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Where Does Economic Development Really Come From? Constitutional Rule Among the Modern Sioux and Apache

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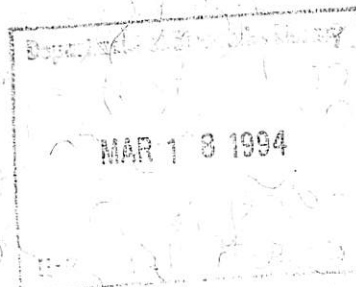
Stephen Cornell and Joseph P. Kalt

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**Malcolm Wiener Center for Social Policy
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by

Stephen Cornell and Joseph P. Kalt

**Harvard Project on
American Indian Economic Development**

April 1993

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Abstract

**WHERE DOES ECONOMIC DEVELOPMENT REALLY COME FROM?
CONSTITUTIONAL RULE AMONG THE MODERN SIOUX AND APACHE**

by

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July 1993

The institutions of self-government are classic Samuelsonian public goods. They are collective consumption goods that provide the organizational and legal structures by which societies arrange and enforce the "rules of the game" that enable divisions of labor, exchange, and collective action. Contractarian and public choice traditions in political science and economics emphasize the central role of constitutions as the foundational institutions that produce public institutions of self-government. Yet, explanation of the origins and dynamic equilibrium properties of constitutions inevitably confronts the "Hobbesian conundrum": Democratic constitutions are, themselves, public goods for which no super-government stands ready to prevent free riding by self-interested usurpers; Constitutions are written on paper and might be expected to be subject to perpetual coalition cycling and/or non-democratic takeover; Paper constitutions are a veil of civility covering up a perpetually Hobbesian struggle. How do societies really establish more or less effective and stable institutions of self-government?

This conundrum is leading many analysts to explore pre- and extra-constitutional socio-cultural foundations of social organization. This study argues that shared cultural norms of political legitimacy among rational individuals provide such foundations. To test the framework, we examine modern constitutional rule among a set of small "nations": the modern Apache and the Sioux tribes on American Indian reservations. Both tribes operate under very similar constitutions that were effectively imposed upon them in the 1930s. In relative terms, the Apache have thrived under their constitution, while the Sioux reservations are among the poorest and most socially desperate places in the United States. We find that the modern constitution of the Apache serendipitously matches the indigenous pre-reservation governmental structure of Apache society, and that this concordance explains the relative success of the Apache. Traditional Sioux political structure, on the other hand, continues to exert powerful influence on Sioux society, but is very poorly matched to the modern constitution. Compared to the Apache context, the resulting illegitimacy of modern Sioux government tends to make that government more of an instrument of private rent-seeking than an effective mechanism of collective action.

(Forthcoming, *Economic Inquiry*, October 1994)

**WHERE DOES ECONOMIC DEVELOPMENT REALLY COME FROM?
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by*

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I. INTRODUCTION

I.A The Hobbesian Conundrum

Early in *The Calculus of Consent* the authors note, almost as a warning to the reader, the need to make an admittedly unrealistic assumption: "In discussing an original constitution or improvements in an existing constitution, we shall adopt conceptual unanimity as a criterion."¹ Of course, the work then goes on to develop the seminal ideas of the contractarian approach to public choice and political economy. Yet, in its prefatory remarks about original unanimity, *The Calculus* provides a disconcerting peek into an Hobbesian world that is never separated by more than the paper of constitutions from the ordered concepts of contractarianism and the new institutionalism.

Collective decision rules, including the institutions of democratic self-government, are mechanisms by which groups of individuals organize themselves for specialization and exchange, resolve disputes, and devote resources toward mutually beneficial ends. At the same time, collective decision

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¹ Buchanan and Tullock, *The Calculus*, at 14-15. On the realism of the assumption, see at 6.

making and adherence to the rules of collective action are an expensive endeavor: "The attainment of consent is a costly process" (*The Calculus*, at 7), and even choosing and abiding by constitutional rules "confront the choosing individual...[with] the costs and benefits of collective action" (*ibid.*, at 7). With these attributes of collectiveness and costliness, the group decision mechanisms of self-government are classic Samuelsonian public goods: "we recognize that 'constitutional' decisions themselves...are necessarily collective" (*The Calculus*, at 6).

These familiar observations raise a conundrum for economic (i.e., methodologically individualistic) explanations of the origins of democratic government. How do large groups of rational individuals arrive at cooperative outcomes and select the public goods – the constitutional rules – by which they govern themselves? "The selection of a decision-making rule is itself a group choice, and it is not possible to discuss positively the basic choice-making of a social group [in the absence of specified rules]...We confront a problem of infinite regression here" (*The Calculus*, at 5-6). How do we, individually and collectively, choose the rules by which we govern ourselves?

Moreover, the selection of collective decision rules is only part of the problem of collective action confronting self-governed individuals. How do we bind ourselves to the rules by which we choose the rules by which we govern ourselves? At least for more or less sovereign democracies, there is no outside government, no third-party "meta-enforcer" (Hirshleifer, 1976), by which to compel individuals' agreement on rules of original constitution making, or by which to coerce their compliance with agreements they profess. There is only us. Constitutions are written on paper. The world is always Hobbesian.²

Original unanimity is an answer to the Hobbesian conundrum of extra-constitutional public choice: "One means of escape from what appears to be a hopeless methodological dilemma is that of

² Interestingly, this line of reasoning seems to have led the authors of *The Calculus* into fascinating (albeit, unjustly overlooked) investigations of the inherently difficult-to-structure world of pre-constitutional public choice. See Tullock (1972a, 1972b).

introducing some rule for unanimity or full consensus at the ultimate constitutional level of decision-making (*The Calculus*, at 6). To avoid [infinite regress] we turn to the unanimity rule, since it is clear that if all members of a social group desire something done that is within their power, action will be taken regardless of the decision rule in operation" (*The Calculus*, at 15).

Yet, even as they assert it, Buchanan and Tullock are standing on firmer ground than mere analytic necessity. The democratic State may be an "artifact" (*The Calculus*, at 13), but the world is not so brutish as the pre-Leviathan world of Hobbesian caricature. Constitutions may not be arrived at unanimously, but neither are they invariably products of wars of all against all. Democratic decision rules and governments come and go, but their lives are not always instantaneous flickers. Reasoning by deduction, the formal foundations of self-government must themselves be founded extra-constitutionally on the shared "agreements" (albeit less than unanimous and commonly unspoken) that make up the cultures that condition the preferences and perceived constraints of socially-living individuals.³ Some sort of extra-constitutional cooperative "agreement" must glue societies of individuals together.

Borrowing from *The Calculus* (at 15):

It seems futile to discuss a "theory" of constitutions for free societies on any other assumptions than these. Unless the parties agree to participate in this way in the ultimate constitutional debate and to search for the required compromises needed to attain general agreement, no real constitution can be made.

³ At this point, by "condition the preferences and perceived constraints" we mean nothing more than the kind of process of acculturation and learning invoked by Stigler and Becker (1977).

I.B Norms of Legitimacy, Social Capital, and Constitutional Match

What if a society found itself with constitutional decision rules around which there was *not* extra-constitutional, cultural agreement? Would the results look more Hobbesian? If the members of a society did not agree that their government was legitimately constituted, would the instruments of government be more likely to be turned away from impartial third-party enforcement of the rules of collective action and toward destructive rent-seeking by unbound private actors?

These kinds of questions motivate this study. Specifically, we seek to provide a test of the deduced hypothesis that extra-constitutional agreement must underlie successful constitutional rule. We examine this hypothesis by taking advantage of an unusual context in which common constitutions have been imposed by outside parties on a set of small states – American Indian reservations. This context helps overcome a problem that often plagues constitutional public choice: If groups of individuals select their form of government non-coercively and they have preferences over governmental forms, regarding some as "better" or "more just" than others, maybe they have the form of government they have (with its economic and social consequences) because they "want" it in some meaningful sense of mutual agreement. In the Indian context, however, constitutional rules have been provided, boilerplate style, to tribes by the Federal Government of the United States (with the Federal Government even retaining the right to approve of changes in constitutional form).

We examine two modern American Indian tribes with markedly different economic and social success: the White Mountain Apache of the Fort Apache Reservation in Arizona and the Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota. The former tribe is one of a handful of tribes in the country that is developing rapidly on other than a transfer-based economy. The Pine Ridge reservation, on the other hand, is the poorest community in the United States. Both Fort Apache and Pine Ridge, however, operate under the same basic constitution. The maintained hypothesis is that the vastly different performance of the two tribes reflects demonstrably closer extra-constitutional agreement

on the form and substance of tribal government at Fort Apache than at Pine Ridge. We test this hypothesis by a pairwise comparison of the current constitutional rules operating at the two reservations with each tribe's pre-reservation (i.e., pre-conquest) governmental system.

II. EXTRA-CONSTITUTIONAL AGREEMENT AND THE FOUNDATIONS OF ECONOMIC DEVELOPMENT

There is an interesting coalescence of inquiry, if not answers, by various social science disciplines taking place around issues of extra-constitutional agreement. Much of this inquiry is centered on the economics of development. Whether referred to as social capital, cultural norms, social contract, political culture or some other phrase, the focus in this work is on the origins of effective institutions of government. For decades, economists and others have been providing developing countries (and even many of the developed countries) with advice of the form "get your prices right," "set up markets," and "establish the rule of law and contract." Viewed at a grand level of the meta-experiments of the new and old China's or East and West Germany, this advice has generally been useful -- where it has been heeded. But why isn't the whole world developed? Why does sound advice only take hold in some countries and not in others? To ask these kinds of questions is to start down the path to asking where countries' governments and governmental policies come from -- a path leading quickly to concern over the extra-constitutional foundations of collective action.

The economist's perspective in these inquiries is perhaps best represented by Douglass North's *Institutions, Institutional Change and Economic Performance* (1990), which aggressively confronts -- but admittedly fails to completely answer -- the question of how the State is ever constrained solely to the role of the impartial third-party enforcer of rules, contracts and property rights in a world peopled by wealth-maximizing, free-riding individuals. North is led to call for a "sociology of knowledge" in order to understand how learning and acculturation constrains the actions of the State.

