

TITLE II

A model code is needed to enumerate Indian rights and specify trial and appellate procedures. Testimony before the subcommittee has shown that tribal courts have a variety of rules of evidence, procedures, and concepts of justice, which in many instances, are devoid of fundamental guarantees secured by the Constitution. Individual Indians have suffered many injustices as a result of vacillating tribal court standards, untrained judges, and unwritten tribal laws.

The present code of offenses, which is operative in the courts of Indian offenses and which serves as a pattern for the codes of tribal courts, was established more than 30 years ago. It is found in title 25 of the Code of Federal Regulations, part II, which deals with law and order on Indian reservations. Sections 11.2 CA-11, 37 CA of title 25 sets out the jurisdiction of the court of Indian offenses and the number, duty, qualifications and procedures for the appointment of the judges. Also contained in these sections are a definition of the method of setting up the appellate proceedings and rules concerning jury trials and the selection of jurors, use of professional attorneys, appointment and duties of clerks of court, recordkeeping, issuance of warrants, detention procedure, bail procedures, et cetera.

25 C.F.R. also sets out the crimes and punishment under the Code of Indian Tribal Offenses. Approximately 58 criminal offenses are within the jurisdiction of the courts of Indian offenses, and sentences range from 5 days to a maximum of 6 months.

The procedures in title 25 are outmoded, impractical, and fail to provide for an adequate administration of justice on Indian reservations. For example, under the existing code, the total number of challenges in selecting a jury, pre-emptory and challenges for cause, is three. Subpenaed witnesses are paid by the party calling them their actual traveling and living expenses incurred, if the court so direct, and the fee for jury duty remains 50 cents a day. Questions before the court regarding the meaning of laws, treaties, or regulations are frequently referred to the superintendent for his opinion even though he is not a lawyer and lacks a legal training.

A new model code is necessary if there is to be a sensitivity to our traditional and constitutional standards in Indian courts. A code applied uniformly to all Indian courts would also assure individuals subject to their jurisdiction the same rights, privileges, and immunities under the U.S. Constitution as are guaranteed other citizens of the United States being tried in a Federal court for similar offenses.

TITLE III

In 1953, Public Law 83-280 (67 Stat. 588) conferred to certain States civil and criminal jurisdiction over Indian country. In many instances, this has resulted in a breakdown in the administration of justice to such a degree that Indian citizens are being denied due process and equal protection of the law. Tribes have been critical of Public Law 83-280 because it authorizes the unilateral application of State law to all tribes without their consent and regardless of their needs or special circumstances. Moreover, it appears that tribal laws were unnecessarily preempted and, as a consequence, tribal communities could not be governed effectively.

The Subcommittee on Constitutional Rights in its "Summary Report of Hearings and Investigations of the Constitutional Rights of the American Indian" arrived at the following conclusion concerning legislation to remedy Public Law 83-280:

"Indian governments do not, of course, bear full responsibility for those denials of rights which have occurred or which in the future may occur. It appears, paradoxically, that the States have also erred, both by failing to prosecute offenses and by assuming civil and criminal jurisdiction when that assumption was clearly against the wishes of the Indian peoples affected. Concurrent jurisdiction by the United States in the first instance and a repeal of Public Law 280 or at least its modification to include tribal consent as a precondition of the State's assumption of jurisdiction, would seem to provide a suitable remedy."

TITLE IV

As a result of an early Supreme Court case, *Ex parte Crow Dog*, 109 U.S. 556 (1883), which held that State courts lacked jurisdiction over offenses committed in Indian country, Congress enacted the "Major Crimes Act" in 1885. This law presently provides Federal courts with jurisdiction over the crimes of