

The Relationship Between Legal Sovereignty and De Facto Sovereignty in the American Indian Nation Context

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For the last thirty years the Supreme Court has been adjusting the boundaries of American Indian tribal sovereignty. Some cases affirm tribal inherent powers, but recently the trend has been to limit those powers. Yet neither the Court nor the Congress, which can reverse Supreme Court decisions on questions of tribal sovereignty, has been informed about how these alterations to tribal powers actually affect American Indian nations on the ground. My research to date on the Navajo Nation's exercise of sovereignty provides that information, and my proposed expansion of this inquiry to other Indian nations would add depth to these preliminary findings.

In a recent article published in the Oregon Law Review, *A Narrative of Sovereignty: Illuminating the Paradox of the Domestic Dependent Nation*, available at: <http://ssrn.com/author=521739>, I describe my findings regarding the interplay between Supreme Court decisions and the Navajo Nation's exercise of its sovereign governmental powers from 1970-2003. In the categories of general civil powers, taxation, and criminal jurisdiction, the Navajo Nation has responded creatively to the recognition, and even the retraction, of its sovereignty. The picture that emerges is one of a nation hard at work, attempting to meet the needs of its people. It is a story of adaptation and resistance, which allows a distinct Navajo political and cultural life to continue. The story deepens our understanding of the unique experience of sovereignty in the American Indian context, which includes the ongoing process of adapting to the external laws of the United States. Yet the study also reveals the ways in which the Navajo Nation is stymied by some of the Court's decisions. Employment and consumer protections, economic development, and even more fundamentally, peace and security are threatened by the Court's categorical divestment of tribal powers over non-members.

The findings of my study suggest that policy makers in all branches of government should consider restoring at least some tribal inherent powers. Yet the Supreme Court seems poised to consider doing just the opposite. Taking the final step in extinguishing the legal doctrine of tribal sovereignty could well wipe out the best chance for American Indian cultural survival. At a minimum, this initial study of the Navajo Nation suggests that decision should not be made without full knowledge of its implications. Further research about other Indian nations is required to be able to provide a comprehensive picture of the effects of American Indian law. I propose to expand the study to include at least two other tribes that have a different economic development, geographic, and demographic profile from the Navajo Nation.