A similar theme is found in political science, notably in Robert Putnam's *Making Democracy Work* (1992), where "social capital" -- embracing networks of reciprocity, trust, cultural norms, and the like - - generated 700-800 years ago through civic clubs is the preeminent factor explaining the disparate social and economic conditions found across the various regions of present-day Italy.

The rational choice movement in sociology, as represented by such works as James Coleman's *Foundations of Social Theory* (1990) and Jon Elster's *The Cement of Society* (1989), is setting about to provide an understanding of the mechanisms by which shared norms of behavior and perception shape and constrain economic man -- putting meat on the bones of the acculturation process suggested by Stigler and Becker (1977). Socio-biology and evolutionary approaches of the type offered by Robert Axelrod's *The Evolution of Cooperation* (1984) are also relevant, as game theoretic models of narrowly self-interested actors produce primarily non-existence conclusions in the large numbers context, and social scientists are forced to come to grips with the fact that they are dealing with a social animal of the type described by Adam Smith in *The Theory of Moral Sentiments* (1723-1790). Finally, the important work of historians such as Basil Davidson's *The Black Man's Burden: Africa and the Curse of the Nation-State* (1992) documents that differential success in post-colonial Africa is directly related to the structural concordance or discordance of the nation-state system left behind by the colonial powers with the historic political cultures of the diverse multitude of native societies.

Concepts such as "social capital," "trust," and "political culture" are excessively vague.⁴

The working hypothesis of this paper is that, to be effective and productive of economic progress, formal institutions of government require wide acceptance (albeit, not unanimity) among individuals in a social group of shared extra-constitutional agreements regarding institutional feasibility (i.e., the perceived technology of making and enforcing governmental decisions -- "chief executives are/are not able to make impartial judicial decisions") and the legitimacy of alternative collective decision rules (i.e., ideological views regarding propriety -- "the president should/should not have the power to remove judges"). For simplicity, we refer to these shared extra-constitutional agreements as "cultural norms" of feasibility and legitimacy. Of relevance to the context under study here, these norms apply across at least four primary dimensions of the form and substance of constitutional rules:

- **Structure of Authority:** The division of powers and responsibilities across such tasks as dispute resolution (judicial affairs), enforcement (coercion and policing), law and rule making (legislative affairs), administration and implementation of public initiatives and investments (executive and bureaucratic functions), and external political, economic and military affairs (international relations).
- **Scope of Authority:** The range of powers and responsibilities wielded by the government over the foregoing areas of authority. E.g., do the society's informal norms support or abhor governmental ownership of businesses?; is it seen to be the proper role of government to enforce contracts?; etc.
- **Location of Authority:** The level of social organization -- family, local community, affinal "band" organization, the tribe -- in which political power and responsibility are properly vested, according to a society's cultural norms.

⁴ We have argued elsewhere that norm- or culture-driven behavior is wholly consistent with choice theoretic models of rational individuals who: (1) have preferences over social sentiments such as loneliness, guilt, self-righteousness, etc. -- perhaps rooted in their being social animals for whom specialization is productive but enforcement of agreements on cooperation is expensive; and (2) are acculturated in a Stigler and Becker (1977) sense as to tastes and perceptions of opportunity sets by growing up and living in particular social contexts. With these kinds of individuals, norms arise as shared public goods out of the networks of social interaction by which individuals receive private Olsonian (Olson, 1971) selective incentives from "sending" and "receiving" moral sentiments. The consumption good character of the selective incentives that "carry" norms suggests that norms are only weakly subject to comparative static explanations of their origin and evolution (per Becker, 1962) thereby providing an explanation for the observed heterogeneity of human social systems. See Cornell and Kalt (1991, 1992a).

- **Source of Authority:** The mechanisms by which individuals who assume governmental roles and control over means of coercion acquire *legitimate* authority, and the actions which violate norms of legitimacy.

Our research strategy is as follows: We know both the relative success of the Apache and the current governmental systems of the Apache and Sioux. Does an intensive reading of the anthropological and historical record, combined with our field work and interviews, reveal underlying indigenous governmental systems and norms that give the Apaches a relatively good match to the *structure, scope, location, and source* of political power and responsibility embedded in their formal government? Do the Sioux confront a relatively poor match?

Testing the closeness of the cultural norms/formal institutions "match" should be difficult, if not impossible, in societies that select their own forms of government, since formal institutional design might reasonably be presumed to follow from cultural norms, and explanation of constitutional outcome by reference to "norms" then starts to take the form of explanation by reference to tastes. Torque around this problem is provided to our research, however, by the fact that most American Indian tribes operate under constitutional governments drafted for them and effectively imposed upon them by the United States Department of the Interior in the 1930s.⁵ These Indian Reorganization Act (IRA) constitutions varied little in basic form across tribes, typically providing for a chief executive (tribal chairman), a small one-house legislature (tribal council), and a non-independent judiciary (or at least certain judicial powers were vested in the tribal council). Tribes, however, often differed markedly in their historic governmental forms, and the concordance of these forms with the IRA constitutions. IRA constitutions commonly require the approval of all changes by the Secretary of the Interior. *Indigenous* tribal governments,

⁵ Note the parallel with Putnam's context, in which national-level actions in Italy altered the regional governmental structures (Putnam, 1992), and with the setting investigated by Davidson, in which colonial powers imposed governmental structures on various African societies (Davidson, 1992). In each case, the resulting possibility of mismatch is what is providing the epistemological basis for avoiding a treatment of cultural norms, etc. as a mere explanation by appeal to tastes. See text below.

meanwhile, were extremely heterogeneous. They ranged from the "communalist" imagined in today's not-universally-applicable "pop" stereotype of "natural man" to the theocratic, dictatorial, autocratic, and representative-democratic. Categorization of indigenous government along these lines serves as our primary mechanism for determining "match" with tribes' present constitutional forms.

III. DEVELOPING APACHE v. STRUGGLING SIOUX

Just as in other societies, American Indian governmental institutions -- constitutions, legislatures, courts, bureaucracies -- are classic, shared public goods. As such, they are subject to problems of individual free riding. If there are no extra-constitutional agreements or norms which constrain free riding and provide governing institutions with stability, authority and constraints, those institutions are liable to be corruptible and/or be ineffectual due to lack of legitimacy (where "lack of legitimacy" means lack of institutionally supportive behavior by individuals). In the Indian context, both our quantitative research and extensive fieldwork with tribes repeatedly turns up the conclusions that ineffective tribal government is a sufficient condition for the stark economic development found on most reservations (Cornell and Kalt, 1992b) and that a match between extra-constitutional cultural norms and formal institutions is a necessary condition for development of an economy based on real production (as opposed to federal transfers).⁶

To be concrete, "ineffective tribal government" can be illustrated with the kinds of common occurrences that we see in the field. If, for example, the central Pine Ridge government tries to follow the Apache example (see below) and launches tribally-owned businesses, but Oglala cultural norms (extra-constitutional agreement) locate *legitimate* allegiance to authority at the subtribal level of

⁶ We find that four attributes, taken together, constitute a set of necessary and sufficient conditions for real economic development to take place on a reservation: (1) cultural match with formal institutions, (2) a formal governmental system that provides for a separation of powers, (3) a willingness to specialize and trade "internationally" with off-reservation economies, and (4) a modest endowment of either labor or natural resources. See Cornell and Kalt (1991).

the reservation's districts, the first time a crisis in such a business's finances or management arises, support for the enterprise will wither, free riders will not be constrained in consuming available rents, and the enterprise will collapse.⁷ Or, if a tribe's chief executive's role as negotiator of external agreements (e.g., with the Federal Government) is not supported by cultural norms because extant norms prescribe *shared* senior leadership, the (e.g.) employment training program landed in Washington by the tribal chairman will flounder in mediocrity as other tribal politicians and citizens fail to support the collective effort needed to make it work. On the positive side, if Apache cultural norms appropriate power in the office of the tribal chairman such that his supporters side with him when it is necessary to fire an incompetent worker at the tribal ski resort, the efficiency of labor at the site has a better chance of being sustained.

The Apache and the Sioux operate under very similar IRA constitutions. These constitutions sanction strong central authority, a directly-elected chief executive, a one-house legislature, and no independent judiciary. With very similar governments, is the differential performance of the Apache and Sioux tribes due to differences in the extra-cultural agreements arguably reflected in the structures of their historical, indigenous constitutional rules?

III.A Present Conditions on Apache and Sioux Reservations

There are four sizable Apache reservations, and seven major Sioux reservations. The Apache reservations are Jicarilla and Mescalero in New Mexico, and San Carlos and Fort Apache in Arizona. The Sioux, meanwhile, occupy the Cheyenne River, Lower Brule, Pine Ridge, Rosebud, and Yankton reservations in South Dakota, and the Sisseton-Wahpeton and Standing Rock reservations that straddle the South and North Dakota borders. As indicated by Table 1, the four sizeable Apache reservations as a group are far outperforming the group of Sioux reservations. As of 1989, Apache

⁷ Jorgensen (1992) provides a case in point.

Table 1

ECONOMIC INDICATORS: APACHE v. SIOUX

	WHITE MTN APACHE	PINE RIDGE OGLALA SIOUX	ALL APACHE (4 Res.)	ALL SIOUX (7 Res.)	ALL TRIBES (67)
Population 1990	12,503	20,806	26,676	59,125	437 (thous)
BLS Unemployment 1989	11%	61%	27%	75%	45%
Change in BLS Unemployment 1979-89	Down 11%	Up 26%	Up 2%	Up 42%	Up 14%
Total Workforce Unemployed 1989	21%	73%	35%	81%	55%
Change in Workforce Unemployed 1979-89	Down 9%	Up 12%	Down 2%	Up 37%	Up 12%
Workers Earning Above \$7000 in 1989	33%	21%	25%	13%	31%
Change in Workers Above \$7000 1977-89	Up 12%	Down .5%	Up 4%	Down 7%	Up 7%
Poverty Rate, 1980 Census	49%	58%	48%	55%	39%
General Assistance, 1980 Census	3%	10%	4%	12%	7%
High School Grads., 1980 Census	38%	42%	44%	45%	49%
Per Capita Income, 1980 Census	\$2,309	\$2,209	\$2,735	\$2,477	\$3,110
Median Household Income, 1980 Census	\$9,854	\$9,530	\$9,787	\$8,525	\$10,759

SOURCES:

U.S. Census, 1980 (as indicated); all other entries are from U.S. Dept. of the Interior, Bureau of Indian Affairs, *Indian Service Population and Labor Force Estimates*, selected annual issues. Except for Population, All Tribes data cover the 67 tribes with more than 700 members.

