

## WHERE DOES ECONOMIC DEVELOPMENT REALLY COME FROM? CONSTITUTIONAL RULE AMONG THE CONTEMPORARY SIOUX AND APACHE

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*Governments are public goods that provide the organizational and legal structures by which societies arrange and enforce "rules of the game" that enable divisions of labor, exchange, and collective action. We argue that shared, pre-constitutional cultural norms of political legitimacy among rational individuals provide the foundations of effective self-government. The performance of contemporary Apache and Sioux economies on Indian reservations governed by common federally imposed constitutions is examined to test the framework. Unlike the impoverished Sioux, the relatively successful Apaches are found to have pre-existing political norms that (serendipitously) match the structure of their formal constitution.*

### I. INTRODUCTION

#### *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."<sup>1</sup> These prefatory remarks about original unanimity provide a disconcerting peek into an Hobbesian world that is never separated by more than the paper of constitutions from the ordered concepts of contractarian public choice and the new institutionalism that *The Calculus* helped launch.

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1. Buchanan and Tullock [1962, 14-15]. On the realism of the assumption, see at p. 6.

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 making and adherence to the rules of collective action are an expensive endeavor: "The attainment of consent is a costly process" and even choosing and abiding by constitutional rules "confront the choosing individual...[with] the costs and benefits of collective action" (Buchanan and Tullock [1962, 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" (p. 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" (p. 5-6). How do we choose the rules by which we govern ourselves?

The selection of collective decision rules is only part of the problem of collective action confronting self-governed groups of 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.

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 introducing some rule for unanimity or full consensus at the ultimate constitutional level of decision-making (Buchanan and Tullock, p. 6). To avoid [infinite regress] we turn to the unanimity rule..." (p. 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" (p. 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.<sup>2</sup> Some sort of extra-constitutional cooperative agreement, or "social capital," must glue individuals together. Borrowing from *The Calculus* (p. 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.

#### *Extra-Constitutional Agreement 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 an outside party (the United States) on a set of small states—American Indian reservations. Under their (albeit imposed) constitutions—and after decades of policies which treated Indian tribes as wards of the U.S. government—tribal governments on res-

2. 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].

ervations are now asserting real powers of self-government as a result of federal judicial and legislative changes since the mid-1970s that have enhanced tribal sovereignty (Cornell and Kalt [1994]). Tribes can now, for example, levy taxes, regulate their economies, pass laws, own assets, establish court and police systems, and determine citizenship.

We examine two modern American Indian tribes with markedly different economic and social success in the current era of self-government: 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 of this study is that the vastly different performance of the modern White Mountain Apache and the Oglala Sioux is consistent with closer extra-constitutional agreement on the form and substance of tribal government at Fort Apache than at Pine Ridge. We test this hypothesis of constitutional "match" by a pairwise comparison of the current constitutional rules operating at the two reservations with each tribe's pre-reservation governmental system. Reliance on but two tribes is, of course, a limitation on the power of our test. At the level of detail at which we propose to examine pre-reservation political systems, however, data is particularly scarce, as is space here. Fortunately, the Apache and Sioux are unusual in the extent of documentation of their histories. In prior work, we have reported results on some elements of constitutional "match" for larger samples of tribes (Cornell and Kalt [1991; 1992a]). This study is intended to supplement those results by focusing at a much finer level of detail.

## II. NORMS OF LEGITIMACY, SOCIAL CAPITAL, 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 old and reformed China or East and West Germany, this advice generally has 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 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 constrain 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 to 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]. Sociobiology 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 nonexistence 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 postcolonial 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.<sup>3</sup> The working hypothesis of

3. 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

this paper is that, to be effective and productive of economic progress, formal institutions of government require widely shared extra-constitutional agreement over two primary attributes of governing institutions: *feasibility* (i.e., the perceived technology of making and enforcing governmental decisions—“chief executives are/are not able to make impartial judicial decisions”), and *legitimacy* (i.e., normative ideological views regarding propriety—“the government should/should not protect private property”). 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.

1. *Structure of authority*: The division of powers and responsibilities across such tasks as dispute resolution and enforcement (judicial affairs), law and rule making (legislative affairs), administration and implementation of policies (executive and bureaucratic functions), and external political, economic and military affairs (international relations).

