

ROSEBUD SIOUX

Sicangu Lakota Tetunwan Oyate:

CONSTITUTIONAL REFORM

**LOOKING TOWARDS SOVEREIGNTY,
DEVELOPMENT, AND CULTURAL MATCH**



Presented to:

The Rosebud Sioux Tribal Council and Citizens

Prepared by:

Natalie Palugyai

Candidate for Master in Public Policy, 2004
John F. Kennedy School of Government,
Harvard University

Andrew Rabens

Candidate for Bachelor of Arts Degree, 2005
Government Department
Harvard College, Harvard University

Supervisor:

Professor Joseph Kalt



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EXECUTIVE SUMMARY

INTRODUCTION

The work, which is currently being done within the Rosebud Sioux community to amend the current 1935 IRA Constitution is both timely and extremely commendable. Reforming the constitution so that it better fits the present day lives and culture of the Rosebud Sioux community is an ambitious act, currently being tackled by the Rosebud Community at-large and through the hard work of the Constitutional Task Force.

A constitution should serve as the essence of the community, which embodies the spirit, political structure, culture, and way of life in which a society has chosen to live. Potential investors will look at the safeguards in place within the constitution to see how their potential investments will be protected. Foreign peoples will look at the Constitution and develop an image of what the Rosebud Sioux stand for. While a constitution must be legitimate in the eyes of its people, it must also evoke a proud and deep personal sense of connection. There seems to be broad consensus that the current constitution comes up short in these respects. Therefore it is extremely advantageous that the Rosebud Community and the Constitutional Task Force have been working to address some of the current Constitution's shortcomings.

The amending process of the Constitution, which is currently taking place, is a tremendous step in the direction of exerting sovereignty and developing a precious document, which can accurately embody the unique Rosebud culture and establish a culturally practical political structure.

At some later date, more constitutional reform including a brand new constitution may be deemed in the best interest of the Rosebud Sioux Community in order to redefine itself domestically and internationally. We hope to provide you with some advice on how to get the process going and on what issues must be addressed in order to attract investment and to better tailor the systems of government to culturally match the unique Rosebud way of life. Given our lack of understanding about the Lakota way of life and culture, this report will not make prescriptions on what would be in the best interest of the Rosebud community. If and when the community chooses to re-write the Constitution from scratch and redefine its political structure and system of governance, this report will provide possible options which can be debated and considered by the Rosebud community.

EXECUTIVE SUMMARY

THE DIFFERENCE BETWEEN PROCESS AND SUBSTANCE

Re-writing a constitution involves two parts: Process & Substance.

By process, we refer to what actions the tribe will take in order to jump start the actual re-writing of the constitution. In general, the greatest concern under process is the assurance that the methods used by the tribe in order to re-write its constitution are legitimate in the eyes of its citizens. This report will provide options and examples of what others have done under three process areas of concern.

- **Creating a constitutional task force and convention:**
 - * Giant Convention Approach
 - * Representative Constitutional Convention
 - * Tiyospaye Representative System

- **Involving and invoking the participation of a nation's citizens:**
 - * Local town hall meetings
 - * Large town hall meetings
 - * Add-on: combine social events with town meetings

- **Disseminating convention information to the people :**
 - * Closed-door vs. open-door constitutional conventions
 - * Use of Rosebud Tribe radio
 - * Use of local tribal newspapers

By substance, we refer to the content the tribe will include in its constitution. Deciding what issues will be placed in a constitution is just as important as the process used to re-write the constitution. Failure to include specific issues can lead any country to political ruin and hinder economic development. This report will provide options and examples of what path other countries as well as tribes have taken under three substance areas of concern.

- **Designing the government bodies:**
 - * Current centralized system
 - * Parliamentary system
 - * Separated Presidential system

- **Designing an independent dispute resolution/court system:**
 - * Pyramid system
 - * Flat system

- **Removing U.S. Department of Interior oversight of tribal constitutions:**
 - * Precedence

PART I- PROCESS CONCERNS

CONSTITUTIONAL TASK FORCE & CONVENTION APPROACH

How is the Constitutional Task Force Created and What Kind of Convention Approach Should be Used?

An effective Constitutional Reform Committee and Convention Structure is one of the most important aspects of the Constitutional Reform Process. The committee and conventional system chosen must be representative, effective, and legitimate in the eyes of the people.

Option I: Giant Convention Approach with Honest Broker Task Force:

This system basically represents what is currently in place in Rosebud.

- The Task Force is made up of a select group of non-tribal council members of the community who initially supervise the giant conventions and ultimately cipher through the numerous amendments or structural ideas and come up with a new Constitution.
- The Task force is appointed by members of the Tribal Council or legislative branch to run the initial conventions and then to judge the ideas and amendments brought forth at the conventions.
- The initial conventions are open to the public and provide an arena for community members to present their ideas and act as delegates.
- The Task Force plays the role as honest broker and remains completely impartial during the process. They do not serve as primary authors of the Constitutional text and are not even allowed to submit ideas themselves. They impartially gather and judge the structural ideas and visions submitted by the public at large and then determine which ones can adequately be applied to the constitution.
- The finished Constitution is eventually put up for a public vote and must gain a majority.

Option II: Representative Constitutional Convention- American Convention

- Task force is made up of delegates who represent their specific state or district and convene to amend or re-write the Constitution in a closed-door setting.
- The representatives are either directly elected by the people or appointed by the local government to serve as delegates for the Constitutional Convention.
- The Delegates work continuously behind closed doors until they have come up with a revised or brand new Constitution which has a likely chance of being legitimate in the eyes of the people.
- The delegates take an active role in the formulation and construction process of the Constitution and act as the primary authors of the text. They can gather initial input from their state and district populations but do not consult them once the Convention begins.
- The Constitution must ultimately be taken back, discussed, and ratified by the state or district government.

