

# Native american civil rights law constitutional administrative essay

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nativearrow" We are tired of being the first Americans, with secondclass citizenship." 2. 1 Indian Civil Rights ActThe Indian Bill of Rights (sometimes called the Indian Civil Rights Act) was passed by Congress in 1968 to correct what was felt to be a double standard of justice. It guarantees to reservation residents many of the same civil rights and liberties in relation to tribal authorities that the Federal Constitution guarantees to all persons in relation to Federal and State authorities. The Bill of Rights, (the first ten amendments to the Constitution) originally bound only the federal government, but after ratification of the fourteenth amendment portions of the Bill of Rights have also come to apply to state government. But for the over 550 American Indian nations currently recognized by the U. S. government, the Constitution and the Bill of Rights represent a social contract which was created without their representation long after their own social contracts. This is why, for example, federal courts had no power to try an Indian for a crime against another Indian on Indian land before the enactment of the Major Crimes Act. Although all of the Bill of Rights applies to the federal government and most of it now applies to state government, it does not and never has applied to tribal governments. As a result, the Constitution would allow tribal governments to shut down newspapers, search tribal members without cause, and lock up tribal members without a fair trial. The Indian Bill of Rights stated (ap. Prucha, 46-48): No Indian tribe in exercising powers of self-government shall:(1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;(2) violate the right of the people to be secure in their persons,

houses, papers, and effects against unreasonable search and seizures, nor issue warrants but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;(3) subject any person for the same offense to be twice put in jeopardy;(4) compel any person in any criminal case to be a witness against himself;(5) take any private property for a public use without just compensation;(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and at his own expense to have the assistance of counsel for his defense;(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of 6 months or a fine of \$500, or both;(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;(9) pass any bill of attainder or ex post facto law; or(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons. The privilege of the writ of habeas corpus shall be available to any person, in a court of the United States, to test the legality of his detention by order of an Indian tribe. The Indian Bill of Rights covers all federally recognized Indian, Eskimo, and Aleut tribes, bands, Pueblos, communities, villages, and rancherias which carry on any self-government functions. These include all native groups that have been organized under Federal statute, as well as those formally

recognized by the Federal Government through treaty or Executive order. Although its language is unclear, the act probably does not protect Indians on State reservations which have no formal trust relationship with the Federal Government. (Wilkins, 17) The act places responsibilities on tribal officials in much the same way that the Federal Constitution places responsibilities on Federal and State officials. It covers all tribal officials, including tribal chairmen and governors, tribal council members, tribal judges, prosecutors, and police, officials of special tribal agencies such as housing authorities and development corporations. All Indian courts are covered by the act, whether they are traditional or nontraditional, tribal courts or Courts of Indian Offenses. All persons, Indian and non-Indian who come under the authority of the tribe, are protected by the act. ( Schusky, 44) One crucial question in the interpretation of the Indian Bill of Rights is whether it requires that the leaders of all Indian governments be chosen by popular elections. Such an interpretation of the act would be disastrous to those traditional tribal governments which choose their leaders through nondemocratic means. (<http://www.tribal-institute.org/lists/icra.htm>) Native American communities have prevailed in legal battles to assure recognition of rights to self-determination and to use of natural resources. Some of those rights, known as treaty rights are enumerated in early treaties signed with the young United States government. Tribal sovereignty has become a cornerstone of American jurisprudence, and at least on the surface, in national legislative policies. Many of the smaller eastern tribes have been trying to gain official recognition of their tribal status. The recognition confers some benefits, including the right to label arts and crafts as Native

American and they can apply for grants that are specifically reserved for Native Americans. But gaining recognition as a tribe is extremely difficult because of a Catch-22 in the process. To be established as a tribal groups, members have to submit extensive genealogical proof of tribal descent, yet in past years many Native Americans denied their Native American heritage, because it would have deprived them of many rights, such as the right of probate. (McCool, 63)