2. *Scope of authority*: The range of powers and responsibilities wielded by the government over the foregoing areas of authority. For example, 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.

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; 1995].

3. *Location of authority*: The level of social organization—family, local community, affinal “band” organization, the tribe or nation—in which political power and responsibility are appropriately vested, according to a society’s cultural norms.

4. *Source of authority*: The mechanisms by which individuals who assume governmental roles and control over means of coercion acquire *legitimate* authority.

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 authority 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. In such societies, 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. These Indian Reorganization Act (IRA) constitutions varied little in basic form across tribes. Tribes, however, often differed markedly in their indigenous, pre-reservation governmental forms. They ranged from the “communalist” imagined in today’s stereotype of “natural man” to the theocratic, dictatorial, autocratic, and repre-

sentative-democratic. Categorization of indigenous government along these lines serves as our primary mechanism for determining “match” with tribes’ present (IRA) constitutional forms.<sup>4</sup>

### III. DEVELOPING APACHE VS. STRUGGLING SIOUX

In the Indian context, both our quantitative research and extensive fieldwork with tribes repeatedly turn up the conclusions that ineffective tribal government is a sufficient condition for the stark economic underdevelopment found on most reservations and that a match between extra-constitutional cultural norms and formal institutions is a necessary condition for existence of an economy based on real production (as opposed to federal transfers).<sup>5</sup> 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 Sioux cultural norms locate *legitimate* allegiance to authority at the subtribal level of the reservation’s local districts, the first time a crisis in a business’s finances or management arises, support for the enter-

4. This involves the further working hypothesis that indigenous pre-reservation political norms continue to exert influence today. This is consistent with Putnam’s [1992] findings that “social capital” dating back hundreds of years explains variation in the performance of modern Italian villages. While beyond the scope of the present study, an exception which proves the rule in Indian Country is provided by the notably *unsuccessful* Apache tribe—the San Carlos Apache. As the tribe of Geronimo, the San Carlos Apache cultural traditions, familial relations, and leadership structure were subjected to well-documented systematic repression over the decades following creation of the reservation. See Cornell and Gil-Swedberg [1995].

5. 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].

TABLE I  
Economic Indicators: Apache v. Sioux

	White Mountain 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%

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.

prise withers, free riders are not constrained in consuming available rents through self-serving manipulation of the central tribal government, and the enterprise collapses.<sup>6</sup> Or, if Apache cultural norms locate legitimate authority in the office of the tribal chairman such that otherwise defecting supporters are constrained by those norms to side with him when it is necessary to fire an incompetent worker at the tribal ski resort, the efficiency of labor at the site and the ski resort have better chances of being sustained.

#### *Present Conditions on Apache and Sioux Reservations*

There are four sizable Apache reservations and seven major Sioux reservations.

6. Jorgensen [1990] provides a case in point.

As indicated by Table I, the economic performance of the Apache reservations as a group is far outpacing the Sioux performance in the period of self-determination (as well as federal budget cuts) that began in the mid-1970s. As of 1989, average Apache unemployment stood at approximately 27 percent, compared to 75 percent for the Sioux. One-fourth of Apache adults earned employment incomes in excess of \$7000 per year, compared to 13 percent on the Sioux reservations; this figure rose slightly for the Apache over 1977-89, while the earnings performance of Sioux adults fell substantially.

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 com-

bination 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 tax and regulatory incentives that originate in federal policy (Cornell and Kalt [1994]). 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 more than twenty 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.<sup>7</sup> In general, efforts at private sector development, supported by nontribal loan programs, have proven relatively more sustainable on Sioux reservations.

*The Cases of the Pine Ridge Sioux and the White Mountain Apache*

*Pine Ridge (Lakota) 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 I). 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 percent 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 percent of this total.<sup>8</sup>

7. On the meat packing investment, see Jorgensen [1990].

8. Data provided by Oglala Sioux Tribe.

In addition to agriculture, a small amount of private sector employment is found in four or five 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 over 100 miles roundtrip) commutes 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 percent of the national average in 1986 (Johnson [1987]). As of 1986, 47 percent of the reservation population was reported to be receiving public assistance (general assistance, food stamps, etc.). Approximately 50 percent of the workforce was reported to be unemployed for more than fifteen weeks at the time of the 1980 census, and three-fourths of the employed workforce was in the governmental sector. As of 1989, 73 percent of the workforce was reported to be unemployed (Table I).