In 1786: Commissioners who were convening at the Virginia Legislature endorsed a motion for a “grand convention” to take place for the following year in which all states would meet in Philadelphia to discuss how to improve the current Articles of Confederation. The Articles of Confederation according to George Washington and other statesmen did not embody the essence of the American character. 70 delegates from the 13 different states were appointed or elected to represent their state at the Convention. 55 delegates from 12 states (not Rhode Island) ended up convening at the Constitutional Convention in Philadelphia to amend the Articles of Confederation, which resulted in the writing of the new U.S. Constitution. The Convention met in secret non-public deliberations for 4 straight months and eventually wrote a comprehensive constitutional document. The delegates then brought the finished Constitution back to their individual states to be debated and ratified within the state government apparatus.

Option III: Tiyospaye Representative System: Family System:

This would be a similar scenario to the basic representative system however the focus is on the more traditional reliance of Tiyospayes (families) as opposed to districts or states. Representative would be chosen from the different tiyospayes and would then convene at a convention behind closed doors for an extended period of time. Once the Constitutional document was completed, then it would be taken back to the tiyospaye for ratification.

- The Task force is made up of delegates who represent their specific tiyospayes and convene to amend or re-write the Constitution in a closed-door setting.
- The representatives are either elected by their tiyospaye or appointed by the family elders to serve as representative delegates at the Constitutional Convention.
- The Delegates work continuously behind closed doors until they have come up with a revised or brand new Constitution which has a likely chance of being legitimate in the eyes of the people.
- The delegates take an active role in the formulation and construction process of the Constitution and act as the primary authors of the text. They can gather initial input from their tiyospayes but do not consult them once the Convention begins.
- The Constitution must ultimately be taken back, discussed, and ratified by the different tiyospayes.

Add-On: Mini Conventions at local levels prior to Representational Convention

- The elected or appointed Representatives for the large Constitutional Convention would convene local conventions or town hall meetings within their district or Tiyospayes to hear public opinion, which could then be used to shape their ideas and better enable them to represent their district, state, or Tiyospaye at the Constitutional Convention

In 1999, the Cherokee Nation of Oklahoma formed a seven member Cherokee Nation Constitution Convention Commission to lead its reform process. Importantly, the Commission successfully obtained enabling legislation from the Council vesting it with sole authority to manage the reform process. The legislation also allowed the Commission to place proposed reforms directly on a referendum ballot – bypassing the need for Council approval and a potential veto of controversial proposals. ¹

QUESTION BOX FOR CONSTITUTIONAL TASK FORCE & CONVENTION APPROACH

| QUESTIONS | <u>Giant Convention Approach with Honest Broker Task Force</u> | <u>Representative Constitutional Convention: American Convention</u> | <u>Tiyospaye Representative Convention: Family System</u> |
|--|---|---|--|
| Who makes up the task force? | Non-tribal council members of the community | Delegates who represent their specific state or district | Delegates who represent their specific tiyospayes |
| How are the representatives on the task force chosen? | Appointed by members of the Tribal Council or legislative branch | Directly elected by the people or appointed by the local government | Elected by their tiyospaye or appointed by the family elders |
| What are the specific roles, powers, and duties of the task force representatives? | Collect changes from the people, organize changes efficiently and give back to people to vote | Collect ideas from the people, then write the constitution without additional outside influence. Then give back to the people to ratify | Collect ideas from tiospayes, then write the constitution with or without additional outside influence. Then give back to the families for approval. |
| Do they craft language of the new Constitution or stay unbiased and act as honest brokers, relaying ideas from the smaller groups to the committee? | Unbiased, do not craft the language of constitution | Close-doors, opinionate and craft language of final constitution | Closed or Open-doors, opinionate, debate and craft language of final constitution |

Consideration Matrix

| | Giant Convention | Representative System | Tiyospaye System |
|---------------------|-------------------------|------------------------------|-------------------------|
| Representation | ✓ ✓ | ✓ ✓ | ✓ ✓ ✓ |
| Independence | ✓ | ✓ ✓ | ✓ ✓ |
| Powers of Delegates | ✓ | ✓ ✓ | ✓ ✓ |

PART I- PROCESS CONCERNS

COMMUNITY INVOLVEMENT & PARTICIPATION

“If we could get the same fanaticism that we have for sports and somehow be able to transfer that to having an interest in our government, we’d have the best government in the world.”

-- Member, Northern Cheyenne Tribe

"[We need to] try to lure people into it [the reform process] because a lot of people feel like what they say won't make a difference. And they're just going to give up on it. But there comes a time when something impacts them and they'll speak up. So, even though people aren't going to come [to community meetings], we have to find a way to get to them."

-- Member, Hualapai Nation Tribal Council ¹

If the Community is not able to feel a sense of ownership of the Constitution and feel that their personal views are well represented in the Constitutional text, then it will be extremely difficult for the Constitution to be legitimate in their eyes. Extraordinary measures must be taken in order to ensure that the community has the opportunity to participate in the Constitutional process and feel a sense of ownership of the text.

Current Problem of Legalese:

One of the inherent problems with the current Rosebud Constitutional Convention is the requirement for the submission of amendments to be written in proper technical legal language. The ability to write thoughts and ideas in precise Constitutional legalese is an extremely difficult task which experienced lawyers often struggle with. It is nearly impossible for the common person to be able to express their thoughts in proper legalese. Some members of the community may therefore feel disenfranchised and unable to partake in the Constitutional Reform process. On this account, they may not view the finished document as legitimate in their eyes. It is imperative that the ideas of the public be submitted and discussed in their raw form and turned into constitutional legalese at some later point in time.



Possible Solutions to Legalese Problem:

Task Force Members and Representative Delegates:

The members of the Constitutional Task Force or representative delegates to the convention could help members of the community transform their raw ideas into constitutional legalese.

