

TRIBAL SOVEREIGNTY: ANOTHER LOOK

Crowe v. Eastern Band of Cherokee Indians, Inc.,
506 F.2d 1231 (4th Cir. 1974)

A "Land Division Agreement," executed in 1960 by the heirs of William T. Saunooke, assigned plaintiff a possessory interest¹ in an eleven acre tract.² In 1970, upon request of another heir, the Tribal Council of the Eastern Band of Cherokees instructed its Lands Committee to redivide the Saunooke land holdings among the heirs. Without notice or hearing, the Lands Committee rescinded plaintiff's possessory interest in the eleven acre tract.³ Plaintiff charged that the tribal action

1. Plaintiff was one of eight surviving children of William T. Saunooke. At the time of his death, Saunooke occupied a 59.60 acre tract of land on the Cherokee Reservation in North Carolina. He held a possessory interest in the tract by consent of the Tribal Council. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1232 (4th Cir. 1974).

Characteristically, the right to possession of reservation property is vested in the tribe, not its individual members. Tribes either formally assign incidents of ownership, notably rights of occupancy, or simply recognize an individual's right to occupancy through custom or usage. Tribal laws and customs determine the character and extent of the rights enjoyed by occupants of tribal land. The status of an Indian occupant is comparable to that of a common law licensee or tenant at will, but his right to possession is generally made more secure by tribal law and custom. F. COHEN, *HANDBOOK OF FEDERAL INDIAN LAW* 188, 288 (1942) [hereinafter cited as COHEN].

Legal title to all lands constituting the Cherokee Reservation is held by the United States as trustees for the Eastern Band of Cherokees by deed dated July 21, 1925. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1232 (4th Cir. 1974). For a history of the Eastern Band of Cherokees, see *United States v. Wright*, 53 F.2d 300 (4th Cir. 1931). See also *United States v. Colvard*, 89 F.2d 312 (4th Cir. 1937); *United States v. Parton*, 46 F. Supp. 843 (W.D.N.C. 1942), *rev'd*, 132 F.2d 886 (4th Cir. 1943); R. STRICKLAND, *FIRE AND THE SPIRITS* (1975); note 25 *infra* and accompanying text.

2. The "Land Division Agreement" was a prelude to the execution of a lease agreement which conveyed the entire 59.60 acres to a nonmember of the tribe. The conveyance, which explicitly referred to plaintiff's eleven acre interest, received the required approval of both the Tribal Council and the Secretary of the Interior. Additionally, a May 14, 1962, settlement and consent order entered by the district court in an action by the lessee against the Saunooke heirs and the Cherokee Tribe had referred to plaintiff's possessory rights. That settlement was also approved by the Tribal Council. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1233 (4th Cir. 1974).

3. The Tribal Council upheld the Land Committee's action in June 1971. Plaintiff was awarded an exclusive possessory interest in 4.48 acres and "a joint undivided interest in certain mountainside land." *Id.*

“denied her the equal protection of its laws and deprived her of her property without due process of law”⁴ in violation of the Indian Civil Rights Act of 1968 (ICRA).⁵ The federal district court found that the tribal action violated the due process provision of the ICRA, set aside the tribal action, and restored to plaintiff her original possessory interest in the eleven acres.⁶ The Court of Appeals for the Fourth Circuit reversed in part, remanded, and *held*: While the Indian Civil Rights Act of 1968 entitles an Indian to due process incident to a redivision of a possessory interest in tribal lands, it does not empower a federal court to substitute its determination for that of the tribe on the substantive issue of the case.⁷

4. *Id.*

5. 25 U.S.C. §§ 1301-41 (1970). Section 1302 provides in part: No Indian tribe in exercising powers of self-government shall—

. . . .
 (8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law

Section 1302 is part of Title II of the Civil Rights Act of 1968. Known as the Indian Civil Rights Act (ICRA) or the Indian Bill of Rights, Titles II through VII were a consolidation of legislation that had been under consideration by the Subcommittee on Constitutional Rights of the Senate Judiciary Committee since 1961. Attached by the Senate as a rider to H.R. Res. 2516, the bill passed the House with little discussion. See 114 CONG. REC. 9550-621 (1968). The legislative history of the bill from the early Senate hearings through its passage by the House is traced in Note, *The Indian Bill of Rights and the Constitutional Status of Tribal Governments*, 82 HARV. L. REV. 1343, 1355-56 n.53 (1969).

