

Tribal Court History

Since time immemorial, Native American and Alaska Native tribes have been keeping the peace and administering justice in their homelands through the use of their own ancient laws, traditions and customs. Historically, the United States federal government has recognized the inherent sovereignty of Indian nations to “make their own laws and to be ruled by them.” (Williams v. Lee, 358 U.S. 217, 1958.) Traditionally, most tribes resolved disputes and addressed criminal activity by consensus, not by an adversarial system, as do Anglo-Americans. While each of the more than 560 federally recognized tribes in the U.S. possesses traditional methods of dispute resolution, formal court institutions are a relatively recent development in Indian Country.

The development of tribal courts as they are now known can be traced to a case arising in the 1880’s on land that is now the Rosebud Sioux reservation in South Dakota, when a Lakota tribal member, Crow Dog, killed a fellow tribal member, Spotted Tail. At the time, there was no formal court system utilized by the Lakota people. Utilizing traditional methods of dispute resolution, the tribe required Crow Dog to provide restitution to Spotted Tail’s family in the form of goods and provisions. Although the victim’s family was satisfied with the resolution, in the eyes of the federal government, the tribal approach did not inflict what it thought was appropriate punishment. As a consequence, the Department of the Interior, the federal agency responsible for directing Indian affairs, set up “Court of Indian Offenses” to handle less serious criminal offenses and to resolve disputes between tribal members through the application of federal law and regulations-not tribal law or custom.

It was not until 1934, with the passage of the Indian Reorganization Act, that tribes were encouraged by the federal government to enact their own laws and to establish their own justice systems. Many tribes, however, did not adopt their own codes at that time, but rather operated under provisions of the Code of Federal Regulations (CFR). Due to lack of financial resources, many smaller tribes could not afford to operate their own tribal courts and retained the CFR courts operated by the Bureau of Indian Affairs. There are approximately 23 CFR courts still in existence.

Approximately 275 Indian nations and Alaska Native villages have established formal tribal court systems. There is widespread variety in the types of forums and the law applied in each is distinctly unique to each tribe. Some tribal courts resemble Western-style judiciaries where written laws and rules of court procedure are applied. An increasing number of tribes are returning to their traditional means of resolving disputes through the use of peacemaking, elders’ councils and sentencing circles.

Each tribe, in developing its justice system, confronts three considerations: (1) Is our justice system effective in reaching prompt, long-term resolutions to disputes? (2) Does our system ensure the safety and well being of our community by preventing crime? (3) Does our justice system inspire confidence in its abilities to the tribal community and the outside American society? In an effort to address all of these goals, many tribes establishing new tribal courts, or enhancing established ones, are developing hybrid or blended systems that will incorporate traditional dispute resolution elements that have proven effective within their culture and community while also insuring that due process is provided.