Community Legal Scholars:

The basic public ideas and discussion can be recorded and written down at the town meetings and then later transformed into Constitutional legalese by the legal scholars within the community.

Traveling Legal Team:

A legal team could be formed whose primary job would be to travel to the different town meetings, large or small, and transform the main ideas into Constitutional legalese.

One member of Northern Cheyenne's constitutional reform committee took the lead for explaining proposed reforms at community meetings in the Cheyenne language. Working closely with the committee's tribal lawyer, he and others were able to ensure that citizens' comments made their way into the language of draft proposals.

To explain the Navajo Nation's Local Governance Act in 1998, then-President Albert Hale visited the nation's citizens on horseback, explaining to individual families in the Navajo language how the proposed reforms would impact their day-to-day lives. ¹

Option I: Local Town Hall Meetings

- Local Town hall meetings within the local districts or Tiyospayes can serve as great arenas to get public opinion from the local population. Ideas can be proposed and discussed in a comfortable casual atmosphere.
- The town hall meetings would be accessible to all members of the local communities and led by the local political leaders or elders.
- The public information and ideas could be collected by a scribe and could at some later point be turned into legalize
- The ideas brought forth in the town hall meetings could then be submitted by the public or by the representative delegates to the Constitutional Convention.
- This system would help establish legitimacy for the Constitution because the ideas directly from the people would be incorporated in the document.

Option II: Large Town Hall Meetings

- Large town hall meetings would be held in a large gymnasium or recreational room and would provide a venue for the community at large to come together and discuss issues and make suggestions openly.
- The large town hall meetings would be open to all members of the community and would be run by the tribal political leaders or Constitutional task force or committee.
- The public discussion and ideas suggested could be collected by a scribe and could at some later point be turned into legalese.
- The ideas brought forth in the town hall meetings could then be further debated and discussed at the Constitutional Convention or by the Constitutional Task Force.
- This system would help establish legitimacy for the Constitution because the ideas directly from the people would be incorporated in the document text.

Add-On: Combining Social Events with Town Meetings

- Community participation at town hall meetings tends to be very low and can difficult to increase. Some members of the community may not be interested in sharing their ideas concerning a new Constitution or even getting involved in the process. However, everybody loves a good social event or a fun night out and the town hall meetings could be used for such an occasion. Both the local or large-scale town hall meetings could be combined with social events. The town hall meeting could be immediately followed by dinner, dancing, and music for the community to enjoy. This would not only attract many more people to the meetings but would also strengthen the cohesiveness and unity of the overall community and would transform the irksome town hall meetings into highly anticipated events.

QUESTION BOX FOR COMMUNITY INVOLVEMENT & PARTICIPATION

| QUESTIONS | <u>Local Town Hall Meeting</u> | <u>Large Town Hall Meeting</u> |
|---|---|--|
| How do you get the Community to become involved in the Constitutional Process? | Attach social event (family event or town event) to meeting | Attach larger social event to meeting (tribal event) |
| Is the system accessible to the people? | Yes, and because it is local, even more accessible | Yes, but transportation problems may exist |
| How should public information be collected? | In smaller meetings, the tiospaye can nominate who will collect all the comments. May also chose to use local university. | With large groups, have to control speaking times and order. Information about what is said can be collected by scribes. |
| Does the system allow for legitimacy in the eyes of the people? | Yes, given history and persistence of tiospaye traditions | Perhaps not as much as local meetings |

Consideration Matrix: Pro's and Con's of Big Town Meeting vs. Small Town Meeting

| | <u>Local Town Hall Meeting</u> | <u>Large Town Hall Meeting</u> |
|-------------------------|---------------------------------------|---------------------------------------|
| Attendance Level | ✓ ✓ | ✓ |
| Comfort Level | ✓ ✓ | Where comfort level is lowest |
| Number of Ideas | ✓ | ✓ ✓ |

PART I- PROCESS CONCERNS

COMMUNICATION OF INFORMATION THROUGHOUT THE RE-WRITING PROCESS

In order for the people to feel as if they are a part of the Constitutional reform process, they have to be constantly updated on the current happenings and decisions within the Convention. This can be a difficult task and the community must be strategic in using its plentiful resources to disseminate information.

Closed vs. Open-Door Constitutional Convention

The US Constitutional Convention was done completely behind closed doors for a lengthy period of 4 months. No information was publicized until the end of the Convention in an effort to enable the delegates to get deep into the issues and not have to be burdened with explaining every minute step to their publics. Once the document was completed however, then great resources were expended to widely publicize the document and gain public approval.

An open Constitutional convention allows for information to be transferred freely to the public during the convention process. Debates and hotly contested issues can be publicized as they are being discussed and the public is able to stay updated on the Constitutional reform process.

Whatever style of convention, open-door or closed-door, is deemed to be in the best interest of the Rosebud community, there is still a need to keep the public informed about the process and to immediately publicize the final constitutional document for public approval.

Option I: Disseminate Information through Rosebud Radio

- Information about the Constitutional Convention process or Constitutional document can be read over the radio during breaks in the daily music or talk show programs.

Option II: Disseminate Information through Local Newspapers

- Information can be printed in the widely read local newspapers, which can cover the Constitutional Convention.

Option III: Making the New Constitution Available

- When the final document is written and the new Constitution is complete, copies must be made available to all members of the community. They should be dropped off at peoples' houses, left available for pick-up at the local hangouts and/or published on the Official Rosebud website.

Add-On: If the newspaper or radio refuses to cover the news surrounding the Constitutional Convention and publish the Constitutional text in the paper, then the Tribal Government should consider investing in buying ads in the newspaper, which publicize updates of the reform process and publish the final text.