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.<sup>9</sup> 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 sixty-year 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 I). Approximately 750 thousand acres of the Reservation are wooded and another 400 thousand acres are rangeland. The White Mountain Apaches operate eleven 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; a small casino; and a tribal cattle herd. These enterprises are large and ongoing, with aggregate revenues approaching \$80 to \$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 percent Apache, close to \$10 million per year in payroll, labor productivity that is 30 percent 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 tens of 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 to \$15,000 per animal hunted.<sup>10</sup>

As of early 1989, unemployment among the White Mountain Apaches was 11 percent (Table I) (although this rose somewhat with the national recession in the early 1990s and with significant return migration onto the reservation). Approximately 19 percent of the White Mountain Apache labor force reported being unemployed for more than fifteen weeks in the

10. 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. On the Coasian management style of the Apache, see Cornell and Kalt [1993].

9. See, e.g., Jorgensen [1993].



1980 census. Thirty percent of White Mountain Apache families were receiving public assistance at the time of the 1980 census, compared to 42 percent for the national Indian population. The census also found that 31 percent of Apache employment was in tribal enterprises in 1980, with 10 percent in the private sector and 59 percent in the public sector. By 1990, however, and correcting for enterprise employment reported as employment by the tribal government, over 75 percent 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.<sup>11</sup>

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 eleven representatives elected from 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 seventeen 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. INDIGENOUS NORMS OF POLITICAL ORGANIZATION AMONG SIOUX AND APACHE

Perhaps the most natural place to look for explanation of the sharp divergence between economic conditions at Pine Ridge and White Mountain would be in differences in resource and/or human capital endowments. Even after accounting for differences of these kinds, however, the Apache economy is far outperforming the economy of the Oglala Sioux. While full description is beyond the scope of this study, we have previously investigated the sources of cross-reservation variation in economic performance in an empirical analysis of sixty-seven tribes (Cornell and Kalt [1991]). Specifying reservation employment levels as functions of such variables as resource endowments (proxied by the state of the immediately adjacent off-reservation economy), educational attainment, work experience, property rights allocations, and tribal constitutional structure produces predicted (fitted) levels of employment at White Mountain and Pine Ridge.<sup>12</sup> Actual employment (percent of the workforce employed) among the White Mountain Apache as of 1989 exceeded the levels predicted for the tribe by more than 30 percentage points, while actual employment among the Oglala Sioux was more than 25 percentage

12. We find evidence that these other factors generally do have significant explanatory power. Thus, for example, Anderson's and Lueck's [1992] hypothesis that federal policies in the early reservation period that resulted in complicated mixtures of public, private, and tribal land ownership impedes current development on reservations is supported. Even accounting for such factors, however, the Oglala Sioux are performing far off the production possibility "frontier" relative to the White Mountain Apache.

11. Data provided by the White Mountain Apache Tribe.

points below predicted levels. By the same token, with its 11 percent unemployment rate, the White Mountain Apache were performing at approximate parity with the adjacent non-Indian economy, while the 61 percent unemployment rate at Pine Ridge was far above that of the adjacent non-Indian economy. Moreover, educational attainment and work experience both appear to be higher among the Oglala Sioux compared to the White Mountain Apache (Cornell and Kalt [1991]).

In short, the relative success of the White Mountain Apache cannot be attributed to simply a better or luckier resource endowment. Moreover, unlike familiar comparisons such as East/West Germany, where resource-based explanations for divergent economic performance give way to explanations based on governmental form, the similarity of Oglala Sioux and White Mountain Apache governments suggests the need to look beyond governmental form—i.e., toward the efficacy of the tribes' governmental systems and the hypothesis that the Apaches' system is better matched to indigenous norms of feasibility and legitimacy.