## **Chronology of Indian Civil Right**

1918Iroquois Indians declare war on Germany. Since they were not included in the 1919 Peace Treaty, they simply renewed their Declaration of War in 1941 and included Italy and Japan. 1919Indian soldiers and sailors receive citizenship. 1924The Snyder Act grants full citizenship to all American Indians. 1938Bureau of Indian Affairs (BIA) estimates number of potential registrants for a draft in case of war. 1939BIA updates male Indian age groups. Jun 1940The Navajo tribe announces that any un-American activity among its people will be dealt with severely. Aug 1940BIA Commissioner John Collier meets with Selective Service representatives to determine how to register Indians. Sep 1940Congress passes Selective Service Act. Oct 1940Congress passes Nationalities Act granting citizenship to all Native Americans without impairing tribal authority.-For the first time, American Indians register for the draft. Jan 1941The Fourth Signal Company recruits thirty Oklahoma Comanche Indians to be part of a special Signal Corps Detachment. Oct 1940The armed forces have inducted 1, 785 Native Americans. Dec 1941There are 5, 000 Native Americans in the armed forces when Japanese forces attack Pearl Harbor. Jan 1942According to Selective

Service officials, 99 percent of all eligible Native Americans had registered for the draft. This ration set the national standard for the nation. Jan 1942The Navajo Tribal Council calls a special convention to dramatize their support for the war effort; 50, 000 attend. Jul 1942The Six Nations (Mohawks, Oneida, Seneca, Cayuga, Onondaga, and Iroquois) declare war on the Axis Powers. 1942-1943The Army Air Corps runs a literacy program in Atlantic City, N. J., for native Americans who could not meet military literacy standards. Apr 1943Secretary of the Interior Harold Ickes announces that Indians have bought \$12. 6 million in war bonds. 1944Over 46, 000 Indian men and women have left their reservations for defense-related jobs. Nov 1944Fifty tribes establish the National Congress of American Indians (NCAI) in Denver, Colorado. Jan 1945John Collier resigns as Indian Commissioner after years of political controversy. 1946The Truman Commission Civil Right surges more humanitarian consideration for Native Americans.-Indian Claims Commission Act created by Congress to adjudicate Indian land claims in the aftermath of WWII. 1947Army Indian Scouts discontinued as a separate element of the U. S. armed forces. They had last been used on border patrol duties. 1957Utah becomes the last state to permit Indians to vote. What the Indian Civil Rights Act is best known for is extending part of the Bill of Rights to individual Indians against tribal governments. The parts of the Bill of Rights not included in this extension are those that would make no sense in the Indian government context. For example, the free exercise of religion is protected to account for the conflict between Christians and traditional religions where such conflict exists, but there is no ban on establishment of religion, since some tribes had traditional theocracies (government by religious leaders).

The right to a lawyer in a criminal case is absent because lawyers are absent from many reservations.(Nagel, 58)The Second Amendment (right to keep and bear arms) is absent because whether to have gun control is left to tribal government except for weapons that are completely illegal to own off the reservation. The Third Amendment (quartering troops in private homes) does not apply because Indian tribes do not have professional armies, and the Tenth Amendment (reserving unenumerated powers to the states) does not apply because states have no power over Indian nations unless a particular power explicitly is conferred on states by Congress.(Washburn, 73)However, the Indian Civil Rights Acts goes farther than the language of the Bill of Rights in that it guarantees " equal protection of the law," something absent from the U. S. Constitution before the Fourteenth Amendment. It also denies tribal governments the power to pass ex post facto laws and bills of attainder, provisions that are contained in the main body of the U. S. Constitution rather than the Bill of Rights, and the power to imprison tribal members for a term greater than six months. Traditional tribal governments did not practice imprisonment at all. The passage of the Act engendered controversy from two points of view. Some believed the ICRA worked as a limitation on the inherent sovereignty of tribes while others thought it would protect the individual against the arbitrary action of the tribe. There was little public discussion or Indian involvement in the creation and passage of the Act, but disagreement with the purpose and provisions of the Act arose later.(Idem, p. 75)