

## **THE CONSTITUTION OF THE UNITED STATES AS A SOURCE OF FEDERAL POWER OVER INDIAN AFFAIRS**

The main sources of congressional authority over Indian affairs is derived primarily from the following clauses in the United States Constitution: (1) the Commerce Clause, (2) the Treaty Clause, (3) the Supremacy Clause, and (4) the Property Clause.

### **Article I, Section 8, Clause 3, Clause 18 (Commerce Clause)**

The Congress shall have power...to regulate commerce with foreign nations, and among the several states, and with the Indian tribes;

...to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof.

### **Article I, Section 10, Article II, Section 2, Clause 2 (Treaty Clause)**

No state shall enter into any treaty...

He [The President] shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators concur...<sup>1</sup>

### **Article VI, Section 2 (Supremacy Clause)**

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding.

### **Article IV, Section 3, Clause 2 (Property Clause)**

The Congress shall have power to dispose of and regulate the Territory or other Property belonging to the United States.

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<sup>1</sup> Congress discontinued the practice of treaty making in 1871. Appropriations Act of Mar. 3, 1871, ch. 120, Sec. 1, 16 Stat. 544, 566 (codified at 25 U.S.C. Sec. 71).