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JURISDICTION AND THE INDIAN CREDIT PROBLEM: CONSIDERATIONS FOR A SOLUTION

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INTRODUCTION

Two recent court decisions involving Montana Indians have highlighted questions of Indian jurisdiction which will be faced by the courts for some time to come. In *Kennerly v. District Court,*[1] the United State Supreme Court held that state courts do not have jurisdiction to hear a claim brought by a non-Indian against an Indian for money owing on a contract made on a reservation. Shortly afterward, the Montana Court in *Crow Tribe of Indians v. Deernose*[2] applied the Kennerly ruling to deny state jurisdiction over a mortgage foreclosure involving Indian land and brought by the Tribe against one of its members.

The aftermath of the *Kennerly* decision is still being felt in the Montana courts as other areas of state jurisdiction over Indians continue to be tested.[3] This paper will discuss only one fact of Indian affairs which has been affected: Indian credit.[4] An attempt will first be made to show that Indian credit has been affected by the jurisdictional problems flowing from the recent decisions. The second portion will deal with possible solutions and how they stand up against developing Indian policy.

THE PROBLEM

It was settled by the *Kennerly* and *Crow Tribe* decisions that state courts do not have jurisdiction over actions involving Indians where the contract was made on a reservation; nor where an Indian sues an Indian on a mortgage of Indian land.[5] If jurisdiction can be found at all, it must be in either tribal or federal court.

It has been established by the federal courts that a suit cannot be brought in federal court merely because one of the parties is an Indian.[6]

[1]Kennerly v. District Court of the Ninth Judicial District of Montana, 400 U.S. 423 (1971).

[2]The Crow Tribe of Indians v. Deernose, ... Mont. ....., 487 P.2d 1133 (1971).

[3]Only recently the Montana Supreme Court held that state courts are without jurisdiction in Indian juvenile matters. *In re* Blackwolf, 29 St.Rep. 128, ... Mont....., ... P.2d ....., (February 23, 1972). This is an area with a long history of state court involvement.

[4]Since so many Indian matters were formerly handled in state courts, few remain untouched by these decisions. Rather than survey the entire jurisdictional field, it would seem better here to concentrate attention on the problems created in Indian credit in the hope that possible solutions discovered there may have application to other areas.

[5]These two decisions are discussed in greater detail *infra.*

[6]Martinez v. Southern Ute Tribe, 273 F.2d 731 (9th Cir. 1959); Rice v. Sioux City Memorial Park Cemetery, 102 F. Supp. 658 (N.D. Ia. 1952); Snyder v. Faucher, 7 F. Supp. 597 (W.D. N.Y. 1932); Deer v. St. Lawrence River Power Co., 32 F.2d 550 (2d Cir. 1929).

[7]Martinez, *supra* note 6.

In *Martinez v. Southern Ute Tribe*[7] the 10th Circuit Court of Appeals emphasized that, "an Indian, because he is an Indian, has no greater right to sue in a Federal Court than any other litigant."[8] In the absence of a specific Congressional grant of federal jurisdiction, Indians who seek to enter federal court to litigate civil matters must do so under the common forms of diversity of citizenship[9] and federal question[10] provisions, keeping in mind that the Martinez language also implies that diversity cannot be found merely because one party is an Indian.[11]

While Congress has specifically conferred federal jurisdiction in Indian criminal matters,[12] relatively few areas of civil litigation have received a similar treatment. District courts have original jurisdiction to hear all civil actions brought by recognized tribes, but the subject matter of the dispute must arise "under the Constitution, laws, or treaties of the United States."[13] Original jurisdiction is also given district courts to hear the claims of individual Indians to allege they are entitled to receive allotments of Indian lands.[14] While these two sections are relatively clear, other provisions for federal jurisdiction are much less easily interpreted. For example, 25 USC § 349 provides in part:

> **At the expiration of the trust period and when the lands have been conveyed to the Indians by patent in fee, as provided in section 348 of this title, then each and every allottee shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside. . . . Provided further, That until the issuance of a fee-simple patent all allottees to whom trust patents shall be issued shall be subject to the exclusive jurisdiction of the United States . . .**

The statute has been used to find state jurisdiction in criminal proceedings[15] but at least two questions can be raised regarding the "exclusive jurisdiction of the United States:" (1) How is the language reconciled with cases holding that an Indian as an Indian has no greater right to a hearing in federal court than any other litigant?[16] (2) Does "exclusive" federal jurisdiction mean exclusive of tribal jurisdiction? If

[8] *Id.* at 734.