**QUESTION BOX FOR COMMUNICATION OF INFORMATION
THROUGHOUT THE RE-WRITING PROCESS**

| QUESTIONS | <u>Radio</u> | <u>Newspapers</u> |
|---|--|--|
| How do people know what is going on during the Constitutional reform process? | The Rosebud radio is listened to by many citizens. Talk about convention updates during breaks or dedicate a talk-show to “what’s going on with the convention” | Individuals who purchase the newspaper will be able to read about the process. Negative to newspapers is that many do not buy paper and therefore will not get this information. |
| Should information be disseminated to the public during the Constitutional reform process? | Depends on whether open-door or closed-door convention is chosen. If open-door is selected then people can call-in and debate or give their opinions on the air. | Depends on whether open-door or closed-door convention is chosen. If open-door selected then people can comment their opinions through articles, op-eds. |

Consideration Matrix: Information Dissemination Techniques

| | Rosebud Radio | Newspaper | Making Constitution Available |
|------------------------|----------------------|-------------------------------|---|
| Cost | LOW | LOW | HIGH (printing) MEDIUM (mix printing/ internet) |
| People Affected | LOW to MEDIUM | MEDIUM | HIGH |
| Advertising | LOW | Medium (but well worth it) | N/A |

PART II- SUBSTANCE CONCERNS

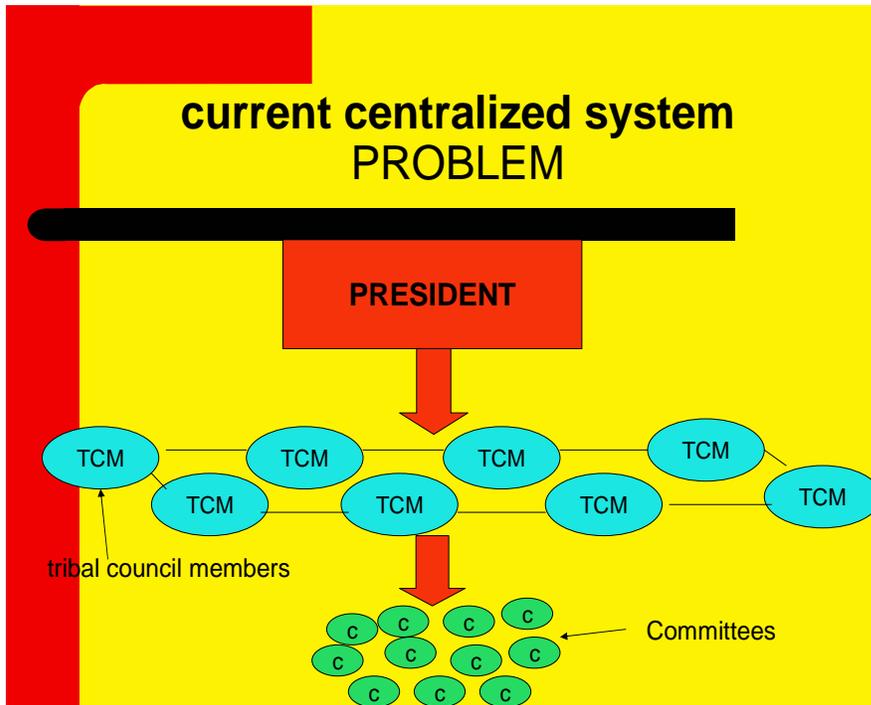
DESIGNING THE GOVERNMENT BODIES

“For the many American Indian nations with histories and cultures of decentralized, consensus-oriented, and deliberative methods of decision-making, IRA constitutions’ centralization of power in small tribal councils acting by divisive majority votes with few checks or balances has been a difficult transition. In addition to their substantive drawbacks, IRA constitutions have been criticized for the way in which they were imposed “top-down” upon tribal memberships that did not fully understand their contents and purposes. Today, a number of American Indian nations have overcome IRA constitutions’ lack of effective mechanisms for separating government power, resolving disputes, and providing avenues for popular participation in government to form strong tribal governments. More often than not, however, these characteristics have posed daunting challenges of tribal governance.” (Iemont)

Example of the Navajo

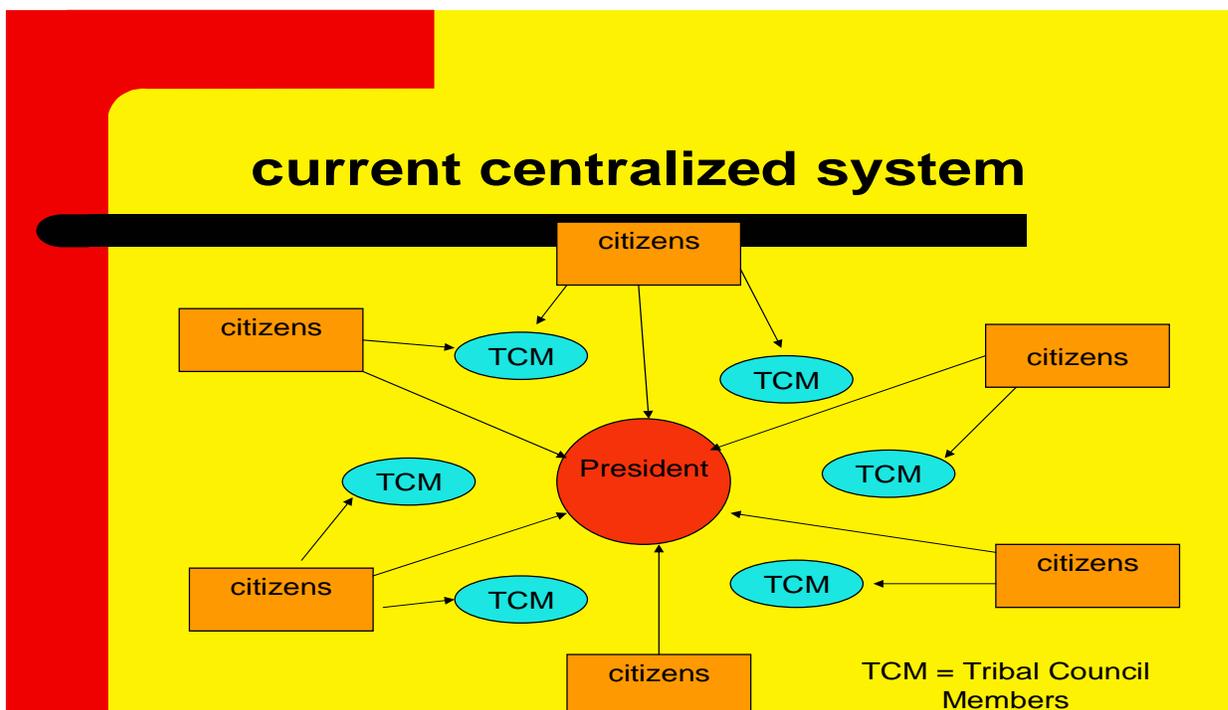
Traditionally, political power and decision-making took place at a local level, with bands of ten to forty families comprising political units. In the early 1920s, however, outside oil interests – eager to tap into Navajo’s potential energy riches – urged the U.S. Department of Interior to authorize the establishment of a centralized, Navajo tribal council for the purpose of approving oil leases. In 1923, the Department initiated the creation of the Navajo Nation Tribal Council, the first body in Navajo history organized to act on behalf of the entire nation. Officials at the Interior Department drafted the Council’s regulations. Although the Council has continued to operate as the Nation’s governing body, its governing authority has never been consented to by the Navajo people in a referendum.¹