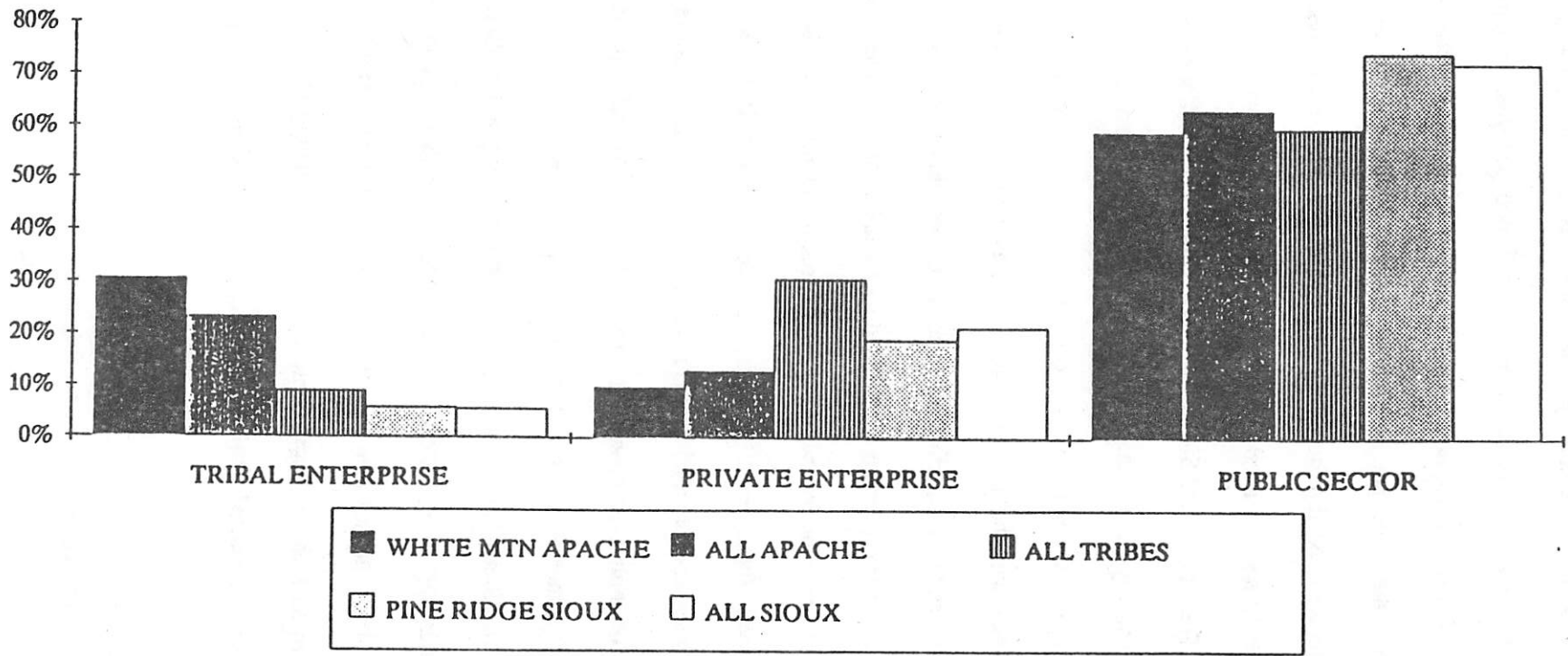
unemployment stood at approximately 27%, compared to 75% for the Sioux. One-fourth of Apache adults earned employment incomes in excess of \$7000 per year, compared to 13% on the Sioux reservations; this figure rose slightly for the Apache over the era of federal funding restrictions covered by 1977-89, while the earnings performance of Sioux adults fell substantially. Apache per capita and household incomes exceed the Sioux levels by 10% and 14%, respectively, with the Sioux receiving somewhat greater levels of general assistance.

The Apache and Sioux tribes have adopted very different economic strategies -- although the strategy is more by default than design on most Sioux reservations. The hallmark of the Apache approach to economic development is a combination of an aggressively "capitalist" strategy vis-à-vis "international" trade with the off-reservation economy coupled with an on-reservation system consisting almost entirely of "state" (i.e., tribal government) ownership of business enterprises. Tribal ownership at Apache and other reservations is encouraged by a number of incentives that originate in federal policy. These incentives include the federal and state tax exemptions for profits from tribally-owned enterprises, relatively easy access (both formally and through political channels) to federal loan and grant programs, no provision for independent judiciary that might undergird private investors and contracts, and relatively lax enforcement or application of various forms of state and federal regulation (including certain aspects of labor and environmental law) to tribally-owned enterprises.

The Sioux have made numerous efforts to respond to these incentives, but success has been rare. At Standing Rock, for example, the tribal government has attempted to establish twenty-one businesses since 1975; not a single one has survived. The story is similar at Pine Ridge, where efforts have ranged from an archery supply company to a meat packing plant.⁸ In general, efforts at private sector development, supported by non-tribal loan programs of the type represented by the not-for-profit

⁸ On the meat packing investment, see Jorgensen (1992).

Table 2
 EMPLOYMENT BY SECTOR: APACHE v. SIOUX



Lakota Fund, have proven more sustainable on the Sioux reservation. This is borne out by the data shown in Table 2.

Table 2 indicates employment by sector: tribal enterprises, private enterprises, and the public sector. Reflecting the absolute underdeveloped state of Indian Country, the shares of employment accounted for by the public sector are quite high on both Sioux and Apache reservations. In relative terms, however, Apache employment is much more heavily tilted toward tribal businesses and away from private businesses than is the case on the Sioux reservations. On average, 23% of Apache employment is in tribal businesses. In fact, this probably understates the extent of tribal business employment since a number of activities, such as forestry and wildlife management, are recorded as public sector employment on the Apache reservations despite the fact that such activities are components of primary commercial operations of the tribes. In general, this data problem does not arise with the data on Sioux employment, where only about 6% of the jobs are in tribal commercial activities. Overall in Indian Country, tribal enterprises are accounting for only about 9% of employment, with a 31% share accounted for by private enterprises. The Apache private sector employment share is only about 13%, while the corresponding Sioux share is 22%. These differences do not appear to reflect, for example, different sectoral mixes in the Apache and Sioux tribes: from manufacturing to agriculture, retail services to tourism, the Apache tribes follow strategies of tribal ownership of enterprises that have been tried, but generally failed, in Sioux Country. We have analyzed elsewhere some of the reasons for this, and believe that differences in informal tribal organization and norms play a major part in explaining the abilities of formal Apache and Sioux governments to sustain tribal enterprises (Cornell and Kalt, 1992b). Further information in this regard is discussed below.

III.B The Cases of the Pine Ridge Sioux and the White Mountain Apache

Since much of the available information regarding the historic and cultural foundations of the different Apache and Sioux governmental and economic systems concerns the original Western Apaches and the Oglala Sioux tribes, now predominantly present at Fort Apache and Pine Ridge reservations (respectively), it is instructive to examine these reservations in more detail.

Pine Ridge Sioux: The Pine Ridge Sioux Reservation is the home of the Oglala Sioux Tribe. The original reservation covered 2.8 million acres in southern South Dakota, prior to certain losses of tribal title. The on-reservation population is approximately 20,000 (Table 1). The primary reservation economic activity is agriculture, with approximately 300 tribal members working in ranching and another 75 employed in farming. Tribal members operate less than 50% of Indian-owned agricultural property, with the remainder leased to non-Indians. Indian-owned lands produce approximately \$10 million in annual gross revenues, with Indian operators accounting for roughly 35% of this total.

In addition to agriculture, a small amount of private sector employment is found in 4-5 convenience stores, and a few other retail operations. Nevertheless, one of the most striking symbols of the inability to sustain the conditions needed for development of a private sector is the stark absence of the wide range of retail services that are typically found in off-reservation small towns, and the corresponding practice (and almost a modern tradition) of long (often 100+ miles roundtrip) commutes (commonly on Saturdays) to off-reservation towns for household supplies and services. Symptomatic of conditions is a great deal of informal barter activity among tribal members, ranging from auto repair to hairdressing (Sherman, 1988).

The Pine Ridge Reservation includes the poorest county in the United States, with per capita income equal to only 25.7% of the national average in 1986 (Johnson, 1987). As of 1986, 47% of the reservation population was reported to be receiving public assistance (general assistance, food stamps, etc.). Approximately 50% of the work force was reported to be unemployed for more than 15

weeks at the time of the 1980 Census, and, as noted above, three-fourths of the employed work force was in the governmental sector (Table 2). As of early 1989, 73% of the work force was reported to be unemployed (Table 1).

The Pine Ridge reservation is governed by an IRA constitution adopted in 1935. This constitution provides for a directly-elected tribal president, serving a two-year term. There is a one-house legislature (Tribal Council) consisting of twenty-seven representatives elected from nine reservation districts, with the president empowered to chair the Council and provision for proportional representation (one representative for every 500 adults). The constitution provides for the creation of district-level governing councils, although these councils are not the source of the Tribal Council representatives. Regarding judicial functions, the constitution makes reference to the ability of the Tribal Council to create such functions at its initiative, although no provisions for matters such as jurisdiction, selection of judges, removal of judges, funding of courts or enumeration of powers and rights are addressed. The Tribe has established a tribal court, which serves at the Council's discretion. Constitutional changes undertaken by the Tribe are subject to the approval of the Secretary of the Interior.