It is important to note that our attention to the cultural foundations of governmental form does not rule out the prospect that other dimensions of social capital and cultural norms play causal roles in current Sioux and Apache economic performance. For example, the norms of behavior, property, and cooperation of a warrior and hunter society may have served the Oglala Sioux well in the pre-reservation era, but may be poorly suited to a rural agricultural and trading economy in the late twentieth century. By the same token, historic Apache experience with, for example, agriculture, publicly owned irrigation infrastructure, and "international" trade (e.g., with the Spanish) may have provided the basis for cultural traits that are more productive in the present day. This said, prior larger sample analyses have

indicated that effective government is necessary to solve the third-party enforcer problem, and that congruence between cultural norms and governmental form is part of a set of necessary conditions for solving that problem and creating economic growth (Cornell and Kalt [1991]). Thus, while other cultural and endowment factors must surely play a role in determining societies' economic conditions and progress, our analysis here can be interpreted as asking whether or not the evidence concerning historic norms of legitimacy is consistent with the presence or absence of the necessary condition of constitutional "match" among the Apache and Sioux, respectively.<sup>13</sup>

#### *Oglala Sioux Self-Government Prior to the IRA*

Aboriginally, the Sioux were a loose association of peoples, located generally in what is today Minnesota and Wisconsin. Within this loose federation, there were seven divisions: the Mdewakanton, Wahpeton, Sisseton, Wahpekute, Yankton, Yanktonais, and Teton. The Tetons in turn were subdivided into seven groups, or tribes. The Oglalas are one of the seven subdivisions of the Tetons, with their population now concentrated on the Pine Ridge Reservation and self-referred to as the Lakota people.<sup>14</sup>

Little is known of Sioux political organization prior to their westward migrations onto the Great Plains over the hundred years ending by approximately 1775. By that date, the designation "Sioux" appears to most accurately describe dimen-

13. Clearly, no implication should be drawn that constitutional match is a sufficient condition for economic success. It is certainly possible for a society to adopt a culturally congruent constitutional form that is unproductive or even disastrous. Self-selection of a constitutional form by a democracy is no guarantor of economic success.

14. See the sometimes conflicting but essentially complementary discussions of this multilayered organization in Powers [1977] and DeMallie [1971].

sions of shared identity as embodied in language and, perhaps, other cultural characteristics (DeMallie [1978, 239]). Political organization above the tribal level—e.g., at the level of the Teton division or at the level of all Sioux divisions—seems to have been nonexistent in practice (Hassrick [1944, 338]). The exception here may have been brief alliances for military purposes, such as the Battle of the Little Bighorn (i.e., Custer Battle) of 1876, in which a number of Teton tribes cooperated.

*The Structure of Authority.* While the available accounts are sketchy and sometimes contradictory, it seems clear that systematic political organization following the westward migration of the Sioux was operative at the subtribal band and tribal (e.g., Oglala) levels. The Lakota term for subtribal bands is *tiyospaye*, which translates as “a group of lodges,” and describes “the essential unit of social order” (DeMallie [1978, 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. 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, 243]; Powers [1977, 35]).

Within bands, however, Sioux political organization was relatively well articulated into structurally distinct forms. 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, 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, persuasiveness, and the prestige of his supporters in the council, although one of Walker’s informants stated that if a chief had many strong supporters, then everyone would obey him [1982, 25–26].<sup>15</sup> 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, 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 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 fol-

15. 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 village” (Parkman [1991, 135]).

lowers joined them, a new band would emerge (Walker [1982, 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) from selected societies with specializations in police functions (Walker [1982]). The appointed *akicita* were charged with implementing and enforcing council decisions, maintaining order in camp and during the hunt, and resolving disputes among band members. 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. The selection of *akicita* from specialized societies and their power over council members suggest some degree of independence and professionalization in judicial and police powers. 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 *wicasa yatapika*, or "men they praise" (DeMallie [1978, 247]).<sup>16</sup> These men, according to DeMallie [1978, 248], "were considered the supreme elder kinsmen of the tribe but had no actual authority," other, presumably, than that derived from their appointment by the council and their persuasiveness. DeMallie finds that political organization at this level functioned only intermittently, emerging when bands came together, often in the summer, for events such as the ceremonial Sun Dance, large hunts, or

cooperation in war. Farber [1970, 126] claims that the annual summer gatherings seldom led to major decisions.

There is evidence that a combination of military necessity and the U.S. 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 (Biolsi [1992, 36]; Price [1994]). Goldfrank [1943, 79–81] suggests that after 1855, as the American threat to Sioux society and territory increased, there was a trend toward consolidation. This was manifested by a strengthening of chieftaincy and a tendency for bands to combine in larger units (see also Biolsi [1992, 36–37]; Utley [1993]). It may be that the elaboration of Oglala political structure was a response in part to these conditions.