The legislative history indicates clearly that Congress intended to protect tribal members' liberties. The character and extent of those liberties, however, are not so clearly indicated. According to Senator Ervin, Title II was intended to “grant to the American Indians enumerated constitutional rights and protection from arbitrary action in their relationship with tribal governments, State governments, and the Federal government.” 114 CONG. REC. 394 (1968). Representative Meeds, on the other hand, stated that “[t]he provisions of the Indian Bill of Rights are not identical to the Federal Constitutional Bill of Rights, and the differences are largely in order to accommodate tribal customs.” 114 CONG. REC. 9596 (1968).

For detailed considerations of the ICRA, see Coulter, *Federal Law and Indian Tribal Law: The Right to Civil Counsel and the 1968 Indian Bill of Rights*, 3 COLUM. SURVEY HUMAN RIGHTS L. REV. 49 (1971) [hereinafter cited as Coulter]; Reiblich, *Indian Rights Under the Civil Rights Act of 1968*, 10 ARIZ. L. REV. 617 (1968); Note, *supra*.

6. The district court's unpublished opinion is discussed in *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1233-34 (4th Cir. 1974).

7. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1237 (4th Cir. 1974).

When a tribe adheres to procedures or customs analogous to those found in Anglo-American culture, a judgment on the merits may follow. For example, the one-man,

The sovereignty of Indian tribes first gained judicial recognition in the Supreme Court's decision in *Worcester v. Georgia*.⁸ Indian tribes have been described as "distinct, independent political communities,"⁹ "subordinate and dependent nations,"¹⁰ and "quasi-sovereign entities."¹¹ Although the original sovereignty of Indian tribes has been repeatedly acknowledged,¹² it has been limited by the plenary powers of the federal

one-vote principle established in *Baker v. Carr*, 369 U.S. 186 (1962), has been held applicable to tribes. *Daly v. United States*, 483 F.2d 700, 704 (8th Cir. 1973); *White Eagle v. One Feather*, 478 F.2d 1311 (8th Cir. 1973).

8. 31 U.S. (6 Pet.) 515 (1832). Historically, Indian tribes were treated as sovereign nations. They executed treaties, maintained territorial boundaries, and practiced self-government. The Constitution implicitly recognized the status of tribes as "distinct, independent political communities" by sanctioning treaties previously made with the Indian tribes and by declaring treaties past and future to be the supreme law of the land. *Id.* at 558-61.

It has been suggested that Chief Justice Marshall's approach to tribal sovereignty in *Worcester* was mandated by the equality of power which existed between the tribes and the federal government during the colonial and early postrevolutionary expansionist periods. Coulter 51-54. By 1871, however, the power of the federal government had increased to such an extent that Congress terminated treaty-making entirely, and began to distinguish between the tribes' internal and external sovereignty. In their external affairs, tribes were subordinated to the federal government; internally, tribal governments continued to exercise plenary power over tribal members and their activities on reservations. *Id.* This complete power of internal self-government enjoyed by the tribes rendered the Bill of Rights inapplicable to any dispute between a tribal government and its members. See note 14 *infra*. This "modern" view of the scope of tribal sovereignty, maintained until the passage of Title II of the Civil Rights Act of 1968, was expressed in *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89, 92 (8th Cir. 1956). See note 11 *infra*.

9. *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832).

10. *Native Am. Church v. Navajo Tribal Council*, 272 F.2d 131, 134 (10th Cir. 1959).

11. *Iron Crow v. Oglala Sioux Tribe*, 231 F.2d 89 (8th Cir. 1956). The court stated:

[T]he Constitution, as construed by the Supreme Court, acknowledges the paramount authority of the United States with regard to Indian tribes but recognizes the existence of Indian tribes as *quasi* sovereign entities possessing all the inherent rights of sovereignty excepting where restrictions have been placed thereon by the United States itself.

Id. at 92 (emphasis original).