Pine Ridge government is noted for instability and periodic crisis. These traits are represented by such actions as frequent impeachment proceedings against officials, suspension of tribal court judges and related constitutional crises.⁹ In 1973, literal armed insurrection broke out between the central tribal government and dissident tribal factions, culminating in the Wounded Knee II siege. Except for the tribal president who served two terms during this period, no Pine Ridge president has ever succeeded himself over the life of the IRA constitution.

White Mountain Apache: The White Mountain Apaches are a tribe of approximately 10,000 occupying the 1.6 million acre Fort Apache Reservation in east-central Arizona (Table 1). Approximately 750 thousand acres of the Reservation are prime logging country, and another 400

⁹ See, e.g., Jorgensen (1993).

thousand acres are rangeland. The White Mountain Apaches operate ten tribally-owned enterprises, including: a tribal farm, which grows and sells livestock feed and other products; an aerospace manufacturing company, which makes parts for McDonnell-Douglas; three separate retail conglomerates, encompassing grocery and variety stores, gasoline stations, movie theaters, restaurants, a motel, a laundry, commercial office space and a car wash; a large sawmill; a recreation support system for fishing and hunting by tourists; a revolving loan credit fund; a ski resort; and a tribal cattle herd. These enterprises are large and ongoing, with aggregate revenues approaching \$80-\$100 million per year. Most enterprises operate profitably and, in the aggregate, consistently generate positive contributions to a tribal "stockholder" (member) fund.

In some cases, the Tribe's enterprises have become dominant forces in the overall state economy of Arizona. Its ski resort, for example, operates seven lifts, employs more than 400 people in its peak season, services hundreds of thousands of skier days per year, and produces a corresponding level of economic activity in the surrounding non-Indian mountain towns. The Tribe's sawmill has a workforce which is 95% Apache, close to \$10 million per year in payroll, labor productivity that is 30% higher than the average Western U.S. mill, and \$30 million per year in revenues. The sawmill is supported by a reservation forest and accompanying logging employment that yields the Tribe millions of dollars in net royalties per year. The pay-per-visit wilderness hunting and fishing produces annual revenues of approximately \$1.5 million, and the Tribe's elk hunts are recognized as the finest in the world, commanding prices of \$12,000-\$15,000 per animal hunted. With so much riding on the quality of its forest and wildlife, the ecological management by the Tribe reflects the expected Coasian consequences -- compared to the immediately adjacent federally-managed National Forests, where recreational amenities are largely unpriced, the White Mountain Apache management is demonstrably more environmentally sound.¹⁰

¹⁰ On the Coasian management style of the Apache, see Cornell and Kalt (1988).

As of early 1989, unemployment among the White Mountain Apaches was 11% (Table 1), although this rose somewhat with the national recession in the early 1990s and with significant return migration onto the reservation. Approximately 19% of the White Mountain Apache labor force reported being unemployed for more than fifteen weeks in the 1980 Census. Thirty percent of White Mountain Apache families were receiving public assistance at the time of the 1980 Census, compared to 42% for the national Indian population. The Census also found that 31% of Apache employment was in tribal enterprises in 1980, with 10% in the private sector and 59% in the public sector (Table 2). By 1990, however, and correcting for enterprise employment reported as employment by the tribal government, over 75% of the Tribe's employment is reported to be in enterprises. While a small number of tribal members find employment off-reservation, the net flow of labor is onto the reservation. This, in part, reflects the job opportunities for management-level non-Indians and the Apaches' willingness to hire non-Indians when requisite qualifications and work experience criteria cannot be met by tribal members. Such a willingness is attributed by tribal members and officials, as well as by the non-Indian managers, to the Tribe's (particularly the tribal chairman's) ability to command the performance of non-members.

The White Mountain Apache Tribe is governed by an IRA constitution adopted in 1938. This constitution provides for a directly-elected tribal president, serving a four-year term. There is a one-house legislature (Tribal Council) consisting of eight representatives elected from eight reservation districts, with the chairman empowered to chair the Council. The constitution makes no reference to the ability of the Tribal Council to create a court system, but vests the Council with the right to exercise judicial powers in the form of rules, regulations, and dispute resolution. No specific mention is made of such matters as jurisdiction, selection of judges, removal of judges, funding of courts or enumeration of powers and rights. The Tribe has established a tribal court, which serves at the Council's discretion. Constitutional changes undertaken by the Tribe are subject to the approval of the Secretary of the Interior.

The White Mountain Apache government is notable for its stability. The present tribal chairman has served in the office for sixteen of the last twenty years. (Interestingly, the related Mescalero Apache Tribe has had the same tribal chairman for over thirty years.) Such longevity is not only high relative to that seen in Sioux Country, but has few parallels in Indian Country as a whole. Individual Council members on average serve multiple terms, although the tenure of tribal judges is apparently more unstable.

IV. INVESTIGATION OF INDIGENOUS NORMS REGARDING POLITICAL ORGANIZATION IN SIOUX AND APACHE SOCIETIES

How did the Sioux and Apache govern themselves prior to adoption of the IRA constitutions? As the discussion below makes evident, these two peoples had well-developed and defined governmental systems. Neither the currently popular stereotype of American Indian societies as pastoral, cooperative communes nor the earlier stereotype of ungoverned savages bears any relation to actual Sioux and Apache history. Indeed, both the Sioux and Apache evolved mechanisms of social organization, control and cooperation that allowed them to become dominant political and military forces in their respective regions of western North America in the period immediately prior to conquest by peoples of European descent. In neither case were their indigenous mechanisms of self-governance imposed by a foreign authority. Arguably the resulting governmental systems of the Sioux and the Apache reflected culturally-supportable answers to the problem of government as a public good. What were these answers?

IV.A Oglala Sioux Self-Government Prior to the IRA

The Oglala Sioux Tribe of the Pine Ridge Reservation in South Dakota is just one of the peoples known collectively today as the Sioux. Most tribal members call themselves Oglala or, commonly, Lakota, in reference to the language they speak.

Aboriginally, the Sioux were a loose association of peoples, located generally in what is today Minnesota and Wisconsin. They referred to themselves collectively as Oceti Sakowin, which has been translated in various ways, among them "The Seven Council Fires" (Hyde, 1937; Walker, 1982) or "The Seven Fireplaces" (Powers, 1977).¹¹ The number seven refers to the seven divisions within this loose federation: the Mdewakanton, Wahpeton, Sisseton, and Wahpekute, known collectively as the Santees; the Yankton and the Yanktonais, known collectively as the Yanktons; and the Tetons. The Tetons in turn are subdivided into seven groups, or tribes. The Oglalas are one of the seven subdivisions of the Tetons.¹²

The first direct Sioux contact with Europeans occurred somewhere in eastern Minnesota or northwestern Wisconsin in 1660. At that time the Sioux were located around the headwaters of the Mississippi River, and had been for a century or more. Early missionaries and traders were clearly aware of organizational or geographical divisions within the population, and described the Sioux as formidable warriors (Powers 1977, pp. 16-17). Over the next century or so the Sioux gradually moved west, partly in response to the pressure of warfare with the Ojibwas and Crees, who had access to French guns. The Oglalas moved farthest west of all, acquiring horses from the Arikaras around 1750, and apparently reaching the western part of South Dakota by 1775. Western South Dakota remains the homeland of the Oglala today as the site of the Pine Ridge reservation.

Little is known of Sioux political organization prior to their westward migrations, although early European accounts describe numerous villages, located on waterways and led by chiefs. These villages seem to have been essentially autonomous; the Oceti Sakowin and its various divisions apparently were more dimensions of identity -- reflecting a sense of commonality rooted in language,

¹¹ This term, according to Powers (1977, at 11) fell into disuse among the Sioux themselves sometime after their dispersal and westward migration toward the prairie and plains regions.

¹² See the sometimes conflicting but essentially complementary discussions of this multi-layered organization in Powers (1977) and DeMallie (1971).

origin, and perhaps other cultural characteristics -- than formally-organized political units (DeMallie, 1978 at 239). The villages also were relatively unstable: new villages would occasionally form as one group or the followers of an influential individual elected to move away. Indeed, this seems to be a long-standing pattern in Sioux political organization, and it may explain why various historical accounts of the Oglalas disagree about the number of Oglala bands: the number surely changed over time. By the middle of the nineteenth century, however, the Oglalas included seven distinct bands, and this was the situation in 1878 when the Pine Ridge Reservation was established (Hyde, 1937).

The Lakota term for these bands is *tiyospaye*, which translates as "a group of lodges," and describes "the essential unit of social order." (DeMallie, 1978 at 243). The *tiyospaye* was basically an extended family, typically including some ten to twenty lodges, usually related to each other and each housing a nuclear family.¹³ While in the nineteenth century a *tiyospaye* might camp and move as a single unit, it was also common for two or three *tiyospaye* to camp or travel together in larger units for a while or, conversely, for a few individual lodges from one or more *tiyospaye* to leave their band or bands and operate together for a time. In other words, band boundaries and camp boundaries did not necessarily coincide, although the kinship links that defined the *tiyospaye* were fundamental to Oglala self-concepts (DeMallie, 1978 at 243; Powers, 1977 at 35).

IV.A.1 The Structure of Authority

While the available accounts are frustratingly sketchy, vague, and often contradictory, it seems clear that systematic political organization following the westward migration was operative at both the band (*tiyospaye*) and tribal (Oglala) levels. Political organization above the tribal level -- i.e.,

¹³ Accounts of Sioux organizational patterns often differ. One of the sources of confusion seems to be the polysemous nature of some Lakota terms. For example, according to DeMallie (1978, at 243-44), the term "tiyospaye" refers both to the band and to the individual extended family. "Tiyospaye is the cultural model or symbol of a social group which lives amicably according to the norms and values of the kinship system."

at the level of the Teton division as a whole or of the Oceti Sakowin -- seems to have been non-existent in practice, at least in the nineteenth century (Hassrick, 1944 at 338). The exception here may have been very brief combined organization for military purposes, such as the Custer Battle of 1876, in which a number of Teton tribes cooperated.