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 "shirt-wearers," 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

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

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

While the example of Red Cloud's band represents 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 policymaking body of the band or tribe; (2) a parliamentary chief or multiple chiefs, selected by the central council and empowered as the primary executor(s) of political authority (perhaps with additional layers of administrators); and (3) an enforcement arm in the akicita, who were selected by the council or by the chief(s) under council authority, and who carried out police and judicial functions.

The primacy of the council in this structure is at direct odds with the present governmental structure at Pine Ridge—a poor “match.” As noted above, the current constitution at Pine Ridge provides for the separate election of the tribal council and the tribal chair (president). Direct election of the tribal chair provides the chair with a power base which is independent of the tribal council. Evidence from throughout Indian Country today indicates that this produces relatively powerful chief executives. Parliamentary-structured tribes (in which the chair is selected by, and usually from, the tribal council), on the other hand, 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 (Cornell and Kalt [1991]). Parliamentary selection of the tribal chair at Pine Ridge

would be more consistent with indigenous Oglala Sioux norms than the current system of direct election.

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 II. The only Sioux reservation with unemployment below 50 percent in 1989 was the Lower Brule reservation (at 29 percent). The only Sioux reservation on which unemployment fell over the decade of 1979–89 was Lower Brule (going from 43 percent to 29 percent). 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 percent (at 39 percent). The Lower Brule reservation is the only Sioux reservation with a parliamentary form of tribal government.

*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 and led by any individual if he could persuade other men to join him. Individuals well known for their skill at warfare presumably attracted more followers. However, raiding parties required approval by the band chief or council before they embarked (DeMallie [1971, 151–53]). In the field, they operated under

**TABLE II**  
Comparative Economic Conditions on the Sioux Reservations

	Unemployment 1989	Change in Unemployment 1979-1989	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%

*Sources:* See Table I.

war leader (*blotahunka*) direction and akicita enforcement. Organized warfare, e.g., against the United States Army, was directly under the control of band and, eventually, tribal government, with council oversight and approval, and war leader 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 limited reason to develop social and political structures and policies 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, 47]). Committing such an offense was subject to law enforcement (with penalties such as complete ostracization and even death). 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, 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, 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, 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).

*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, 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 *wicasa yatapika* noted above (DeMallie [1978]). At no time did the Sioux concentrate power in a central *tribal-level* government with a single chieftain.<sup>17</sup>

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, 52]; Olson [1965, 301]). Prior to the adoption of the IRA

17. They may have come close during the period of extreme military duress leading up to and following the Battle of the Little Bighorn in 1876, when some accounts indicate that Sitting Bull very briefly acquired unprecedented authority as a chieftain (Utley [1993]).

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, including 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, 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 single strong chief executive. 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 central tribal government. 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 the district level at Pine Ridge, and that a preference for local autonomy still remains (e.g., DeMallie [1978, 274]; Powers [1977, 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, 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.<sup>18</sup> DeMallie [1978, 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 the direction of local leaders.” As discussed below, the contrast with the White Mountain Apache could not be more stark.

*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:

18. This is consistent with the hypothesis put forth by, e.g., Ellickson [1990] that, in the presence of dysfunctional formal institutions of government, groups turn to informal and even illegal substitutes.

warfare and the hunt. Warfare encouraged individual competition for status through daring and flamboyant deeds in battle. The buffalo hunt, in contrast, placed the common good—the need for meat—above individual performance. The hunt was a highly disciplined activity and offered relatively few opportunities to add to one’s individual prestige (Mirsky [1937, 405]; Walker [1982, 32]).

The traits and sources of status leading to political authority in Sioux culture represent a mixture of individualist and collectivist criteria. Writes Wissler [1948, 103], “the real aristocrats seem to have been those with great and good deeds to their credit.” 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]). Chieftaincy was not formally hereditary in Sioux society. Great leaders were often succeeded, with council approval, by their sons (Wissler [1912]; Walker [1982, 24]; DeMallie [1978, 247]), presumably if the council felt that the younger had acquired enough of the traits that defined legitimate leadership.

