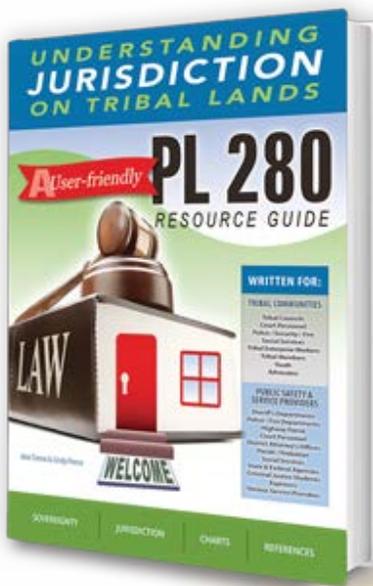


# I.C.R.A.

An Overview of the Indian Civil Rights Act



An interactive article - excerpts from "A User-friendly PL 280 Resource Guide"



## Quick Links

[Tribal governments not created by the U.S. Constitution](#)

[The Bill of Rights and the I.C.R.A.](#)

[Unique political, cultural & economic needs of tribes](#)

[Tribal consent provision added to PL 280](#)

[I.C.R.A.'s habeas corpus provision](#)

[Mixed feelings about I.C.R.A.](#)

The mid 1950's through the mid 1960's was a time period known as the **Civil Rights era**. This period is memorialized by brave men and women who spoke out against abuses of government. Native Americans were also among those who spoke out. During this period of time, a Senate subcommittee was created to hear issues involving civil rights violations of American Indians.

This subcommittee heard allegations regarding abusive tribal governments in such matters as: membership and voting practices, free speech/press infringements, discrimination, vague criminal statutes, arrest and search procedures, and jail conditions. "In addition ... the subcommittee also ... received complaints concerning deprivation of constitutional rights through illegal detention of reservation Indians by State and tribal officials, arbitrary decision-making by the **Bureau of Indian Affairs**, denial of various State welfare services to Indians living off the reservation, discrimination by government officials in health services, mistreatment and brutality of Indians by State and tribal law enforcement officers, and job discrimination by Federal and State agencies and private businesses." [1]



*“As the hearings developed and as the evidence and testimony was taken, I believe all of us who were students of the law were jarred and shocked by the conditions as far as constitutional rights for members of the Indian tribes were concerned. There was found to be unchecked and unlimited authority over many facets of Indian rights ... The Constitution simply was not applicable.”*

*Senator Roman L. Hruska of Nebraska, 111 Cong. Rec. part 26, p.35473, 90th Cong., 1st Session (Dec. 7, 1967)*

### Quick Links

[Native Americans and the Civil Rights era](#)

[Senate subcommittee heard allegations of civil rights violations](#)

[Tribal consent provision added to PL 280](#)

[I.C.R.A.'s habeas corpus provision](#)

[Mixed feelings about I.C.R.A.](#)

Some of the Senators on the subcommittee were rather surprised to learn during the hearings, that many of the constitutional provisions for U.S. citizens were not applicable to on-reservation Indians. When the U.S. Constitution was written, tribal nations were not part of “We the people of the United States of America.” [2] Tribal governments, as separate political entities, pre-exist the U.S. Constitution and were not created by it.

Therefore, “to ‘secure for the American Indian the broad constitutional rights afforded to other Americans,’ and thereby to ‘protect individual Indians from arbitrary and unjust actions of tribal governments,’” the [Indian Civil Rights Act \(I.C.R.A.\)](#) was enacted by Congress in 1968. [3] Yet, this “protection against tribal authority” [4] purposed also to “protect tribal sovereignty from undue interference.” [5] This is why, even though it was initially suggested by some members of Congress, to exactly mirror the U.S. Constitution’s [Bill of Rights](#) to create the I.C.R.A., it was instead modified to “fit the unique political, cultural, and economic needs of tribal governments.” [6]

Also, very important provisions in I.C.R.A. are found in [25 USC § 1321, 1322 and 1326](#). These sections amended [Public Law 280 \(PL 280\)](#) to include “consent of the Indian