Within bands, however, Sioux political organization was relatively well-articulated into structurally-distinct forms. The basic political unit was the band, and the central political institution at the band level was the council: "an informal organization consisting of all the *respected* males of the band" (DeMallie, 1978 at 247; emphasis added). The council selected a band chief who was expected to administer the affairs of the tribe and place the collective interest above his own. This individual held office as long as he maintained people's confidence in his leadership. His power was limited and was based largely on his performance and persuasiveness and on the prestige of his supporters, although one of Walker's informants stated that if a chief had many strong supporters, then everyone would obey him (Walker, 1982 at 25-26).¹⁴ It appears also that the authority of the chief depended in part on the size of the band: in a small band a personally powerful chief might command everything; in a larger band, he would turn to various councilors and deputies for advice (Walker, 1982 at 25-26).

In the method of selection and powers of the chief, the Sioux structure might be called "parliamentary." As noted, the council was the central political institution of the band. The chief presided over gatherings of the council and served as the executive power, administering the daily affairs of the band -- moving camp, where to hunt, the resolution of minor disputes, and so forth. At the same time and unless they were faced by a particularly powerful individual as chief, the council retained considerable decision-making power in most situations. Major issues were discussed by the council until

¹⁴ This conforms to Francis Parkman's observations during the time he spent in a Sioux camp in 1846: "Each village has a chief, who is honored and obeyed only so far as his personal qualities may command respect and fear. Sometimes he is a mere nominal chief; sometimes his authority is little short of absolute, and his fame and influence reach even beyond his own villages..." (Parkman 1991, at 135).

a clear majority or consensus had been achieved, and the council seems to have had a veto power of sorts over the decisions of the chief. Those who disagreed with council decisions were free to leave the band. New bands typically were established by dissenters who chose to leave a situation they disagreed with; as relatives and other followers joined them, a new band would emerge (Walker, 1982 at 25).

The third organ of band governance was the *akicita* (marshals). These were individuals appointed by the council (or by the chief, with council approval), and charged with implementing or enforcing council decisions and maintaining order in camp and during the hunt. They could resort to force if necessary in the execution of their jobs, and could exercise power over members of the council itself. The organized police power represented by the *akicita* indicates the presence of well-defined judicial authority emanating from the council and administered by the chief. As discussed below, the division of labor and power that such a police force and judicial structure signify was absent in the Apache tribes.

At the tribal (Oglala) level there was also a council, composed of the most prestigious men from each band. This council was presided over by four appointed chiefs, known as *wicaya yatapika*, or "men they praise" (DeMallie, 1978 at 247).¹⁵ These men, according to DeMallie (1978 at 248), "were considered the supreme elder kinsmen of the tribe but had no actual authority," other, presumably, than that derived from their prestige and persuasiveness. DeMallie goes on to say that political organization at this level functioned only intermittently, emerging when bands came together, often in the summer, for ceremonial events such as the Sun Dance, large hunts, or cooperation in war. Farber (1970 at 126) claims that the annual summer gatherings seldom led to major decisions.

There is evidence that a combination of military necessity and the federal government's common insistence on dealing with a chief for each tribe caused an increase, over time, in the size and cohesion of the optimal political unit among many Indian societies. Goldfrank (1943 at 79-81) suggests

¹⁵ These also were known as "shirt-wearers" after their badge of office, a hair-fringed shirt. See below.

that after 1855, as the American threat to Sioux society increased, there was a trend toward consolidation, with a strengthening of chieftaincy and a tendency for bands to combine in larger units (see also Biolsi, 1992 at 36-37). It may be that the elaboration of Oglala political structure was a response in part to these conditions.¹⁶

One such instance is represented by Red Cloud's sizeable band. This band coalesced around the U.S. Government's channeling of resources and decisions through Red Cloud (Hyde, 1937), and at one time included a large, if not majority, portion of the Oglala. The band was organized according to a highly complex and almost bureaucratic system (Wissler, 1912). The governing council of this band was known as the Chiefs Society, was made up of males forty and over, and was thereby also known as the "Big Bellies." This council chose seven chiefs to serve for life. The seven chiefs in turn delegated the bulk of their authority to four "shirtwearers," appointed by the chiefs and named for the hair-fringed shirts which were their badge of office. The four shirt-wearers were the primary executors of power in the government. Under them were four appointed administrators called *wakicunze*, who were selected by the seven lifetime chiefs, often assisted by the four shirt-wearers and the whole Chiefs Society. The *wakicunze* were empowered with judicial authority to settle disputes, adjudicate crimes and make rules to ensure proper decorum in camp. Their primary managerial role seems to have been even more important: to regulate the hunt and ensure the adequacy of the level and allocation of

¹⁶ The office of head chief at the tribal level, sometimes mentioned by contemporary observers and a few informants, seems to have been a product of Indian-white interaction. Writes Biolsi (1992, at 36): "The United States systematically recognized chiefs who would, at least as far as it was concerned, speak for the Lakota. The Fort Laramie Treaty of 1851, for example, established a head chief for each 'nation' which was a signatory. A head chief was selected for the Lakota only after much insistence by them that there could be no one chief."

the food supply (Wissler, 1912 at 11). The *wakicunze* could resort to the *akicita* to ensure that decisions were carried out and that order prevailed.¹⁷

While the example of Red Cloud's band seems to represent the known extreme of layered political organization among Sioux tribes, it exhibits a basic structure that was prevalent throughout the Sioux bands. Specifically, indigenous Sioux political structure consistently exhibited: (1) a council of respected men, serving as the central policy-making body of the band or tribe; (2) a parliamentary chief or multiple chiefs, selected by the central council and empowered as the primary executor of political and judicial power (perhaps with additional layers of administrators); and (3) an enforcement arm in the *akicita*, who were selected by authority of the council.

The primacy of the council in this structure is at direct odds with the present governmental structure at Pine Ridge -- a poor "match." Throughout Indian Country, the direct election of the tribal chair by the members of the tribe results in relatively powerful chairpersons. Through direct election, the chair acquires an independent power base and is not beholden to the council for his/her position. Parliamentary-structured tribes (in which the chair is selected by, and usually from, the tribal council) place relatively more power in the tribal council. While direct-elect chairs may be serving tribes like the Apaches well (see more below), there are clear cases where a parliamentary system works well. The Flathead reservation (mentioned above), for example, is home to an amalgam of tribes -- Salish and Kootenai -- that were not historically a single political unit (or even particularly friendly). Through a parliamentary system, the Flathead reservation avoids the concentration of political power in a single individual in a context where there is no history of support for such a notion. We would hypothesize that

¹⁷ Wissler's (1912) account of Oglala political organization was based largely on Red Cloud's band, and Hassrick's (1964) description seems to have been based largely on Wissler. Wissler himself pointed out (at 7) that Red Cloud's band had a more complex political organization than the others. DeMallie claims (1978, at 248) that much of this complexity in fact emerged in the 1870s and 1880s and suggests that it was not typical of Oglala bands. However, it is difficult to determine from the available literature to what degree the structure of Red Cloud's band was replicated in other bands, or just when the structure Wissler and Hassrick describe emerged.

compelling such a concentration of power where no norms exist to support it, as the IRA constitution has done at Pine Ridge, would have dramatically negative consequences at Flathead. Meanwhile, the actual parliamentary system at Flathead governs one of the strongest economies in Indian Country (Cornell and Kalt, 1991).

After developing the foregoing hypothesis – that Sioux political norms are more consistent with a parliamentary system than with their current strong chief executive system – we examined the relative performance of the seven sizeable Sioux reservations. Various measures of economic well-being for these reservations are shown in Table 3. The only Sioux reservation with

Table 3

COMPARATIVE ECONOMIC CONDITIONS ON THE SIOUX RESERVATIONS

	UNEMPLOYMENT 1989	CHANGE IN UNEMPLOYMENT 1979-89	PER CAPITA INCOME, 1980 CENSUS	POVERTY RATE, 1980 CENSUS
LOWER BRULE	29%	DOWN 14%	\$2801	39%
CHEYENNE RIVER	61%	UP 15%	\$2563	56%
PINE RIDGE	61%	UP 26%	\$2209	58%
ROSEBUD	90%	UP 65%	\$2484	51%
SISSETON- WAHPETON	50%	UP 29%	\$2208	54%
STANDING ROCK	87%	UP 53%	\$2602	55%
YANKTON	77%	UP 28%	\$2473	53%

SOURCE: See Table 1.

unemployment below 50% in 1989 was the Lower Brule reservation (at 29%). The only Sioux reservation on which unemployment fell over the decade of 1979-89 was Lower Brule (going from 43% to 29%). According to the 1980 Census, the Sioux reservation with the highest per capita income was Lower Brule, and Lower Brule was also the only reservation with a poverty rate below 50% (at 39%). The Lower Brule reservation is the only Sioux reservation with a parliamentary form of tribal government.

IV.A.2 The Scope of Authority

The foregoing discussion of Sioux political *structure* also reveals a great deal about the *scope* of political authority. The band government had the authority to direct and command such activities as the communal hunt, camp movements, the maintenance of order in camp life, and the guaranteeing of the means of sustenance across the members of the group.

Raiding against enemies was a central activity in Sioux society, and served as a major source of status. It was carried out by parties of varying size which could be organized by any individual if he could persuade other men to join him. Individuals well known for their skill at warfare presumably were more successful at gaining followers. However, it appears that raiding parties required approval by the band chief or council before they embarked. Organized warfare, e.g., against the United States Army, was directly under the control of band and, over time, tribal government, with council oversight and approval, and chieftain and *akicita* administration.

Interestingly, unlike the Apaches (see below), the buffalo-based economy of the Sioux meant that its primary capital stock was migratory and uncontrollable, and the Sioux had no need to develop social and political organization by which to govern the communal or individual ownership of capital. On the other hand, protection of personal property was a high Sioux priority: "Thievery was recognized as a heinous offense" (Hassrick, 1964 at 47). Committing such an offense was subject to law

enforcement (with penalties such as complete ostracization). The concept of private property apparently extended to certain aspects of ideas and intellectual output: (perceived) supernatural power could be sold or given to others (DeMallie, 1978 at 249). Murder was punishable by death, often carried out by the victim's family. With regard to civil liberties, other than for marital infidelity, "there were in most cases no marked penalties for the ill-mannered or uncouth. Gossip and ridicule sufficed as punishment" (Hassrick, 1964 at 47).