12. See, e.g., *Talton v. Mayes*, 163 U.S. 376, 384 (1896) (powers of local self-government enjoyed by Cherokee Nation existed prior to Constitution); *Ex parte Crow Dog*, 109 U.S. 556, 572 (1883), citing *United States v. Joseph*, 94 U.S. 614, 617 (1876) (tribes are "semi-independent," "exempt from our laws," and dealt with in "their national or tribal character"); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 559 (1832) (Indian nations always considered "distinct, independent political communities, retaining their original natural rights"). See generally *United States v. Kagama*, 118 U.S. 375 (1886); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831); *Ex parte Tiger*, 2 Indian Terr. 41, 47 S.W. 304 (1898); COHEN 122-26.

government.¹³ While the external or "international" powers of tribes were severely curtailed, matters involving internal affairs of the tribes remained almost exclusively within the province of the tribal government.¹⁴ The ICRA,¹⁵ however, cast doubt on the tribe's power to

13. The United States government derives its power over the Indian tribes from three sources. Comment, *The Indian Battle for Self-Determination*, 58 CALIF. L. REV. 445, 447-52 (1970). The original source is the United States Constitution. Under U.S. CONST. art. II, § 2, cl. 2, the President has "Power, by and with the Advice and Consent of the Senate, to make Treaties . . ." Although once a significant factor in the government's relationship with the independent Indian tribes, see note 8 *supra*, treaty making ended in 1871. Comment, *supra* at 447-48. See also Coulter 52-60. In addition, U.S. CONST. art. I, § 8, cl. 3 grants Congress power "[t]o regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes . . ." This power, exercised by Congress as early as 1790, remains in force. Comment, *supra* at 447-48. See also COHEN 89.

The second source of power was based upon the now abandoned "guardian-ward" theory. Dicta in *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1 (1831), discussed the federal government's duty to protect "[a] people once numerous, powerful, and truly independent . . . gradually sinking beneath our superior policy, our arts and our arms . . ." *Id.* at 15. Chief Justice Marshall continued, "[The Indians] are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." *Id.* at 17. For examples of judicial application of the theory, see *United States v. Nice*, 241 U.S. 591, 597-98 (1916); *United States v. Kagama*, 118 U.S. 375, 383-84 (1886). See Comment, *supra* at 449-50.

The third source of plenary power, federal ownership of Indian land, was first expounded in *Johnson & Graham's Lessee v. McIntosh*, 21 U.S. (8 Wheat.) 240 (1823). Federal title in Indian lands was derived from the "original fundamental principle, that discovery gave exclusive title to those who made it." *Id.* at 574. Title in the grantees was subject only to the Indian right of occupancy. By treaty Great Britain passed title to the United States. *Id.* at 584. As "landlord," the federal government has power to control occupants of the land. Comment, *supra* at 450. See *United States v. Kagama*, *supra* at 380 (reaffirming principles of *Johnson & Graham's Lessee*).

14. See, e.g., *United States v. Quiver*, 241 U.S. 602 (1916) (personal and domestic relations, offenses against person or property); *Ex parte Crow Dog*, 109 U.S. 556 (1883) (murder of one Sioux by another on reservation); *Motah v. United States*, 402 F.2d 1 (10th Cir. 1968) (contested tribal election). See COHEN 122:

Indian self-government, the decided cases hold, includes the power of an Indian tribe to adopt and operate under a form of government of the Indians' choosing, to define conditions of tribal membership, to regulate domestic relations of members, to prescribe rules of inheritance, to levy taxes, to regulate property within the jurisdiction of the tribe, to control the conduct of members of municipal legislation, and to administer justice.

See also *Prairie Band of the Pottawatomie Tribe of Indians v. Puckee*, 321 F.2d 767 (10th Cir. 1963); Note, *The Constitutional Rights of the American Tribal Indian*, 51 VA. L. REV. 121, 123, n.12 (1965).

Beginning with the Supreme Court's decision in *Talton v. Mayes*, 163 U.S. 376 (1896), federal courts have held the Bill of Rights inapplicable to Indians living on reservations. "[A]s the powers of local self government enjoyed by the Cherokee nation existed prior to the Constitution, they are not operated upon by the Fifth Amendment

resolve intratribal disputes solely through tribal mechanisms.¹⁶

Enacted by Congress as part of the Civil Rights Act of 1968, the ICRA¹⁷ was intended to protect individual Indians from tribal actions that would deprive them of fundamental rights.¹⁸ The ICRA drew heavily from the Bill of Rights and incorporated significant parts of the fourteenth amendment as well.¹⁹ Although Congress did not intend to weaken tribal authority,²⁰ the ICRA conferred jurisdiction on the feder-