Option I: Current Centralized System



Currently, the Rosebud Sioux government bodies under the 1935 IRA Constitution do not allow for a separation of powers. This results in the centralization of power within the President, who presides over tribal council meetings, and oversees the tribal committees. This system of centralized power results in part because of the

imposed IRA constitution which was based on the American Legion’s non-for profit organizational style. It is also a result of the Rosebud community’s decision to vote directly for its President and Tribal Council members.



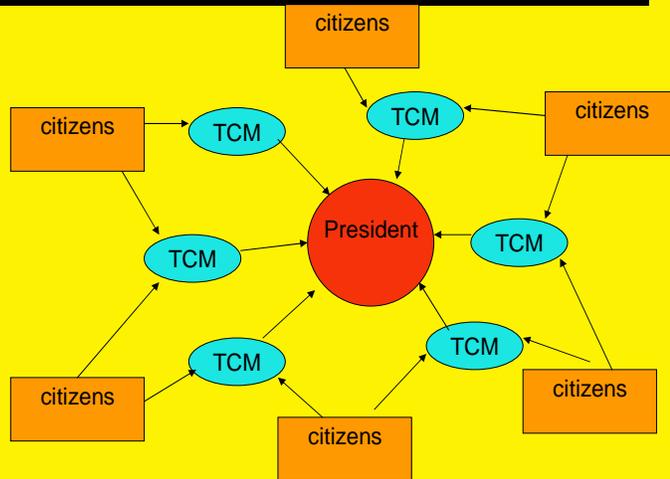
A centralized government may not fit the Sioux's traditional form of governance. It is extremely important for the Rosebud Sioux to create government bodies that fit best not only with the traditional Sioux government, but with the tribe's present culture as well.

Certain tribes appear to have done relatively well under the IRA. IRA constitutions—and those modeled on them—typically created a system of centralized tribal government with a single chief executive (the tribal chair or president), a one-house legislature (the tribal council), and a weak or absent judiciary. This system appears to match certain tribes' traditions and norms regarding the legitimate structure and powers of government, and these tribes may function effectively under these provisions... These historic foundations of Apache governance share some common ground with the IRA system, i.e., in both indigenous Apache governance and the IRA we find few and relatively undifferentiated branches of government. Our research repeatedly finds that this kind of common ground—this match between cultural standards of governmental legitimacy and the formal structure of tribes' current governments—is a key to creating an environment conducive to economic development. ²

Historic Sioux societies had fairly fluid but highly developed political systems. Oglala bands, for example, were governed by a council, or legislature, known as the Big Bellies or *naca*, composed of headmen, medicine men, warriors, and other men of stature. This council selected from among its number an executive council of four chiefs or councilors, who bore primary responsibility for the welfare of the group. They were ultimately responsible for camp policy, dispute resolution, and for advising the people on issues of significance to the community as a whole. They in turn delegated authority to four younger men, known as "shirt wearers," who served as the executives of the tribe and the voice of the chiefs, responsible for carrying out their policies. These then appointed marshals or *akicita* were responsible for the maintenance of order, for seeing to it that the decisions of the chiefs and the laws of the society were observed by all the members of the camp—including the Big Bellies and the chiefs themselves—and for disciplining violators. Political organization above the band level apparently was rare and fleeting, but according to Royal Hassrick, something resembling a national assembly met yearly prior to the mid-nineteenth century. In these gatherings hundreds of delegates from the Oglala, Miniconjou, Brulé, and other Sioux tribes selected four "Supreme Owners" who served as chief executives of the nation. At the same time, it seems clear that collective identity was most prominently focused at the band or *tiyospaye* level, where there was a high degree of group autonomy. ²