In fact, a high degree of individualism characterized Sioux society and influenced the scope of political authority. The concept of individual freedom in Sioux society:

made possible an individualism that could be daring to the point of recalcitrance [and] imposed upon the leadership uncertainties for which there was no defense. It may well account for the Sioux's ideal pattern of talking over matters with members who had erred rather than ordering punishment for them, and obtaining unanimous decision in council matters rather than mere majority action. Imposing the will of a dominant leader or a majority group might succeed only in so offending the individual that he and his adherents would secede (Hassrick, 1964 at 31).

Herein may lie a crucial distinction between Sioux and Apache cultural norms that explains the relative inability of Sioux government to adopt hierarchical management structures and decision-making capability that would enable more effective attempts at tribal ownership of enterprises in the Apache style (discussed below).

IV.A.3 The Location of Authority

As noted, historic Sioux political organization embodied a *subtribal* unit as the base of political legitimacy: the *tiyospaye*. Even as external forces pushed the Oglala toward nation-statehood, and resulting bands grew, subgroups retained rights of secession that band and tribal government had no power to prevent (Hyde, 1937). Consequently, Oglala governance involved "almost unlimited home rule" (Farber, 1970 at 125). In fact, each of the various subtribal units of Sioux society, from the large band to the *tiyospaye* to the individual family to the individual, enjoyed a great deal of autonomy and the right

of secession. Moreover, when bands were brought together into a tribal organization, power emanated from the bands, which selected *multiple* leaders, sharing authority -- the four *wicasa yatapika* noted above (DeMallie, 1978). At no time did the Sioux concentrate power in a central tribal government with a single chieftain.

These tendencies toward subtribal allegiances and shared authority at the top persisted in the period following the creation of the Pine Ridge reservation in 1878. The origin of the reservation lay in military conquest, and military rule by an occupying force initially eliminated institutions of self-government. As U.S. military force was replaced with bureaucratic oversight, federal agents took the initial lead in encouraging the Oglala to establish some mechanism of civic rule among themselves (Biolsi, 1992 at 52; Olson, 1965 at 301). Prior to the adoption of the IRA constitution in 1935, however, the attempts at creation of self-governing bodies centered on establishment of a centralized, representative government. These attempts were notable primarily for their failure. The Oglalas repeatedly exhibited strong preferences for broad but locally-organized public participation in governance, with local units retaining substantial control over their affairs, inducing the selection of their own leaders. The authority, and even the concept of a single, central tribal Chairman or President, was rejected by the Oglalas when given the chance; and there is evidence that governmental forms that did not provide for rule by at least three-fourths majorities were unsustainable (Biolsi, 1992).

The primary Oglala norms regarding the legitimate location of political power, as laid out in the foregoing discussion, were largely excluded from the IRA constitution. The IRA constitution was the product of the federal government's agents:

The constitutions and by-laws of the Rosebud Sioux Tribe and the Oglala Sioux Tribe were not drafted by, nor do they represent the intentions of, the Lakota constitution committees, the tribal councils, or the grassroots... It would not be inaccurate to say that the Lakota were presented with boilerplate constitutions and allowed to fill in the blanks... The new powers in the IRA constitutions were the result of OIA [Office of Indian Affairs] policy, not of an indigenous ideology of self-government (Biolsi, 1992 at 98-99).

The new constitution rejected the three-fourths majority rule principle, and imposed instead a model of centralized, representative government. Perhaps most striking were the dramatic increase in the power of the Tribal Council and provision for direct election of a powerful president. But these changes reflected not a decrease in federal power on the reservation; instead they reflected a decrease in the powers of local communities vis-à-vis tribal government.¹⁸ The IRA constitution survives to this day as the conduit through which federal monies and powers are channeled, and as the federally-recognized source of tribal sovereignty. Modification of the Pine Ridge IRA constitution requires the approval of the Secretary of the Interior, and unilateral rejection of the constitution by the Tribe could destroy its sovereignty and access to procedural and material benefits of federal recognition.

There seems to be wide agreement among many observers that the *tiyospaye* structure, despite the battering it has taken over the years, still survives at Pine Ridge, and that a preference for local autonomy still remains (e.g., DeMallie, 1978 at 274; Powers, 1977 at 122-23; Feraca, 1966). As one Pine Ridge superintendent said in the 1970s, during the siege of Wounded Knee II, the IRA government "is an overlay; it does not reach the people" (Lyman, 1991 at x). Indeed, there is a marked pattern at Pine Ridge in which the sustainability of major activities requiring collective action -- creation of a tribal college, community health clinics, schools -- occurs at units organized at subtribal levels. DeMallie (1978 at 274) concludes, and our fieldwork at Pine Ridge confirms, that many Oglalas "do not identify with the tribe as a political group and would prefer to run their affairs at the local level under

¹⁸ Neither Biolsi nor anyone else seems to have much to say about the emergence of the office of president as a position of importance or power. Biolsi does note the absence of any separation of powers in the new constitution, and on this makes an interesting point (1992, at 103): "There was a separation of powers, not among the branches of the tribal government, but between the tribal councils and the United States Department of the Interior. Pursuing the idea of supervision, rather than that of a tribal judiciary, as protection against abuse of tribal power also had the effect that provisions for civil liberties were neglected when the reformers drafted the constitutions; since the secretary of the interior and the superintendents, not tribal courts, would protect tribal members, tribal bills of rights were not necessary -- the secretary's and superintendents' wise discretion would suffice."

the direction of local leaders." As discussed below, the contrast with the White Mountain Apache could not be more stark.

IV.A.4 Sources of Authority

There were tensions in historic Sioux society, as in many societies, between individualism and conformity. This is apparent in a comparison of two of the major activities in Sioux life. Warfare encouraged individual competition for status through daring and flamboyant war deeds. The buffalo hunt, in contrast, placed the common good – the need for meat – above individual performance, was a highly-disciplined activity, and offered relatively few opportunities to add to one's prestige (Mirsky, 1937 at 405; Walker, 1982 at 32). We can speculate, in fact, that the highly-developed police force (the *akicita*) of Sioux society reflected the need to control the unsavory edge of outrageous individualism.

Chieftaincy was not formally hereditary in Sioux society. Great leaders were often succeeded, with council approval, by their sons (Wissler, 1912; Walker, 1982 at 24; DeMallie, 1978 at 247), presumably if the council felt that the younger had acquired enough of the traits that defined legitimate leadership. The traits and sources of status leading to political authority in Sioux culture represent a mixture of individualistic and collectivist criteria. Writes Wissler (1948 at 103), "the real aristocrats seem to have been those with great and good deeds to their credit." For men, these deeds usually had to do with individual bravery and success in warfare, acts of generosity, and personal religious experience (see Mirsky, 1937; Hassrick, 1964).¹⁹

War deeds were graded and men accumulated prestige according to the nature and number of their individual achievements. Those who repeatedly demonstrated great courage or endurance rose to positions of great honor and influence within the group (Mekeel, 1936; Hassrick, 1964, chapter 4).

¹⁹ Female status shared some of these roots, in particular an emphasis on bravery and religious experience. Craft accomplishments and strict sexual behavior were also sources of prestige for women in Sioux society (Mirsky 1937, at 403, 410; Medicine 1987, at 169-70; Hassrick 1964, at 41-45).

Warfare itself seems to have been occasioned to a substantial degree by the need for opportunities to demonstrate individual bravery and skill; without such opportunities, the paths to high status and influence were limited.

At the same time, generosity, a form of service to the community, was highly valued. Acts of generosity were noted and rewarded with praise and status, and successful individuals were expected to provide for the poor, the sick, and the old (Hassrick, 1964 at 37; Mekeel, 1936). The individual accumulation of goods was frowned upon as a sign that the person involved valued material possessions more than social relations (Mirsky, 1937 at 387). In this the Sioux resembled other Plains societies, in which "the lavish giving away of property was a sure road to social distinction" (Wissler, 1948 at 103). In Sioux society chiefs were often among the poorest persons in the community, having given so much away (DeMallie, 1978 at 250; Parkman, 1991 at 135).²⁰

Individuals could also acquire status via a third source of power -- religious experience. Religious themes ran through virtually every aspect of Sioux life, and the individual quest for supernatural power was part of each individual's life experience (DeMallie, 1987 at 34). The Sioux world was infused with spiritual power, and individual success -- in warfare, in the hunt, in political decision-making and social relations -- was dependent in part on gaining access to it. Spiritual power was an important element in the acquisition of culturally-legitimate political power. "The most prestigious chiefs," says DeMallie (1978 at 249), "were generally held to be shamans as well." They were expected to use their supernatural skill and power for the benefit of the people. If things went poorly under a chief's leadership, this was a sign that his spiritual powers were failing, and he might be abandoned by his followers. On the other hand, if he were successful, his followers might grow in number, his own stature and power within the tribe as a whole would increase, and the stature of his band within the tribe would increase as well. In contrast to the Apache (see below), the Sioux exhibit relatively greater emphasis on

²⁰ This is more extreme than observed in the case of Apache leaders -- see below.

such traits as spiritual power and outrageous bravery (itself evidence of supernatural power) -- compared to the Apache emphasis on deliberativeness and charismatic forcefulness in their chieftains.

The IRA constitution at Pine Ridge does not seem to present any substantial mismatch between its demands for political leadership and indigenous Sioux norms governing the sources of legitimate political authority. Spiritual, brave, and generous individuals are certainly not precluded from seeking positions within the IRA government. Interestingly, our field interviews with many Oglala leaders indicate that the most basic problem they face is the mismatch between their legitimate leadership traits and the culturally-unsupported structure, scope and location of the political power of the centralized tribal government. Indicative of this are cases in which aspiring politicians voluntarily eschew national (tribal) level office for district level office, and self-reported frustration with the inability to accomplish concrete progress through the central tribal government.

