

Indian tribes, but recognizes the existence of Indian tribes as quasi-sovereign entities possessing all the inherent rights of sovereignty except where restrictions have been placed thereon by the United States itself."

In discussing the scope of the meaning of tribal sovereignty, Felix Cohen in his book entitled "Federal Indian Law," said:

"The whole course of judicial decision on the nature of Indian tribal powers is marked by adherence to three fundamental principles:

"(1) The Indian tribe possesses, in the first instance, all the powers of any sovereign state.

"(2) Conquest renders a tribe subject to the legislative power of the United States, and, in substance, terminates the external powers of sovereignty of the tribe, e.g. its power to enter into treaties with foreign nations, but does not, by itself, affect the internal sovereignty of the tribe; that is, its power of local self-government.

"(3) These powers are subject to qualification by treaties and by express legislation by Congress, but, save as thus expressly qualified, full powers of internal sovereignty are vested in the Indian tribes and in their duly constituted organs of government."

The courts have repeatedly upheld the quasi-sovereign status of the tribe; however, the Congress has the prerogative placing limitations upon tribal autonomy.

Since 1885 and the enactment of the Seven Major Crimes Act, tribal authority has been markedly circumscribed by congressional action. That sovereignty, moreover, has been further limited in those instances in which States, acting pursuant to Public Law 83-280 have undertaken to assume civil and criminal jurisdiction over Indians. There remain, however, significant areas in which the tribe retains complete authority over the lives of its members.

One of the most serious inadequacies in tribal government arises from its failure to conform to traditional constitutional safeguards which apply to State and Federal Governments. As Senator Anderson, a member of the Committee on Interior and Insular Affairs has noted: "An Indian citizen has all the rights of other citizens while he is off the reservation, but on the reservation 'in the absence of Federal legislation' he has only the rights given to him by the tribal governing body."

Chairman Ervin has made a similar observation: "It appears that a tribe may deprive its members of property and liberty without due process of law and may not come under the limitation of Federal and State governments as stated in the Bill of Rights. However, the sovereignty of an Indian tribe can be limited by acts of Congress."

In examining the legal status of the American Indian, it is first necessary to appreciate what transpires where tribal law denies Indians the constitutional protection accorded other citizens. As a corollary consideration, it is also important to understand whether a tribal Indian can successfully challenge on constitutional grounds specific acts or practices of the Indian tribe. A negative response to this question was given in *Elk v. Wilkins*, 112 U.S. 94 (1884) for example, where the unilateral renunciation of tribal affiliation by an Indian was held to be insufficient to confer citizenship. An affirmative act of recognition by the Federal Government was deemed essential to establish citizenship. Absent such an affirmative act a State was able to deny Indians the right to vote in a State election. Only recently has this right been held to be irreconcilable with the 15th amendment and the Citizenship Act of 1924, 43 Stat. 253 (1924), 8 U.S.C. 1401 et seq. See e.g., *Montov v. Bolack*, 70 N. Mex. 196, (1962); *Harrison v. Laveen*, 67 Ariz. 337 (1948).

Because general acts of Congress were thought not to be applicable to Indians, general constitutional provisions received similar interpretation. In *Talton v. Mayes*, 163 U.S. 376 (1896), the Supreme Court refused to apply the fifth amendment to the Constitution to invalidate a tribal law that established a five-man grand jury. In this case the Court held that the Cherokee Nation, as an autonomous body, had the power to define crimes and independently provide for criminal procedure. Recognizing that the fifth amendment limits only the powers of the Federal Government, the Court rejected the argument that the power of local government exercised by the Cherokees was Federal in nature, that is, based on the Constitution. The Court also said:

"It follows that as the powers of self-government enjoyed by the Cherokee nation existed prior to the Constitution, they are not operated upon by the Fifth Amendment which, as we have said, had for its sole object to control the