. . . ." *Id.* at 384. This decision, which was consistent with the government's prior policy of noninterference with intratribal disputes, remained tenable for many years. *See* *Native Am. Church v. Navajo Tribal Council*, 272 F.2d 131 (10th Cir. 1959) (first amendment inapplicable to Indian nations); *Barta v. Oglala Sioux Tribe*, 259 F.2d 553 (8th Cir. 1958) (fifth and fourteenth amendments inapplicable to action of Indian tribe taxing use of Indian trust land); COHEN 181. But see *Colliflower v. Garland*, 342 F.2d 369 (9th Cir. 1965), in which the court significantly deviated from this policy. In finding federal jurisdiction, the court distinguished *Talton* and asserted that the tribal court, because it had been created and maintained by the federal executive, was but an extension of a federal agency. *See* Lazarus, *Title II of the 1968 Civil Rights Act: An Indian Bill of Rights*, 45 N. DAK. L. REV. 337, 340-44 (1969); Comment, *supra* note 13; Note, *supra* note 5.

15. 25 U.S.C. §§ 1301-41 (1970). *See* note 5 *supra*.

16. Prior to the ICRA, federal courts generally would not decide intratribal suits, *see* note 14 *supra*. With the ICRA's passage, jurisdiction became available under 25 U.S.C. § 1343(4) (1970) in conjunction with 25 U.S.C. § 1302(8) (1970), *see* note 22 *infra*. The congressional policy underlying the ICRA, however, was not to weaken tribal sovereignty, but rather to make tribal government more responsive to individual tribal members' needs. *See, e.g., Lohnes v. Cloud*, 366 F. Supp. 619 (D.N.D. 1973).

17. Act of April 11, 1968, Pub. L. No. 90-284, tit. II-VII, 82 Stat. 77 (codified at 25 U.S.C.A. §§ 1301-41 (1970)).

18. *See* note 5 *supra*. *See generally* *Lohnes v. Cloud*, 366 F. Supp. 619, 621 (D.N.D. 1973); *Solomon v. LaRose*, 335 F. Supp. 715, 718 (D. Neb. 1971); Note, *supra* note 5, at 1360.

19. The sections of the Bill of Rights that were omitted from the ICRA were discussed in *Groundhog v. Keeler*, 442 F.2d 674, 682 (10th Cir. 1971); Note, *supra* note 5, at 1353. For example, the establishment of religion by Indian tribes is not prohibited by the ICRA. For a complete sectional analysis of the ICRA, *see* Reiblich, *supra* note 5.

20. *See* Lazarus, *supra* note 14, at 346; note 16 *supra*.

The policy of Indian self-determination was specifically adopted by Congress in a resolution on December 11, 1971:

[I]t is the sense of Congress that—(1) our national Indian policy shall give full recognition to and be predicated upon the unique relationship that exists between this group of citizens and the Federal Government and that a governmentwide commitment shall derive from this relationship that will be designed to give Indians the freedom and encouragement to develop their individual, family, and community potential and to determine their own future to the maximum extent possible; . . .

(3) improving the quality and quantity of social and economic development efforts for Indian people and maximizing opportunities for Indian control and self-determination shall be a major goal of our National Indian policy;

al courts to hear matters formerly adjudicated solely by the tribes.²¹

After finding jurisdiction under 25 U.S.C. § 1302(8) and 28 U.S.C. § 1343(4)²² the Fourth Circuit in *Crowe v. Eastern Band of Cherokee Indians, Inc.* reaffirmed the doctrine of internal Indian sovereignty.²³ The court found the doctrine relevant since "it plays an integral role in the concept of tribal property law"²⁴ by empowering the tribe "to regulate the use and disposition of individual property among its members."²⁵ Under the Indian concept of property, ownership rests in the

Lohnes v. Cloud, 366 F. Supp. 619, 622 (D.N.D. 1973) (deletions and punctuation of the court), quoting 117 CONG. REC. 46383 (1971).

21. See note 16 *supra*; note 22 *infra*.

22. 28 U.S.C. § 1343 provides:

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

.....
(4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, including the right to vote.