[9] 28 U.S.C. § 1331.

[10] 28 U.S.C. § 1332.

[11] See also Deer, *supra* note 6 at 551.

[12] See 18 U.S.C. §§1152, 1153, 3242. Note also the emphasis on criminal matters found in Hearings on Constitutional Rights of the American Indians, S. 961-68 & S.J. Res. 40, Before the Subcom. on Constitutional Rights of the Senate. Comm. on the Judiciary, 89th Cong., 1st Sess. (1965).

[13] 28 U.S.C. § 1362.

[14] 28 U.S.C. § 1353.

[15] State v. Big Sheep, 75 Mont. 219, 243 P. 1067 (1926); Bonds v. Sherburn Mercantile, 169 F.2d 433 (9th Cir. 1948).

[16] Two factors may be considered in resolving the apparent contradiction: (1) in the decisions holding that an Indian as an Indian is not entitled to federal jurisdiction, none of the courts were explicitly considering § 349; (2) while the courts in those cases did not make the distinction between Indians and Indian allottees, the distinction may be decisive in determining the jurisdictional effects of § 349 since it applies to allottees to whom trust patents shall be issued."

so, how is that reconciled with cases which speak of non-interference in tribal affairs[17] and federal deference to tribal courts in certain circumstances?[18]

Even when legitimate grounds for federal jurisdiction are found, however, the jurisdictional questions are not ended. For example, even if federal jurisdiction may be invoked on the grounds of diversity of citizenship or because a federal question is presented, there remains the barrier of the required $10,000 in controversy. While many land and business loans would meet the requirement, it would certainly prevent federal courts from hearing a good deal of other Indian credit cases.

Another recent and more important factor has added further difficulty in finding federal jurisdiction in Indian civil matters. In *Williams v. Lee*[19] the United States Supreme Court held that state courts do not have jurisdiction in certain matters involving Indians when state jurisdiction would interfere with tribal affairs.[20] The United States Court of Appeals for the 9th Circuit has held that the logical extention of the *Williams* principle requires that the federal court also refuse to exercise its jurisdiction where that jurisdiction would interfere with internal tribal affairs. In *Littell v. Nakai,* the federal court held it had no jurisdiction to hear a request by the non-Indian tribal attorney for an injunction against the tribal council to prohibit its interference with the attorney's performance of his retainer contract. The significant jurisdictional feature of the decision was the court's refusal to assume jurisdiction even though it conceded that the facts entitled the plaintiff to diversity jurisdiction under 28 USC § 1332. In giving its reason the court noted:

> . . . a strong Congressional policy to vest the Navajo Tribal Government with responsibility for their own affairs emerges from the decision in Williams. Plainly, fruition of the policy depends upon freedom from outside interference. And federal court jurisdiction would be equally disruptive of the policy as would state court jurisdiction.[21]

Continued application of the *Littell* principle of federal abstention where tribal matters are at stake is bound to result in a further decrease of an already limited scope of federal jurisdiction in Indian civil actions. In the *Crow Tribe* situation for example, it might be argued that a federal court should not accept jurisdiction since both parties were Indians and the transaction involved Indian land. This would appear to be a case where non-Indian jurisdiction could "infringe on the right

[17]Williams v. Lee, 358 U.S. 217 (1959).

[18]Littell v. Nakai, 344 F.2d 486 (9th Cir. 1965), cert. den. 382 U.S. 852.

[19]Williams, *supra* note 17.

[20]This case and other decisions following from it are discussed in the preceeding student note.

[21]Little, *supra* note 18 at 489; *see also* U.S. *ex rel.* Rollingson v. Blackfeet Tribal Court, 244 F.Supp. 474 (D. Mont. 1965).

of the Indians to govern themselves."[22] What is significant is that even though the federal court might legitimately assume jurisdiction as noted by the Montana Court in *Crow Tribe,* the federal court might still refuse to assume jurisdiction under the principle of non-interference. Such abstention makes federal jurisdiction in Indian civil matters subject to an added restriction and thus even more questionable.