Option II: Parliamentary System

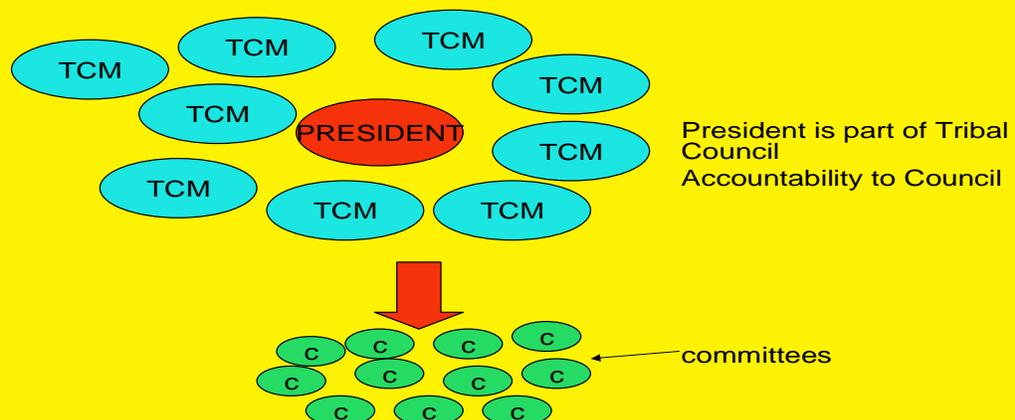
Parliamentary System



A parliamentary system presents a model more in line with decentralized governments. In such a system, the Rosebud citizens would vote for their respective Tribal Council Members and then the Tribal Council members would select their leader or President from amongst the members of the Tribal Council.

In such a model, the President, as a Tribal Council member would be accountable to the Tribal Council. This model may still present problems because there is no clear separation of powers. The roles of the President and the Tribal Council are not distinct.

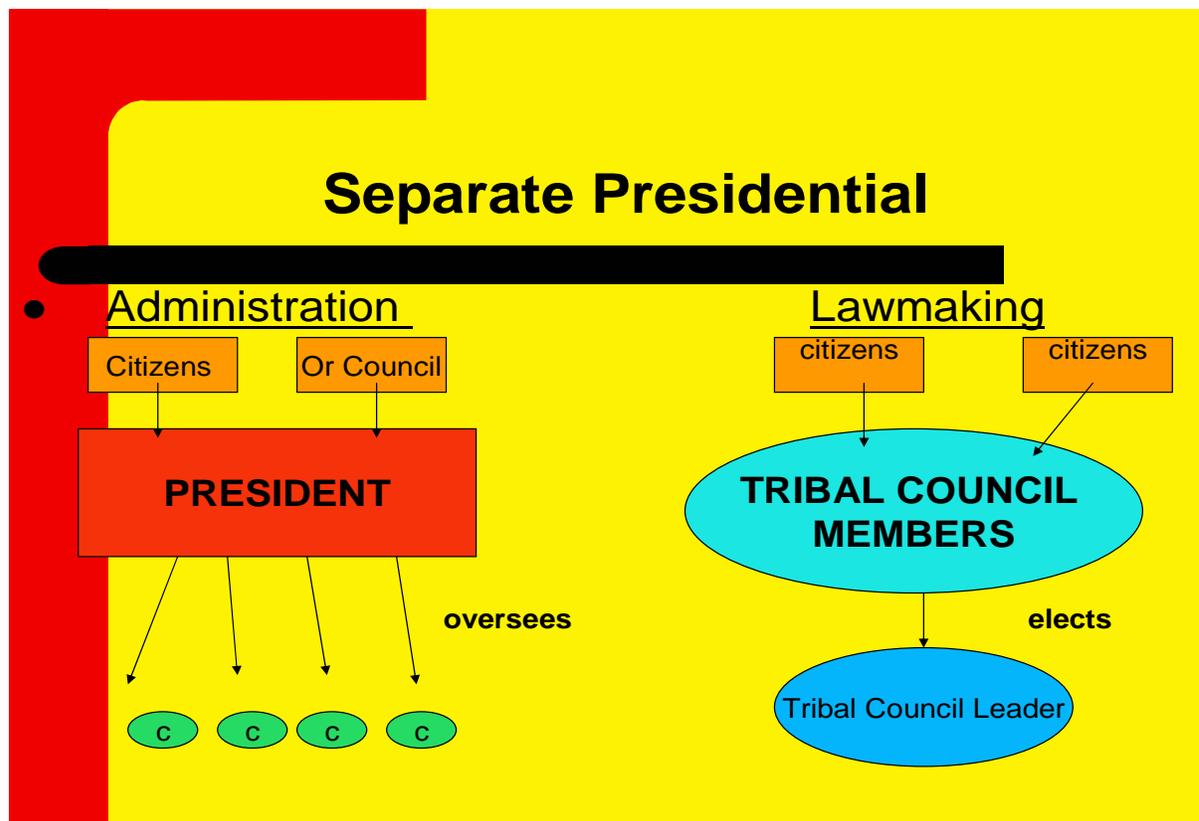
SUBSTANCE: Design of Gov't Bodies Parliamentary System



Option III: Separate Presidential

Another option for the tribe is to combine the very traditional decentralized governments with a distinct separation of powers. Under such a design, Rosebud citizens would elect their tribal council members either through a district or tiyospaye system, and could either elect the President directly as done currently or have the Tribal Council members elect the President from amongst the Tribal Council as is done in a parliamentary system.

What would result is a separate Presidential System, where the President falls under the Administration of the government, responsible for the Tribal Committees, and the Tribal Council falls under the Lawmaking of the government, selecting a Tribal Council Leader if desired.