Use of section 1302 of the ICRA, quoted in part note 5 *supra*, in conjunction with 28 U.S.C. § 1343(4), developed soon after the passage of the Act. In *Dodge v. Nakai*, 298 F. Supp. 17, 25 (D. Ariz. 1968), the court used the reasoning of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 413, n.1 (1968), to fashion a means for establishing federal jurisdiction in cases arising under the ICRA. Under *Jones*, a plaintiff must find a federal statute protecting his rights to come within the reach of § 1343(4). See *Dry Creek Lodge, Inc. v. United States*, 515 F.2d 926, 933 (10th Cir. 1975); *Daly v. United States*, 483 F.2d 700 (8th Cir. 1973); *White Eagle v. One Feather*, 478 F.2d 1311, 1314 (8th Cir. 1973). See also *Johnson v. Lower Elwha Tribal Community*, 484 F.2d 200 (9th Cir. 1973); *Luxon v. Rosebud Sioux Tribe*, 455 F.2d 698 (8th Cir. 1972); Note, *supra* note 5, at 1372-73; Note, *Equitable and Declaratory Relief Under the Indian Civil Rights Act*, 48 N. DAK. L. REV. 695 (1972).

23. 506 F.2d 1231, 1234-35 (4th Cir. 1974). See also *United States v. Wright*, 53 F.2d 300 (4th Cir. 1931).

24. 506 F.2d at 1235.

25. *Id.*, quoting COHEN 143. The power to control tribal lands lies with Congress. Absent congressional legislation, federal courts have no power to regulate tribal lands. See, e.g., *Washburn v. Parker*, 7 F. Supp. 120 (W.D.N.Y. 1934); *United States v. Seneca Nation of New York Indians*, 274 F. 946, 951 (W.D.N.Y. 1921). Instead, federal courts have a duty on behalf of the federal government to preserve intact the Indian reservation, leaving the management of internal affairs within the hands of the Indians. *United States v. Charles*, 23 F. Supp. 346, 348 (W.D.N.Y. 1938).

When the United States gives tribal lands to other persons or entities or appropriates them for its own use, the tribes must be justly compensated. See, e.g., *United States v. Creek Nation*, 295 U.S. 103, 110 (1934). Although the Indians have only a right of occupancy, it is "as sacred as that of the United States to the fee." *United States v. Cook*, 86 U.S. (19 Wall.) 591, 593 (1873). See also *United States v. Jim*, 409 U.S. 80, 89 (1972) (Douglas, J., dissenting); *United States v. Santa Fe Pac. R.R.*, 314 U.S. 339, 345 (1941).

The power to regulate the inheritance of tribal land was established in *Jones v. Mee-*

tribe,²⁶ so that the interest of an individual member is limited to a "right of use [which] depends upon tribal law or custom."²⁷ The court found that in two separate resolutions the Eastern Band of Cherokees had employed its internal sovereign power over property to set up procedures intended to avoid tribal land disputes.²⁸

The Fourth Circuit affirmed the district court's holding setting aside the Tribal Council action.²⁹ The tribe's cancellation of plaintiff's possessory interest without notice or hearing was clearly violative of the plaintiff's due process rights under the ICRA.³⁰

On the substantive issue, however, the Fourth Circuit reversed the district court's restoration of plaintiff's possessory interest in the land. The court found that the district court had erroneously applied "Anglo-American principles of real property law" that were incompatible with the Indian concept of communal ownership of tribal property.³¹ The court stated that ICRA was designed "to protect individual members from arbitrary tribal action,"³² but not to abolish "the historic sovereign-

han, 175 U.S. 1 (1899). The Supreme Court held that inheritance is "controlled by the laws, usages, and customs of the tribe." *Id.* at 29.

26. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1235 (4th Cir. 1974). The court stated:

Under the Indian concept of tribal property the ownership and use of the land is communal. The power of absolute ownership is lodged in the tribe and the interests of the individual members of the tribe are "limited to mere occupancy of the tracts set apart for homes with the right to free use in common of the unoccupied portion of the reserve"

Id., quoting *Cherokee Nation v. Journeycake*, 155 U.S. 196, 215 (1894). See also *United States v. Jim*, 409 U.S. 80, 82 (1972); *Sizemore v. Brady*, 235 U.S. 441, 446 (1914); note 1 *supra*. Cherokee reservation land is communally owned. See *Cherokee Nation v. Journeycake, supra*.

27. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1235 (4th Cir. 1974). See also, *Prairie Band of Pottawatomis Indians v. United States*, 165 F. Supp. 139 (Ct. Cl. 1958); COHEN 144; note 1 *supra*.

28. 506 F.2d at 1235. The Fourth Circuit further recognized that the laws and customs of the Eastern Band of Cherokees had become formalized with the Tribe's incorporation in 1889. Through amendments to the Corporate Charter and two resolutions—the first was passed in February 1931 and the second was ratified in October 1960—the tribe had retained all powers over the disposition of its land. *Id.* at 1235-36.