In response to further limitations of state and federal jurisdiction, the jurisdiction of tribal courts is expanding.[24] A non-Indian's rights under a contract made with an Indian on a reservation must be enforced in tribal court;[25] a non-Indian must use the tribal court to protect his rights under an employment contract with an Indian;[26] tribal court may require a non-Indian to show cause why he should not be enjoined from entering reservation land to get to property he has leased from an Indian;[27] Indians must use tribal court in certain divorce[28] and tort[29] actions. The decisions affect both Indians and those non-Indians who have dealings with Indians.

As state and federal courts withdraw from Indian civil matters there appears to be a related withdrawal of the non-Indian businessman. The appended study reflects the affect of the two Montana cases (*Kennerly* and *Crow Tribe*) on the reservation, where the *Crow Tribe* case arose, and the nearby community.[30] It indicates the impact of the cases

[22]Williams, *supra* note 17 at 223.

[23]Crow Tribe, *supra* note 2 at 1134, 1135.

[24]For the relation of tribal and state courts in Montana *See* PARKER, STATE AND TRIBAL COURTS: THE JURISDICTIONAL RELATIONSHIP, *supra.*

[25]Williams, *supra* note 17.

[26]Littell, *supra* note 18.

[27]Rollingson, *supra* note 21.

[28]Whyte v. District Court of Montezuma County, 40 Colo. 1334, 346 P.2d 1012 (1959).

[29]Sigana v. Bailey, 282 Minn. 367, 164 N.W.2d 886 (1969).

[30]While the study was limited to one Montana reservation, there is evidence that these decisions have had a much broader impact, calling into question the status of Indian loans amounting to several million dollars in Montana alone, and significantly greater amounts in other states where there is a larger Indian population.

In *Annis v. Dewey County Bank,* 335 F. Supp. 133 (D. S. D., 1971), the federal court took jurisdiction under 25 U.S.C. §1343 and 42 U.S.C. §1983 which allow the court to hear cases involving a deprivation of federally protected rights under color of state law. In denying state jurisdiction to enforce a lien on cattle taken as security for a loan and located on Indian land, the court nevertheless assumed jurisdiction of the bank's counterclaim for the amount of the loan. The overall effect was for the loan to be enforced anyway, but by the federal rather than the state court. The court commented at 138, "the result of granting plaintiff an injunction without granting defendant relief on his counterclaim would be to cut off credit to enrolled Indians living within the closed portions of the reservation." The footnote adds, "It appears, however, that such a result could still occur if an enrolled Indian should stay within the state judicial system in view of the holding of the South Dakota Supreme Court."

After the *Crow Tribe* decision, Production Credit Associations (P.C.A.) face a special problem since they are prevented by statute from using federal courts to enforce their loans. 12 U.S.C. §1138. This leaves tribal courts with the task of enforcing loans and mortgages in significant amounts. At this writing the Farm Credit Act of 1971 being considered by the House of Representatives would allow P.C.A.'s to use federal courts in cases "against any person over whom the courts of the state have no jurisdiction." H.R. 11232, 92nd Cong., 1st Sess. (1971).

on the availability of credit legally obtained from non-Indian lenders.[31] As a practical matter, non-Indian lenders who face the possibility of using tribal courts to enforce their contracts can be expected to be hesitant in extending credit. The same is true with Indian lenders who in some cases have an equal reluctance to use tribal court. The study bears out this fact.

When the United States Supreme Court in *Williams* held that a non-Indian creditor had to sue his Indian debtor in tribal court, it went to some length to describe the advanced system of justice developed by the Navajo Tribe:

> . . . Congress and the Bureau of Indian Affairs have assisted in strengthening the Navajo tribal government and its courts. . . . The Tribe itself has in recent years greatly improved its legal system through increased expenditures and better trained personnel. Today the Navajo Court of Offenses exercise broad criminal and civil jurisdiction which covers suits by outsiders against Indian defendants.[32]

The result in that case might have been as legally sound, but less fortunate had the civil issue been more complex and the tribal court less developed. While the efforts of the tribes, governmental agencies, and private foundations to improve the courts have met with varying degrees of success, the fact remains that in some locations the requirement of using tribal court is enough to cut off credit to Indians which might otherwise be available.[33]

CONSIDERATIONS FOR A SOLUTION

The discussion to this point indicates that there is a problem in the area of Indian credit which to some degree has been occasioned by the withdrawal of state courts from Indian affairs, the difficulty in obtaining federal jurisdiction in Indian civil matters, and the real possibility of a federal court's refusal to accept jurisdiction when there is an otherwise legitimate foundation for it. Since the withdrawal of non-Indian jurisdiction places the burden on tribal courts whose capabilities vary greatly, lenders avoid litigation in tribal court by simply not extending credit.