Cherokee Nation of Oklahoma

Major changes in the proposed constitution include the addition of two Council seats for off reservation tribal members, the removal of the Deputy Chief from his position presiding over Council meetings, the creation of the position of Speaker of the Council, the creation of an independent election commission, term limits, removal of all references in the old constitution requiring federal government approval of tribal laws, and a complete overhaul of the judiciary, including the creation of a Court on the Judiciary charged with suspension and recommendation of removal of judges and justices. ¹

QUESTION BOX FOR DESIGNING THE GOVERNMENT BODIES

| QUESTIONS | <u>Current Centralized</u> | <u>Parliamentary</u> | <u>Separate Presidential</u> |
|--|--|------------------------------------|--|
| Who is control of the tribal budget? | Tribal Council & President ==conflict | Tribal Council | President/Tribal Chair |
| Who proposes laws? | Tribal Council & President ==conflict | Tribal Council | Tribal Council |
| Who are the Tribal Committees accountable to? | Tribal Council & President ==conflict | Tribal Council | The President/ Tribal Chair |
| Who is the President/Tribal Chair accountable to? | The tribe's citizens who voted for him | The Tribal Council that elects him | *If direct election: the people *If elected by tribal council: tribal council |

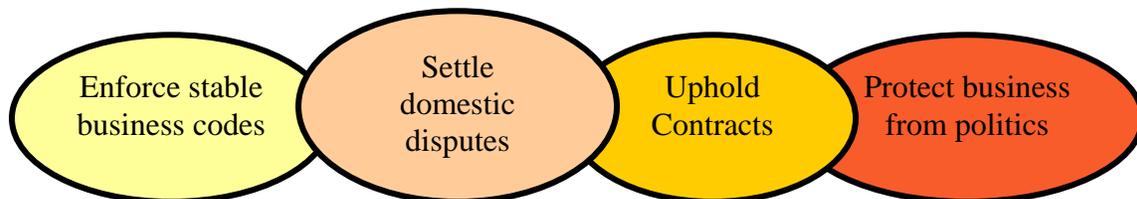
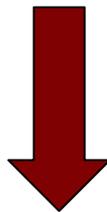
PART II- SUBSTANCE CONCERNS

INDEPENDENT DISPUTE RESOLUTION/COURTS

No matter which governmental body design is chosen by the tribe, an independent judiciary is a crucial aspect of a tribe's political structure and is an absolute necessity if a tribe wants to attract greater investment from the outside world. Specifying this separation in the Constitution will allow for a strong independence from political influence. Weak and non-independent powers not only hurt the tribe politically, as court decisions have the potential to be interfered with by officials from other branches of government, but economically as well, as the lack of an independent judiciary causes the outside investor to fear that his contracts will not be held up by the tribal courts. An independent judiciary is essential in promoting the confidence of both tribal citizens and outside investors that court decisions are being made in a just manner.

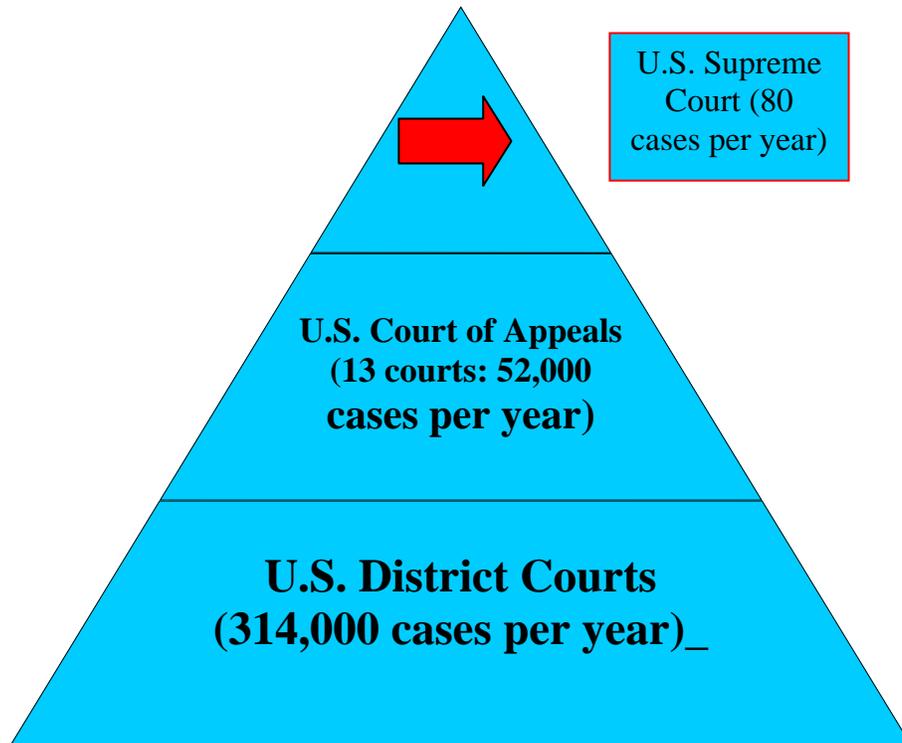
“67 Tribes Studied: those that have strong, genuinely independent judiciary systems outperform – economically – those that don't. ²

THE INDEPENDENT TRIBAL JUDICIAL SYSTEM MUST:



Option I: Pyramid System

A Pyramid system is one where one court deals with all possible grievances. It is referred to as a pyramid because there is the opportunity to appeal cases to a higher court. The United States is only one of many countries that have adopted such a court model.



- The judges for the Federal bench are selected to lifelong terms in office if they are nominated by the President and confirmed by a 2/3 Senate vote
- They are beholden solely to the people of the United States and are immune from being fired unless for some egregious violation
- The appeals process is highly regarded in the pyramid system as cases can be appealed from the District Courts to the Court of Appeals and ultimately to the Supreme Court
- The Supreme Court judges also possess "Judicial Review," which allows them to strike down laws emanating from the legislative branch which are found to be unconstitutional, or inconsistent with the constitution

Option II: Flat System

In a flat court system, such as has been adopted in South Africa, different grievances are dealt with by different courts. In such a system, there would be a different judge and/or court assigned for different matters:

- Civil Courts: Dealing with non-criminal matters between individuals, businesses, and the government
 - i. Business Court
 - ii. Family Court
 - iii. Government Personnel Grievances
 - iv. Redress of government abuses of power

- Criminal Courts: Deal with criminal matters
 - i. Juvenile Court
 - ii. Trial Court

Add-on: Pooling Resources with other tribes

Having the Tribal Constitution explicitly state that the court system is independent and enforcing this independence may not be as difficult as actually deciding what court design will best fit the tribe. It may very well be that the present tribal court, once assured independence will work perfectly for the tribe. In any case, any redesigning of the court system must consider the financial implications for the tribe. One option for reducing the cost is pooling the resources of the Rosebud Sioux with other Lakota tribes and communities in the region and creating an intertribal court system.