IV.B Western (White Mountain) Apache Self-Government Prior to the IRA

The White Mountain Apache Tribe of the Fort Apache Reservation in Arizona is just one of the peoples known collectively today as the Apache. Descendants of historical Apache tribes are distributed across a number of reservations in Arizona and New Mexico, as well as in small groups in Oklahoma and Florida (reflecting a policy of imprisonment and dislocation in the late nineteenth century). Most of the people of the White Mountain Tribe are of Western Apache origin.

Aboriginally, the Apache are derived from a linguistic and cultural group referred to as Athapaskan, with New World origins centered in northwestern Canada and Alaska. Sometime around 600 A.D., climatic changes appear to have pushed some Athapaskans southward and forced a migration of groups that eventually came to be known as Apache, Navajo, Kiowa Apache, and Chipewyan (Perry, 1980). During their migration southward, the Southern Athapaskans occupied and culturally dominated parts of most of the western great plains, and the migrating "Southern" Athapaskans appear to have

settled in the southwestern United States by around 1500 A.D. (Perry, 1980). First contact with Europeans may have occurred in Texas or Northern Mexico as early as 1535 (Terrell, 1972). Eventually, military conflict with the Comanche in Texas and eastern New Mexico forced the Apaches of that region westward, with significant settlement in Arizona occurring by around 1700 (Terrell, 1972). The Western Apaches populated the mountains of central Arizona, around the Gila and Salt Rivers (Goodwin, 1942).

Little is known of Apache political organization prior to their settlement in the southwest. It is known that their economy hinged on hunting, gathering, and agriculture, and that such subsistence typically requires relatively small groupings (Goodwin, 1942). Only the far eastern Apache groups were significantly dependent upon buffalo for subsistence. Some analysts argue that the Apaches "were among the most enterprising traders of the entire southwestern region" prior to European contact (Terrell, 1972 at 69; see also Perry, 1980). It certainly is the case that the Apaches were major traders, particularly with the less nomadic Pueblo settlements of New Mexico, during the period of Spanish occupation, and were occasional middlemen in trade between Mexican villages and between Mexican and American traders (e.g., Forbes, 1960; Griffen, 1988; Hall, 1989). Trading, however, was conducted only with "people unlike themselves" (Haley, 1981).

The acquisition of horses and the appearance of Spanish settlements dramatically altered the Apache economic system. Raiding, particularly of Spanish ranches and settlements, for the purpose of making off with horses, sheep, cattle, burros and Spanish or non-Apache slaves became a central part of Apache life. U.S. marshals estimated that in one five-year period in New Mexico, the Apache stole 450,000 sheep, 13,000 mules, 7,000 horses, and 32,000 cattle (Terrell, 1972 at 210). The Apache emerged as the dominant tribe in the region, fending off Spanish expansion for a century and establishing a unique status with the Europeans. Numerous reports indicate that Apache/Spanish social and commercial interaction -- from playing cards to sharing houses -- put the Apache on a par with the Spanish, led to Apache adoption of Spanish behaviors (as opposed to the Indians enslaved by the

Europeans), and tended to confirm an ongoing Apache self-definition as the tribe that could not be enslaved (Gunnerson, 1974).

Apache social structure was based on the matrilineal extended family: when a couple married, they lived with the woman's mother's family group. The local group was the basic economic unit and typically consisted of several families who occupied an agricultural area, cooperated in certain food-gathering activities, and assisted in development (in the fashion of rural American barnraisings) of otherwise private agricultural plots (Goodwin, 1942). These local groups have parallels in the Sioux *tiyospayes*, and the mobility of individuals and families (e.g., resulting from some dissatisfaction) across local groups was similar. The local group was not, however, a unit of political organization; the basic units in this regard were bands composed of several local groups (Goodwin, 1942). Moreover, in addition to the local group structure, the Western Apache participated in a highly-developed clan structure that linked individuals to affinal groupings that cut across local groups, bands, and a wide geographic swath (Goodwin, 1942; Kaut, 1956, 1974).²¹

IV.B.1 The Structure of Authority

As noted, the band was the basic unit of Apache political structure. The central political institution at the band level was the head chief (Basehart, 1971). During 1850-75, each of the sixteen units designated as bands by the Western Apache had a recognized chief and "the solidarity of the band was expressed in the explicit social status of the band chief" (Kaut, 1974 at 61). The head chief of a band²² was selected and installed by the members of the band in a system of "direct election", as opposed to a parliamentary system in which a preeminent council selected its headman but retained

²¹ Other Apache groups, such as the Chiricahua in southeastern Arizona and far southwestern New Mexico, lacked a clan system (Opler, 1937).

²² A similar flow of authority was exercised at the sub-band level, indicating a continuity in the basic chief-centered political organization of the Apache (Goodwin, 1942).

policymaking authority (Goddard, 1921 at 169; Opler, 1953). While some investigators suggest that it was the respected senior men in the band (i.e., a subset of the adult citizens) who selected the chief (Opler, 1941; Goodwin, 1942), such a group was not a tribal council; it did not have existence, structure or authority beyond the installing of chiefs as the need arose. Chiefs served essentially for life (Ogle, 1970 at 24), although they could be removed or would remove themselves upon becoming feeble or otherwise incapacitated (Opler, 1941 and 1953).

The head chief of a band was complemented by a group of subchiefs: "Every chief had from three to six subchiefs whom he might consult in matters which concerned the entire local group" (Goodwin, 1942 at 165; see also Goodwin, 1942 at 676). The head chief and the subchiefs formed "sort of a council" (Kaut, 1974 at 61), but it is clear that the subchiefs were subordinate to the head chief and served executive administration roles. These included law enforcement (see below), provision of ceremonies, and public information dissemination (Goodwin, 1942). Opler (1941 at 46) concludes that the band "is guided by a recognized leader (occasionally by more than one), assisted by a number of subordinates." The daughter of an important head chief of the Western Apache who served in the decades preceding establishment of reservations reported upon being interviewed that: "Under my father were seven subchiefs besides [a second-in-command vice-chief]...All of the subchiefs, regardless of their clan, were equally under father's control...When father said something for the people, [the second-in-command] would say, 'These words he speaks are for all of us. It doesn't matter who you are. One head for all of us is best'" (in Goodwin, 1942 at 676).

Subchiefs were typically drawn from the leadership of the local groups that made up a band. When the band contained many local groups (up to 30, by some reports), the head chief apparently selected the subchiefs (Ogle, 1970 at 24, based on first-hand accounts). That is, the head chief selected the "sort of a council." Obviously, in contrast to the Sioux council-centered government, the Apache structure is remarkably chief-centered.

Further contrast with the Sioux is evident in the mechanism of policy decision-making. Whereas the Sioux emphasized consensus verging on unanimity as the primary decision rule for policymaking, the Apache regarded decisiveness by the head chief as appropriate. The head chief was referred to variously as "our smart one" (Goodwin, 1942 at 131), "he who directs" or commands (Opler, 1953), or "he who convinces us."²³ Note, however, that while government by referendum was certainly not the Apache norm as a political decision rule, this does not mean that the head chief was legitimately expected to be dictatorial. On major policy decisions (e.g., a treaty, an alliance), the chief was required to consult with others, particularly others of influence, and more agreement was preferred to less. Nevertheless, while "he always gave weight to the opinions expressed by others", "[i]t was the leader's responsibility to decide a question" (Haley, 1981 at 155). As Opler concluded in the case of the Chiricahua, "where opinion is divided or undecided, what the leader suggests is the decisive factor" (Opler, 1937 at 234).

Opler's (1983) conclusion, at least with respect to the Mescalero Apache in New Mexico, that consensus was required for decision-making and that the chief was more of an "advisor" than a decision-maker seems to be based on recognition of the *illegitimacy* of the use of coercive force in civil matters by Apache chiefs and the ease with which individuals might leave a group or band if disgruntled with a chief (Opler, 1941 and 1953; Cortes, 1799 in John, 1989; Kaut, 1974). While the equation of power with coercive violence is found to be fairly common by anthropologists operating in the post-war era, cultural norms restricting leaders' access to violent enforcement do not necessarily imply cultural restrictions on leaders' authority. This is crisply illustrated in the Western Apache context. Goodwin's (1942 at 679) informant (quoted above) says, for example: "If a man was told to do something by my father, he had to do it. If he refused, father could run him out of the local group."

²³ Translation provided by Mr. Edgar Perry, tribal cultural director, White Mountain Apache Tribe, personal interview, 1987.

The Apache contrast in political structure with the Sioux is further evident in the organization of judicial authority. Unlike the Sioux, with their *akicita*, powers of law enforcement among the Apache were combined with judicial authority in the head chief. Dispute resolution, arbitration, and criminal prosecution are repeatedly cited by historical analysts as primary roles of the chief (Ogle, 1970 at 24; Goodwin, 1942 at 179; Opler, 1946 and 1937 at 235; Kaut, 1974). There is general agreement that the chief was not empowered with coercive power vis-à-vis other band or group members (Basso, 1983); nevertheless, the chief was the dispenser of justice. "If there should be a murder and the leader finds it out, he and some assistants saddle their horses, ride out among the camps, and work for peace so there will not be any trouble" (quoting informants, Opler, 1941 at 468). "Justice" in the case of criminal injury, murder, rape, and the like in Apache society seems to have commonly taken the form of fines and payments, rather than physical punishment or incarceration (Ogle, 1970; Opler, 1941). In the case of murder, the victim's relatives would at times be sanctioned to carry out physical punishment of the murderer (Opler, 1937 and 1941). If liability was uncertain, a chief would convene a jury of himself and two or three assistants, allowing the plaintiff to propose appropriate compensation payments (Ogle, 1970 at 25).

Finally, war leaders were selected by the band chiefs (and often included the chief himself). These leaders might be called war "chiefs," but they had no political authority outside of the particular military campaigns in which they served (Goodwin, 1942; Opler, 1953). Policy-level decisions, such as where and when to go to war, were the province of the head chief and his subordinate subchiefs (Basso, 1983).