To many interested in Indian affairs, the replacement of non-Indian jurisdiction with tribal jurisdiction is a welcome step in the direction of increased tribal self-determination. It may be argued that the resultng

[31]Emphasis is placed on *legal* credit, since, as the study indicates, there appears to have been no decrease in the availability of black market type loans in small amounts. The decisions appear to have increased that type of activity.

[32]Williams, *supra* note 17 at 222.

[33]An example of the type of policy problem faced in making more loans available to Indians is found in the question of security for the loans. 25 U.S.C. §483a permits the use of Indian land as security. Yet if the loans are obtained from non-Indian lenders, as is likely in many cases, the tribe runs the risk of diminishing its land base. The land base is a fundamental source of tribal power and vital to any long range policy of self-determination. Here the goal of ready credit has great potential for confliet with the policy of self-determination. Unless there is a careful weighing of all factors, what may appear to be a satisfactory solution may eventually create an even greater problem.

loss of credit, which may be temporary, is a price happily paid for the extended freedom from outside interference. Under this view, then, the present situation should not be disturbed since it is more a part of the advancement of tribal self-determination than it is a problem of Indian credit. Thus the first possibility for a solution to the problem of Indian credit is that one is not needed, that things should remain as they are.

Another view is that the present loss of credit, whether created by the confusion as to where jurisdiction lies, or by lenders' reluctance to rely on tribal courts, is an unfortunate blow to the Indians' efforts in economic development and should be remedied. What follows are some of the considerations which should enter into a solution should one hold the view, not that the present state of affairs is as it should be, but that some concrete action is needed.

The ultimate goal to which a solution to the Indian credit problem would be directed is that credit be available to Indians as readily as to other citizens. It must be added that a solution is without substance unless it seeks to correct not only the more abstract, legal jurisdictional barriers to Indian credit, but the practical barriers to using that jurisdiction as well. That is, a statutory solution which would confer jurisdiction to a particular court would be no solution at all if the particular court did not have the capacity to render a judgment properly and see that it was carried out.

Any proposed solution must also take into account a development in Indian affairs which may be broadly characterized as a two-sided policy. On the federal side, there is increased emphasis on removing some federal control in favor of increased tribal self-determination and self-government. As President Nixon has phrased it,

> Both as a matter of justice and as a matter of enlightened social policy, we must begin to act on the basis of what the Indians themselves have long been telling us. The time has come to break decisively with the past and to create the conditions for a new era in which the Indian future is determined by Indian acts and Indian decisions.[34]

On the other side there appears to be a desire by both Indians and non-Indians to avoid state jurisdiction. In Montana this is evidenced by the failure of the Montana Legislature to assume Indian jurisdiction permitted by the 1953 act of Congress,[35] and by the failure of the Indians to seek state jurisdiction under the 1968 provisions.[36]

Any proposal to remedy credit problems will to some extent run contrary to these developments and may suffer from practical defects as well. The deficiencies alone need not prevent consideration of a pro-

[34]Richard M. Nixon, MESSAGE TO CONGRESS ON AMERICAN INDIANS, July 8, 1970.

[35]Act of August 15, 1953, 67 Stat. 588, 590. State jurisdiction over the Flathead Reservation was sought under the provisions of this act in 1963: REVISED CODES OF MONTANA, § 83-801 (1947).

[36]25 U.S.C. § 1322.

posal, since it is probable that any recommendation for an effective solution in 1972 will suffer from a variety of flaws. A good solution may merely be the one with the fewest defects.

In questioning whether exclusive jurisdiction to hear Indian credit matters should go to federal, state or tribal courts, a good case can be made for the federal courts. Such a move would insure that an effective legal disposition of credit matters would be available regardless of the location of the action. And since much of Indian affairs is already in the hands of the federal government, Indian self-determination would be less affected by this remedy than by conferring jurisdiction to the state. It would, however, take from Indian courts some of the jurisdiction they already have, and would tend to delay Indian self-government.

