

powers conferred by the Constitution on the National Government." (163 U.S. 376 at 384 (1894)).

Only a limited number of cases involving the denial of constitutional rights in Indian court proceedings reach the Federal courts due to the absence of a right to appeal tribal court decisions to Federal courts. The case of *Colliflower v. United States*, 342, F. 2d (1965), virtually stands alone in upholding the competence of a Federal court to inquire into the legality of an order of an Indian court. Federal courts generally have consistently refused to impose constitutional standards on the tribes on the theory that these standards apply only to State or Federal governmental action. For example, the guarantee of representation by legal counsel has been held not to apply in tribal court action. In *Glover v. United States*, 219 F. Supp. 19 at 21 (D. Mont. 1963), the Court stated:

"The right to be represented by counsel is protected by the Sixth and Fourteenth Amendments. These Amendments, however, protect * * * [this right] only as against action by the United States in the case of the * * * Sixth * * * [Amendment], and as against action by the states in the case of the Fourteenth Amendment, Indian tribes are not states within the meaning of the Fourteenth Amendment."

In the case of *Native American Church v. Navajo Tribal Council*, 272 F. 2d 131 (10 Cir. 1959), the Court by implication, held that a tribal Indian cannot claim protection from illegal search and seizure protected by the fourth amendment. The case involved the relationship between tribal law and first amendment guarantees of freedom of religion. The Native American Church is a religious sect to which many Indians belong. Peyote, a hallucinating agent, is used by members of this church in their religious ceremonies. Its use is often prohibited by State and tribal laws. In *State v. Big Sheep*, 75 Mont. 219 (1962), for example, the constitutionality of a tribal ordinance prohibiting its importation and use was challenged on the grounds that it violated the first, fourth and fourteenth amendments. The tenth circuit denied relief noting lack of Federal jurisdiction, and observed that internal affairs such as police powers were solely within the cognizance of the various tribes and that the general law of the United States could not interfere with purely internal matters. (272 F. 2d 131 at 134-135.) In refusing to concede the applicability of the fourteenth amendment to Indian tribes, the court stated:

"No provision in the Constitution makes the First Amendment applicable to Indian nations nor is there any law of Congress doing so. It follows that neither under the Constitution nor the laws of Congress, do the Federal courts have jurisdiction of tribal laws or regulations, even though they may have an impact to some extent on forms of religious workshop." (272 F. 131 at 135.)

In 1954, an effort to redress tribal infringements of religious freedoms by involving civil rights statutes also failed in the case of *Toledo v. Pueblo De Jemez*, 119 F. Supp. 429 (D. N. Mex. 1954). In this case, six Jemez Pueblo Indians brought an action for declaratory judgment against their tribe, the tribal council, and its governor charging that they had been subjected to indignities, threats, and reprisals solely because of their Protestant faith. Despite a tribal ordinance purporting to guarantee freedom of religion, the tribal council had refused to permit them to bury their dead in the community cemetery and had denied them permission to build a church. The court acknowledged that the tribal government acts represented a serious invasion of religious liberties; however, it concluded that these actions were not taken "under color of any statute, ordinance, regulation, custom or usage of any State or Territory," as required to invoke the Civil Rights Act, 119 F. Supp. 429 at 431-432. Thus, the Indians had no cause of action under the Civil Rights Act in the Federal courts.

In addition, a tribe can impose a tax (see *Barta v. Oglala Sioux Tribe*, 259 F. 2d 553 (8th Cir. 1958), cert. denied, 358 U.S. 932 (1959); *Iron Crow v. Oglala Sioux Tribe*, 231 F. 89 (8th Cir. 1956), or revoke tribal membership rights without complying with due process requirements. *Martinez v. Southern Ute Tribe*, 249 F. 2d 915 (10th Cir. 1957), cert. denied, 356 U.S. 960 (1958).

These cases illustrate the continued denial of specific constitutional guarantees to litigants in tribal court proceedings, on the ground that the tribal courts are quasi-sovereign entities to which general provisions in the Constitution do not apply.

Section 102 of title I provides that any Indian tribe in exercising its powers of local self-government shall, with certain exceptions, be subject to the same limitations and restraints as those which are imposed on the Government of the United States by the Constitution.