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]). 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, 37]; Mekeel [1936]; DeMallie [1971]). The individual accumula-



tion of goods was frowned upon as a sign that the person involved valued material possessions more than social relations (Mirsky [1937, 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, 103]). In Sioux society, chiefs were often among the poorest persons in the community, having given so much away (DeMallie [1978, 250]; Parkman [1991, 135]).<sup>19</sup>

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, 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, 249] "were generally held to be shamans as well." 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. If he were successful, followers might be attracted by such evidence of spiritual power, his own stature and power within the tribe as a whole would increase, and the stature of his band within the tribe would increase. In contrast to the Apache (see below), the Sioux exhibit relatively greater emphasis on 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.

19. This is more extreme than observed in the case of Apache leaders—see below.

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 current 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.

*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. 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. Migrating "Southern" Athapaskans appear to have settled in the southwestern United States by around 1500 A.D. (Perry [1980]). Significant settlement in Arizona by what came to be known as the Western Apache occurred by around 1700 (Terrell [1972]; Goodwin [1942]). The modern White Mountain Apache Tribe is descended from these Western Apache.

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]). Some analysts argue that the Apaches "were among the most enterprising traders of the entire southwestern region" prior to European contact (Terrell [1972, 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. The Apache also 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 by the seventeenth century. 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, 210]). The Apache emerged as the dominant tribe in the region, fending off Spanish expansion 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 barn raisings) 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]).

*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 1850–1875, 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, 61]). The head chief of a band 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 remained "in session" and retained policymaking authority (Goddard [1921, 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, 24]), although they could be removed or would remove themselves upon becoming feeble or otherwise incapacitated (Opler [1941; 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, 165, 676]). The head chief and the subchiefs formed "sort of a council" (Kaut [1974, 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, 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 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, 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 thirty, by some reports), the head chief apparently selected the subchiefs (Ogle [1970, 24] based on first-hand accounts). That is, the head chief selected the "sort of a council." Obviously, in contrast to the Sioux coun-

cil-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, 131]), "he who directs" or commands (Opler [1953]), or "he who convinces us."<sup>20</sup> 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, 155]). As Opler [1937, 234] concluded in the case of the Chiricahua, "where opinion is divided or undecided, what the leader suggests is the decisive factor."

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; 1953]; Cortes [1799]; John [1989]; Kaut [1974]). While the equation of power with coercive violence is found to

20. Translation provided by Mr. Edgar Perry, Tribal Cultural Director, White Mountain Apache Tribe, personal interview, 1987.

be fairly common by anthropologists operating in the postwar 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, 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."

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, 24]; Goodwin [1942, 179]; Opler [1946; 1937, 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, 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; 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, 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]).

*The Scope of Authority.* Present-day Apache tribal chairmen are noted for their political power and longevity.<sup>21</sup> 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 the important tribal enterprises. In addition, he 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; 1983]; Kaut [1974]). Economic authority was restricted in the agricultural sector, where individ-

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

ual land plots were the private property of individual families (Opler [1969; 1983]; 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, 150–51]). Trespass onto the bands' and groups' hunting tracts also required approval of the head chief (Goodwin [1942, 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; 1941]; Goodwin's informants [1942, 678]). Apache 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, 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 deco-

rum through almost daily speechmaking. The morning speech was an obligation of the head chief (Goodwin [1942, 165]; Goddard [1921, 169]).

*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, 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, 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, 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.

*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 feel constrained 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: as noted, Apache head chiefs 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, 181]). In contrast, it is well documented that 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 (e.g., 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, 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 chairpersons.

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, 164]; see also Opler [1937, 233]; Ogle [1970, 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, 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, 182]; Basso [1983, 475]). Common citizens were expected to show deference to chiefs and did not talk on equal terms

with them (Goodwin [1942, 182]; Kaut [1974]). Chiefs typically had superior dwellings and camps, reflecting above-average wealth (Goodwin [1942, 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 chairperson 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 Apache. Whatever leadership traits had worked historically for the Western Apache, those same traits and the cultural norms supporting them would be expected to work well under IRA government. This is consistent with the observed recent relative economic success of 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 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 relatively 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 current Apache governance is consistent with their relative economic success as a self-governing society.

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