Exclusive state jurisdiction in Indian credit matters is least in line with the policy considerations given above, since it would run contrary to the apparent desires of the federal government, the tribes and the state. An example of this type of conferral would be found if Congress were to specifiy that state courts have jurisdiction in mortgage foreclosure actions under 25 USC § 483a (the section construed in the *Crow Tribe* case). In addition to this being only a partial solution, it is the type of legislation which creates concern on the part of Indians who are seeking increased tribal independence that once state jurisdiction is assumed, the tribe will be prevented from ever regaining it (or taking it for the first time depending on how one reads the present situation).[37]

The solution most in line with the more recent Indian policy is to have Indian courts themselves handle credit matters involving Indians. Such a move is in line with Williams and would significantly enhance the Indians' control of their own affairs. The solution suffers to the extent that tribal courts are unable to meet the burden of the litigation.[38] Any proposal must take into account the fact that tribal courts vary greatly in procedures, records, law, and the training of judges.[39] While a particular tribal court may be quite capable of granting specific performance in a contract action, it may not be able to handle a complicated mortgage foreclosure.

If considerable funds were available, tribes could speed the development of their courts by hiring trained Indian and non-Indian judges as

[37]This concern was alluded to in Justice Stewart's dissent in Kennerly, *supra* note 1 at 513.

[38]There are presently 85 tribal courts which have to handle matters involving nearly 500,000 Indians and 52 million acres of land. 4 AMERICAN INDIAN LAW NEWSLETTER 202 (1971).

[39]*See* generally, the HEARINGS ON CONSTITUTIONAL RIGHTS OF THE AMERICAN INDIAN BEFORE THE SUBCOMMITTEE ON CONSTITUTIONAL RIGHTS OF THE SENATE COMM. ON THE JUDICIARY, 87th Cong., 1st Sess., pt. 1 (1962), 87th Cong., 1st Sess. pt. 2 (1963), 87th Cong., 2d Sess. pt. 3 (1963), and 88th Cong., 1st Sess., pt. 4 (1964). *See also*, the discussion of this material in Note, *Indian Bill of Rights and the Constitutional Status of Tribal Government*, 82 HARV. L. REV. 1343, 1355-60 (1969).

well as other court personnel. Even though the merits of improving tribal courts by such a massive funding program may be many, the effects of such a program, if adopted, would take time to be felt. Time would be needed not only to have the court function smoothly, but also for the lenders to gain confidence in the court sufficient for them to risk their money on the court's judgment.

While a grant of exclusive jurisdiction to tribal, state or federal courts would suffer from a variety of drawbacks, some of the deficiencies might be remedied by a grant of concurrent jurisdiction. Such a move would allow more flexibility. The jurisdiction could, for example, be given to tribal and federal courts with a presumption in favor of initial tribal court jurisdiction, but with the possibility of a petition for removal to federal court when certain conditions were met. The removal could be granted at the discretion of the federal judge if the party seeking removal presented evidence sufficient to show that he could not receive a proper hearing in tribal court.

Such a procedure might be drawn to correspond to the current provisions for removal of state proceedings to federal court.[40] Under the present removal statutes, a defendant may remove a case to federal court if his petition to the court verifies adequate grounds for federal jurisdiction.[41] An effective application of this procedure to tribal courts would require that both plaintiffs and defendants be allowed to petition for removal. In addition, grounds for removal would have to be expanded to include a showing of an absense of corrective process in the tribal court or circumstances which make the process ineffective to protect the rights of the petitioner. An analogy may be drawn between this procedure and the present removal of civil actions against a person who claims he cannot enforce his federally protected rights in state court.[42] Some discretion would be required by the federal court to which the petition would be directed, but there are ample examples where such discretion is already exercised in a variety of situations.[43]

Concurrent jurisdiction would provide some distinct advantages over an absolute and exclusive grant to any of the three court systems. A clear Congressional declaration of concurrent jurisdiction in specified civil matters would eliminate a great deal of confusion which currently exists in Indian law. As already mentioned, this confusion itself operates as an obstacle to Indian credit. Such a system would provide an operat-

[40]28 U.S.C. § 1441 ff.

[41]28 U.S.C. § 1446.

[42]28 U.S.C. § 1443.

[43]Federal courts are already called upon to use discretion in issuing writs of habeas corpus to Indians convicted in tribal court, 25 U.S.C. § 1303. For some of the factors involved in issuing the writ *see: Colliflower v. Garland*, 342 F.2d 369 (9th Cir. 1965); *Settler v. Yakima Tribal Court*, 419 F.2d 486 (9th Cir. 1969).