## Quick Links

[Native Americans and the Civil Rights era](#)

[Senate subcommittee heard allegations of civil rights violations](#)

[Tribal governments not created by the U.S. Constitution](#)

[The Bill of Rights and the I.C.R.A.](#)

[Unique political, cultural & economic needs of tribes](#)

[Mixed feelings about I.C.R.A.](#)

tribe occupying the particular Indian country or part thereof which could be affected by such assumption” before any state could assume criminal or civil jurisdiction in Indian country. The provision of consultation with the tribes was the very provision **President Eisenhower**, who signed PL 280 into law in 1953, had asked Congress to implement as soon as possible. (He had strongly suggested that it be added at the next session of Congress.) The addition of the tribal consent provision, fifteen years after PL 280 was enacted, was the result of much hard work by many tribal leaders and their tribal and non-tribal supporters.

The I.C.R.A. did reveal Congress’ intent and “commitment to the goal of tribal self-determination” by providing for “strengthening certain tribal courts through training of Indian judges” and by reducing some of the frustrating and excessive rules and regulations tribes had been experiencing from the Federal Bureau of Indian Affairs (B.I.A.). [7]

Although the I.C.R.A. was clearly modeled after the U.S. Constitution’s Bill of Rights, it was not intended to be identical. The I.C.R.A. is a federal law, making compliance with this law consistent with an Indian tribe’s relinquishment of *external* sovereignty (doing nothing contrary or in conflict with the laws of the United States). *Internal* sovereignty, an Indian tribe’s inherent right of self-government, was not to be unnecessarily infringed upon by this federal law. This is why alleged violations of the I.C.R.A. are to be addressed only by tribal court proceedings.

The only exception to this is if someone contests their detention through a *writ of habeas corpus*. Essentially, a writ of habeas corpus declares that a person believes they are being illegally detained. Placing habeas corpus relief as the only federal remedy for alleged I.C.R.A. violations, was consistent with Congress’ intent of “avoiding undue or **precipitous** interference in the affairs of Indian people.” [8]

As the I.C.R.A. was drafted, it was noted that, as tribal members addressed issues regarding their civil rights, federal courts would be less prepared to evaluate tribal tradition and custom than tribal courts.



{ “[T]hose issues likely to arise in a civil context, will frequently depend on questions of tribal tradition and custom which tribal forums may be in a better position to evaluate than federal courts.”

*Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 71 (1978)

## Quick Links

[Native Americans and the Civil Rights era](#)

[Senate subcommittee heard allegations of civil rights violations](#)

[Tribal governments not created by the U.S. Constitution](#)

[The Bill of Rights and the I.C.R.A.](#)

[Unique political, cultural & economic needs of tribes](#)

[Tribal consent provision added to PL 280](#)

[I.C.R.A.'s habeas corpus provision](#)

It was Congress’ purpose that solutions for civil rights violations by tribal governments and their agents to be found through tribal court proceedings.

There have been mixed feelings about the I.C.R.A. since its inception. On one hand, it exposed abuses that had taken place and it sought to protect an individual’s right without undermining a tribal government’s power to be self-governing. Yet, many saw the I.C.R.A. as an intrusion by the federal government into matters tribes hold sacred – their tribal cultures and ways. Indeed, the I.C.R.A. gave federal courts the authority, through writ of habeas corpus, to arbitrate regarding internal affairs of a tribe.

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## Endnotes

[1] Hearings on constitutional rights of the American Indian before the Subcommittee on Constitutional Rights of the Committee on the Judiciary, U.S. Senate, 88th Cong., 2d Sess., p.22

[2] *Preamble of the United States Constitution*

[3] *Santa Clara Pueblo v. Martinez*, 436 U.S. 49, 61 (1978) citing the central purpose of the I.C.R.A. from its legislative history, S. Rep. No. 841, 90th Cong., 1st Sess., 5-6 (1967)

[4] *Id.* at 55

[5] *Id.* at 63

[6] *Id.* at 62

[7] *Id.* at 62-64

[8] *Id.* at 67