
UNDER STATE JURISDICTION

FEDERAL-TRIBAL RELATIONSHIP =
GUARDIAN-WARD RELATIONSHIP

KEEP WHEN YOU'RE DEAD

PLENARY POWER HOT SPOTS

MAJOR CRIMES ACT —
VENEMO DISSENT FROM
CERT DENIAL

OAK FLAT — SACRED
SITES PROTECTIONS
(OR LACK THEREOF)

STATE LAW PREEMPTION — TAXES
(STROBLE) & CRIMINAL JURISDICTION
(OKLAHOMA POST-CASTRO-HUERTA)

TRUST LAND ACQUISITION
— LITTLEFIELD & VILLAGE
OF HOBART APPROVALS