Under the doctrine of primary jurisdiction federal courts also use discretion in requiring that certain disputes receive an initial determination by an administrative agency. *See Nathanson v. N.L.R.B.* 344 U.S. 25, 30 (1952).

ing forum to handle disputes, which, during the interim of their development, tribal courts are unable to treat. By retaining the presumption of tribal jurisdiction, the system would allow a review of the capabilities of the particular tribal court on a case by case basis. Since many tribal courts at the present time are not able to hear all matters equally well, and since it is doubtful that they will develop at an equal pace, a great deal of flexibility is required in any provision regarding their jurisdiction. Concurrent jurisdiction could provide that flexibility.

The presumption of tribal jurisdiction and the cost to the federal system would offer a theoretical and practical incentive for placing increased responsibility on the tribal court. Other measures could be added to insure as much tribal court authority as possible. For example, an opportunity for direct review of the district court's determination of tribal court ability to treat a particular question.

A system of concurrent jurisdiction is not without problems, both theoretical and practical. It might deprive tribal courts of jurisdiction which is arguably theirs exclusively. From the viewpoint of the federal courts there are increased practical difficulties. The cost in terms of facilities and personnel is a major consideration. Considerable attention would have to be given to the question of what law the federal court would apply after removal. If the comparison with the present removal from state court is maintained, the federal courts should apply the law of the jurisdiction from which the case was removed—Indian law. The difficulty of a federal court applying tribal law is apparent both from a legal and a cultural viewpoint. The problems would be even greater if tribal law on the particular issue were unclear or non-existent.

It should also be noted that when a petitioner under present law seeks removal to protect his federally guaranteed rights in federal court, both courts evaluate his rights in the light of a single legal tradition. The same cannot be said if the federal court is asked to evaluate the protection afforded a petitioner's rights in the court of a different cultural and legal tradition. Where there is a conflict, which view of personal rights should prevail, tribal or Anglo-American? This conflict of laws question must eventually be faced regardless of whether Indian jurisdiction continues to grow under the present jurisdictional arrangements, or whether an entirely different scheme is adopted. If tribal self-determination is to be authentic, tribal law cannot consist merely in a wholesale transposition of the common law tradition to Indian courts. An understanding of this problem must underlie any long range policy on both original jurisdiction and any system for review between the two traditions.[44]

[44]Serious policy questions have already surfaced in a similar vein in trying to apply Title II of the CIVIL RIGHTS ACT OF 1968. 25 U.S.C. §1301 ff. One federal judge has commented, "This opinion is written in an effort to reveal some of the problems concerning the jurisdiction of federal courts inherent in the CIVIL RIGHTS ACT OF

CONCLUSION

It has been suggested here that a great deal of confusion exists in Indian civil jurisdiction. While substantial confirmation would require a far broader and more detailed study, there is evidence that this jurisdictional problem has had an adverse impact on Indian credit in at least one area. The credit problem may be viewed merely as a side effect of expanded Indian self-determination or a situation to be remedied by Congressional action. If the present state of affairs is unhappy, the corrective measures do not present an altogether pleasant picture either. Grants of exclusive jurisdiction to state or federal courts prevent the tribe from handling its own affairs, and a grant (or a verification) of tribal court jurisdiction may be ineffective in many areas due to the present status of the tribal courts. Concurrent tribal-federal jurisdiction offers effectiveness and flexibility as an interim solution in addition to providing a forum in which issues involved in a final solution can be raised. But concurrent jurisdiction would be difficult to administer.

It might seem that every possible solution presents more problems than it solves. That might be reason enough for not doing anything. On the other hand, it might produce a necessary awareness of the extent of the repercussions which are felt when only one area of Indian affairs is dealt with. This awareness and respect for the problem might at least rule out a hasty, narrowly-considered or piecemeal solution.

While no solution is easy, any decision made—or the decision to do nothing—must include at least three elements: (1) a factual determination of the extent of the present problem in Indian civil jurisdiction; (2) the practical effectiveness of the court machinery involved in any solution; (3) a basic long-range policy regarding Indian self-determination and a careful analysis of how that policy might be affected by any action taken.

1968 and the extent to which that statute requires this court to depart from long established principles and policies.'' Dodge v. Nakai, 298 F. Supp. 17, 27 (D. Ariz. 1968).