An amendment in 1897, for example, conferred upon the tribe the power to manage and control all tribal property whether real or personal. This procedure was refined in the Resolution of 1931 establishing a Business Committee of the Tribal Council to settle all matters concerning tribal land. *Id.*

29. *Id.* at 1237.

30. 506 F.2d at 1234.

31. *Id.* at 1236. The concept of the vesting of rights, for example, is foreign to Indian tradition. *Id.* at 1235. See also note 26 *supra*.

32. 506 F.2d at 1237.

ty of a tribe."³³ Therefore, the court held that the substantive controversy should be decided "in the light of the traditions and customs of the Indian people."³⁴ The court remanded the case to the district court with instructions that the tribe "reconsider" the division of the possessory interests in the property.³⁵

The *Crowe* opinion is praiseworthy for clearly recognizing the scope of intervention authorized by the ICRA³⁶ and refusing to apply common law property principles to Indian land disputes.³⁷ By recognizing this limited scope, the court maintained the delicate balance implicit within the ICRA between the sovereignty of the tribe and the rights of its individual members. While the ICRA further impinges upon Indian tribal sovereignty, *Crowe* reflects the notion that the intervention authorized by the ICRA is not unbridled.³⁸

Although the decision in *Crowe* is not a landmark, it is illustrative of the problems that the ICRA presents. Despite the court's hesitation to intervene in internal tribal affairs, the decision raises the possibility that application of the ICRA will increasingly limit internal tribal sovereignty. Only if courts continue to distinguish carefully between the procedural and substantive areas of a dispute, thus avoiding "the application

33. *Id.*

34. *Id.* at 1236.

35. *Id.* at 1237. The reconsideration was to occur in a proceeding that "accorded to the plaintiff . . . the rights of procedural due process." *Id.* (footnote omitted).

36. See notes 29-34 *supra* and accompanying text.

37. *Id.*

38. The *Crowe* decision is but one in a series of cases construing the "due process" and "equal protection" provisions of the ICRA. For other decisions contributing to this interpretative process, see *Wounded Head v. Tribal Council of Oglala Sioux Tribe*, 507 F.2d 1079 (8th Cir. 1975) (equal protection clause of ICRA not coextensive with equal protection clause of Constitution); *Daly v. United States*, 483 F.2d 700 (8th Cir. 1973) (blood quantum requirement for tribal elections, if applied uniformly, not violative of statutory equal protection); *Williams v. Siseton-Wahpeton Sioux Tribe Council*, 387 F. Supp. 1144 (S.D.N.D. 1975) (tribal election procedures satisfied statutory due process); *Janis v. Wilson*, 385 F. Supp. 1143 (D.S.D. 1974) (notice and hearing satisfied statutory equal protection and due process); *Yellow Bird v. Oglala Sioux Tribe*, 380 F. Supp. 438 (D.S.D. 1974) (if uniformly applied, membership provisions satisfied statutory equal protection); *Solomon v. LaRose*, 335 F. Supp. 715 (D. Neb. 1971) (right of tribal council to exclude electees from council amounted to a denial of due process under ICRA); *Loucasson v. Leekity*, 334 F. Supp. 370 (D.N.M. 1971) (§ 1302(8) protects right to be free from excessive injurious force that is arbitrarily inflicted); *Dodge v. Nakai*, 298 F. Supp. 26 (D. Ariz. 1969) (exclusion of nonmember from reservation for raucous behavior was a denial of due process and an abridgement of free speech).

of technical rules of common law"³⁹ to internal Indian disputes, will tribes remain free to develop according to their own traditions.⁴⁰

39. *Crowe v. Eastern Band of Cherokee Indians, Inc.*, 506 F.2d 1231, 1236 (4th Cir. 1974).

40. Congress did not intend the ICRA to be a carbon copy of the Bill of Rights. *See note 5 supra*. Certain sections that were incompatible with tribal traditions were intentionally omitted. *See note 19 supra* and accompanying text. Thus, although the ICRA incorporates some of the language of the Constitution, "this does not necessarily mean that the terms 'due process' and 'equal protection' as used in the ICRA carry their full Constitutional impact." *McCurdy v. Steele*, 506 F.2d 653, 655 (10th Cir. 1974).