IV.B.2 The Scope of Authority

Present-day Apache tribal chairmen are noted for their political power and longevity.²⁴

This power includes more than chairing the tribal government and the tribal council under the IRA constitutions. At Fort Apache, for example, the tribal chairman is also the *de facto* chairman or CEO of important tribal enterprises. He also exercises direct control over such civil matters as the content of the tribal newspaper and the tribal radio station, and serves as the primary "foreign affairs" decision-maker and representative for the Tribe (e.g., in dealing with Congress, deciding to file or contest law suits, etc.). How does this extensive scope of authority compare to the powers of historic tribal chiefs?

The head chief-centered indigenous Apache band and group government had responsibilities for directing important components of the Apache economic system. The chief had primary responsibility for such matters as when and where to move camps, when and where to hunt, the tactics and timing of resource raiding, the split of collectively-acquired capital (raided horses, sheep, etc.) between food consumption by band members and trade with non-Apaches, investment and management of collective investments (e.g., in irrigation facilities), and allocation of land under dispute (Opler, 1969 and 1983; Kaut, 1974). Economic authority was restricted in the agricultural sector, where individual land plots were the private property of individual families (Kaut, 1974). Inheritance and use were the province of the owners, although the chief would be consulted for approval on land transfers to other than current band members (Goodwin, 1942 at 150-51). Trespass onto the bands' and groups' hunting tracts also required approval of the head chief (Goodwin, 1942 at 150-51).

A key responsibility of the head chief was provision of basic necessities for all of his followers. This entailed the equivalent of income maintenance programs for the indigent, and required authority for taxation and redistributive power, as well as control over collective resources such as the yield of a group hunt or raid (Opler, 1983 and 1941; Goodwin's informants, 1942 at 678). Apache

²⁴ See, e.g., *U.S. News and World Report*, "Apaches Make Their Peace with the World," April 5, 1982.

norms did not go so far, however, as to compel complete income equality. Chiefs and subchiefs, for example, were expected to be and stay wealthy as legitimate reward for their being "smart" (Goodwin, 1942 at 182).

As suggested above, in civic life, government authority extended over criminal acts, such as murder and rape; and the head chief had primary judicial authority. Marital infidelity was the province of the family and extended family, rather than the chiefs and the band government. Apache culture does not seem to have created such strong conflicts between individualism and conformity as are seen in historic Sioux society (see above). Warfare and raiding, for example, were not the occasions for outrageous and ritualistic bravery. Although the Apache were formidable and courageous warriors, to be sure, Apache military exploits did not become the stylized game observed frequently in the plains tribes (Opler, 1953). Qualities of self-control demanded in leaders (see below) were representative of core Apache norms regarding individual behavior. The head chief, and occasionally the subchiefs, were expected to maintain such values, standards of behavior, and public decorum through almost daily speech-making. The morning speech was an obligation of the head chief (Goodwin, 1942 at 165; Goddard, 1921 at 169).

IV.B.3 The Location of Authority

The Western Apache as a *tribe* lacked an explicit political structure; the political structure was embedded in the bands and local groups as described above. The web of clan relationships, however, cut across these units, creating a broader community of identity and affinity. A clan had no political function or structure, but rather represented a set of far-reaching reciprocal obligations and affinities (Perry, 1972). The dozens of Western Apache clans had roots in three or four basic clans originating in the prehistoric breaking away from the Navajo: "The Western Apache think of the clan as being that group of relatives which is descended not necessarily from one common ancestor but from

the group which established the first agricultural site at which the clan originated" (Kaut, 1956 at 142). This form of lineage, coupled with matrilineal norms for family location and no restrictions on interclan marriage, produced a "far flung network" of overlapping reciprocity (Kaut, 1974 at 60). This, in turn, was the basis for a significant degree of tribal identity, even if there was no corresponding political structure, among the Western Apache: "Thus, the White Mountain, Cibecue, San Carlos, and Southern Tonto formed a relatively solid block of co-operating and interacting defensive and offensive organizations occupying a broad and rugged triangle of territory..." (Kaut, 1974 at 67). The existence of these tribal-level norms of solidarity provides a plausible explanation for the apparent ease with which IRA concentration of power in a central tribal government took hold at the Fort Apache reservation. Field experience indicates that the central tribal government at Fort Apache is widely and intensely regarded as the legitimate locus of Apache political identity and authority. As compared to Pine Ridge, it is striking how senior tribal political office is a central objective of aggressive, young Apache leaders and managers.

IV.B.4 Sources of Authority

Political leadership is an informal contract, enforced by cultural norms whose violation engenders the opprobrium of fellow members of the society in the manner described in Section III above. Under this contract, rights and obligations go in both directions: citizens feel obligated to abide by legitimate exercises of authority, and leaders agree to exercise only legitimate authority. An interesting quandary presented by the Apache political system concerns how a system that fosters and sanctions such strong senior leaders controls destructive rent-seeking by such chiefs. The indigenous Apache leader was indeed powerful to the point of being autocratic, but there is no evidence that he was a rent-seeking petty dictator. Indeed, the Apache cultural norms governing leadership controlled rent-seeking and compelled chiefs to behave literally as third-party enforcers: although chiefs were not vested with powers of

violence, they were explicitly charged with the judicial authority in Apache society. It is significant that in his extensive interviews with surviving members of the Western Apache who had experienced pre-reservation life, Goodwin could find "no Apache [who] could recall an unsatisfactory chief nor one who had been removed because of incompetence" (Goodwin, 1942 at 181). In contrast, Sioux political life was marked by more or less continuous factional splitting, as individuals and families aligned themselves with one group of leaders or another (Hyde, 1937).

A number of traits in leaders seem to have been necessary to make the chief-centered system of government work for the Apache. The leader was required to be convincing -- able to exercise charismatic attraction to hold would-be free riders -- and to exhibit intelligence. The premium on intelligence ("our smart one") has been suggested above. Regarding charisma and persuasiveness, virtually all students of Apache leadership remark upon the importance of oratorical ability as a source of political authority (Opler, 1937 at 234, 1941, 1983; Goddard, 1921; Goodwin, 1942; Basso, 1983). To this day, oratorical skill and charisma are hallmarks of Apache leaders. This is in sharp contrast to the demands made of Sioux tribal chairmen.

In addition to the role of intelligence and oratory, Apache leaders acquired authority through demonstration of disinterested wisdom: "Ability in hunting, raiding, and war and industriousness were all prerequisites, but cool and sane thinking, impartiality, control of temper, speaking ability, generosity, patience, and sometimes self-sacrifice were attributes held even higher" (Goodwin, 1942 at 164; see also Opler, 1937 at 233; Ogle, 1970 at 24; Basso, 1983). Compared to the Sioux, there appears to be relatively little emphasis in Apache norms of legitimacy on supernatural attributes that might be demonstrated by outrageous bravery or accumulated good fortune with which superstitious followers might like to associate. Rather, Apache chiefs were expected to be flesh-and-blood embodiments of Apache identity: "they served as models for others to emulate and, in so doing, personified a set of moral values to which the Apache attached singular importance. These values included:

...industriousness... generosity... impartiality... forbearance... conscientiousness... eloquence" (Basso, 1983 at 475).

Reflective of the tilt away from leadership by compromise and consensus and toward leadership by forcefulness and decisiveness, or perhaps as manifestation of whatever charisma is in the human psyche, Apache leaders were frequently described as aristocratic, haughty, aloof, etc. (Cortes, 1799 in John, 1989; Goodwin, 1942 at 182; Basso, 1983 at 475). Common citizens were expected to show deference to chiefs, and did not talk on equal terms with them (Goodwin, 1942 at 182; Kaut, 1974). Chiefs typically had superior dwellings and camps, reflecting above-average wealth (Goodwin, 1942 at 182; Opler, 1941). In part, this wealth was justified by reference to the intelligence and responsibility of chiefs, and in part it reflected the demands placed on the chief to serve as the welfare program of last resort.

While it is difficult to know whether one is engaging in after-the-fact reasoning, it is tempting to conclude that the traits expected of Apache leaders under indigenous, pre-reservation self-government describe the attributes expected of a forceful corporate chairman or non-rent-seeking autocrat. At least it can be said that the IRA's centralization of political power in a single chief executive, with a modest-sized council under his direction and no separate judiciary, does not present a monumental change in governmental system for the Western Apaches. Whatever leadership traits had worked historically for the Western Apaches, those same traits and the cultural norms supporting them would be expected to work well under IRA government. Our conclusion is that this is one of the sources of the recent relative economic success at tribes like the White Mountain Apache.

V. CONCLUSION

The origins -- in both the causal and the temporal senses -- of effective institutions of government is a matter about which little is known. In part, this is because these institutions are public

goods for which no meta-government exists that might serve as the device for overcoming free rider and defector problems. Application of the standard invisible hand reasoning of economics in this context runs into intractable difficulties. Rational, but socially-disconnected, individuals lead us into the conundrum of constitutional public choice: How do we choose, and bind ourselves to, the rules by which we choose the rules that will govern us?

We have argued in this study that extra-constitutional "agreements," in the form of cultural norms concerning the feasible and the legitimate, provide the foundations for avoiding the Hobbesian war of all against all. As a test of this proposition, we have examined a set of small sovereign states that operate under similar formal constitutions, yet produce widely different economic and social performance -- the modern Apache and Sioux Indian tribes. The Fort Apache reservation of the White Mountain Apache Tribe and the Pine Ridge reservation of the Oglala Sioux Tribe are each governed by a centralized tribal government consisting of a direct-elect chief executive, a one-house legislature, and non-independent judiciary. Each of these attributes is almost precisely the opposite of the corresponding form found in indigenous Sioux government. For the Apache, on the other hand, the match is remarkably close. Accordingly, the modern government of the Sioux is a counterproductive mechanism of social and economic disunion. The Apaches, meanwhile, are progressing in both absolute and relative terms. The concordance between extra-constitutional agreements on the appropriate structure, scope, location and source of political authority and the formal constitutional system of Apache governance provides at least part of the explanation for their success.

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