Makah Tribe of Indians v. the State of Washington

“Recognizing the increasing burdens that the administration and oversight of these issues would cause, leaders of nine Native American tribes met that year in order to discuss the pooling of resources. This decision came from the realization that none of the tribes possessed the individual financial resources or the trained personnel to accomplish the mission of the tribal courts. The most practical solution that was devised was to create a personnel pool system, and thus the Northwest Intertribal Court System (NICS) was born.

NICS tribes decided to interlock both the original and appellate levels of their individual court systems. Moreover, prosecution, code writing, and administrative (personnel) are also fully combined, such that individual members of any one of the tribes receive full service in these areas regardless of their location. The relative proximity, both in terms of geography as well as cultural heritage, makes this type of intertribal court feasible and legitimate. ³

PART II- SUBSTANCE CONCERNS

REMOVING U.S. DEPARTMENT OF INTERIOR OVERSIGHT

One of the real ironies in current tribal political affairs is the federal granting of tribal sovereignty coupled with the requirement of the U.S. Secretary of the Interior to approve any changes made to the constitution. The present Rosebud Constitution mentions this oversight several times. The following are only a few examples:

- To employ legal counsel for the protection and advancement of the rights of the tribe and its members, the choice of counsel and the fixing of fees to be subject to the approval of the Secretary of the Interior
- To advise the Secretary of the Interior with regard to all appropriation estimates or Federal projects....
- Future Powers - The Tribal council may exercise such further powers as may in the future be delegated to the tribe by the Secretary of the Interior
- The council shall draw up one or more forms for standard and exchange assignments, which shall be subject to the approval of the Secretary of Interior
- This Constitution and By-Laws may be amended by a majority vote of the qualified voters of the Rosebud Sioux Tribe...but no amendment shall become effective until it shall have been approved by the Secretary of Interior. It shall be the duty of the Secretary of Interior to call an election on any proposed amendment, upon receipt of a written resolution signed by at least three-fourths (3/4) of the membership of the council.
- Harold I. Ickes, the Secretary of the Interior of the United States of America, by virtue of the authority granted to me by the act of June 18, 1934 (48 Stat. 984), as amended, do hereby approve the attached constitution and by-laws of the Rosebud Sioux Tribe.
- ...permits or contracts must be approved by the Secretary of the Interior

The good news for tribes wishing to fully assert their sovereignty and remove Department of the Interior and BIA oversight is that there is now precedent set by both the Crow tribe and the Oklahoma Cherokee Nation to do so. The removal of Department of Interior oversight will not affect Federal recognition of tribes and furthermore it will not affect tribes' abilities to apply for federally funded grants.

The Convention was convened on February 26, 1999 and was in session for 9 days. On March 6, 1999 the delegation adopted a new Constitution. Since then, the Constitution Convention Commission has been working to define a strategy to get the new Constitution to a vote of the Cherokee people. The greatest obstacle to that process is contained in Article XV, Section 10 of the 1976 Constitution that requires that “*no amendment or new Constitution shall become effective without the approval of the President of the United States or his authorized representative*”.

The new Constitution was submitted to the Bureau of Indian Affairs for review. After months of waiting, the BIA responded with numerous comments, some of which were “suggestions”, and others were “mandatory” changes. In May 2000 the Council passed a resolution requesting that the Commission seek approval from the Assistant Secretary of the Interior to authorize a referendum vote on a single amendment to the 1976 Constitution. After almost two years of communication and negotiation, in April of 2002, an agreement was reached with the BIA to allow the Cherokee Nation to amend the 1976 Constitution, by referendum vote, to *remove Presidential approval authority*, thus eliminating the need for further negotiation on the new Constitution. 4

QUESTION BOX FOR REMOVING U.S. DEPARTMENT OF INTERIOR APPROVAL LANGUAGE

| QUESTIONS | <u>Removing the U.S. Department of Interior “approval and oversight” language from the constitution</u> | | |
|--|--|--|--|
| What is being removed? | All language stating that the U.S. Secretary of Labor must approve constitutional or government changes. | | |
| How will affect the ability to obtain federal grants? | Not at all. | | |
| Will the tribe still be federally recognized? | Yes. | | |
| | | | |

FINAL THOUGHTS

The ability to have a constitution that truly represents the Rosebud people, expounds an image of what they stand for, encourages outside investment, and evokes a deep sense of personal pride and connection is invaluable and well worth the efforts and toils which will go into crafting the precious document.

The current work which is being undertaken by the Rosebud Community at-large and through the hard work of the Constitutional Task Force to reform the Constitution is a step in the right direction and extremely commendable work. It is a testament to the fact that there is a great underlying desire and urge within the Rosebud community to reform the current 1935 IRA constitution and tailor it to better fit the present day lives and culture of the Rosebud Community. In the ideal world, it would be fantastic if at the end of this current Constitutional Reform period, all the structural problems were solved and the Rosebud people were both happy and proud of their new document. The reality is that you are going through a process similar not only to other tribes in the United States but to other countries around the world. Creating a constitution signifies a long process, a challenge, and once achieved, the foundation for a people's every day life.

We are privileged and honored to have had the opportunity to work with you and were very impressed with the commitment and dedication of community members to the future progress and financial success of the Rosebud community. We urge you to remain optimistic in this battle against a history of cultural and spiritual repression. We urge you to keep fighting to reclaim and re-build what is yours. We urge you to move forward, confident that the outcomes will be great.

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